

PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

THE HANSARD

Thursday, 3rd December 2020

The House met at 10.00 a.m.

[The Deputy Speaker (Hon. Moses Cheboi) in the Chair]

PRAYERS

QUORUM

Hon. Deputy Speaker: Hon. Members, this is probably our last day this year. We have started with a few Members this morning. I am not too sure what has tied down the other Members. I order that the Quorum Bell be rung for 10 minutes.

(The Quorum Bell was rung)

Hon. Members, we now seem to have quorum. I encourage Members not to use the holding areas until the main Chamber is full. You are encouraged to first fill the Chamber. Let us proceed with the business for today.

PAPERS LAID

Hon. Deputy Speaker: Under this particular Order, we have the Leader of the Majority Party, Hon. Kimunya.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Deputy Speaker, I beg to lay the following Papers on the Table of the House:

Report to Parliament on All New Loans Contracted by the Government of Kenya from 1st May 2020 to 31st August, 2020.

List of nominees to four National Government Constituencies Development Fund Committees from the National Government Constituencies Development Fund Board for the following constituencies:

- (a) Ainabkoi;
- (b) Chepalungu;
- (c) Kasarani; and
- (d) Buuri

Reports of the Auditor-General on the Financial Statements in respect of the following institutions for the year ended 30th June 2019, and the certificates therein:

- (a) Kenya Youth Employment and Opportunities Project Credit No.58120 – KE
- (b) Higher Education Loans Board;

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- (c) State Department for Housing and Urban Development; and
- (d) State Department for Shipping and Maritime.

Hon. Deputy Speaker: Very well. The Report on all new loans contracted by the Kenya Government is referred to the Budget and Appropriations Committee.

Let us have the Chairperson of the Departmental Committee on Lands.

Hon. (Ms.) Rachael Nyamai (Kitui South, JP): Hon. Deputy Speaker, I beg to lay the following Papers on the Table of the House:

Reports of the Departmental Committee on Lands on its consideration of:

1. The Senate Amendments to the Sectional Properties Bill (National Assembly Bill No.23 of 2019); and
2. A Petition by the Shareholders of Chenze Ranching Cooperative Society Limited regarding Irregular Transfer of the Ownership of Chenze Ranch.

Hon. Deputy Speaker: Very well. Let us move to the next Order.

NOTICE OF MOTION

APPROVAL OF NOMINEES FOR APPOINTMENT TO CONSTITUENCY COMMITTEES

Hon. Deputy Speaker: On this one, we have the Member for Mt. Elgon representing the Committee. Is that the position, Hon. Kapondi? Hon. Kapondi, you have the Floor. I do not know how to trace you. Is Hon. Kapondi in the House? You are looking a little shorter than usual. You now have the microphone.

Hon. Fred Kapondi (Mt. Elgon, JP): Hon. Deputy Speaker, I beg to give notice of the following Motion:

THAT, pursuant to the provisions of Section 43(4) of the National Government Constituencies Development Act, 2015, and paragraphs 5(2) and (10) of the National Government Constituencies Development Fund Regulations, 2016, this House approves the list of nominees for appointment to the following four constituencies committees of the National Government Constituencies Development Fund, laid on the Table of the House on Thursday, 3rd December 2020:

- (a) Ainabkoi Constituency;
- (b) Chepalungu Constituency;
- (c) Kasarani Constituency; and
- (d) Buuri Constituency.

Hon. Deputy Speaker: Thank you very much. Let us move to the next Order.

QUESTIONS AND STATEMENTS

Hon. Deputy Speaker: On this particular Order, we have a few Questions.

ORDINARY QUESTIONS

Some Members have requested that we defer theirs. I will keep asking. Hon. Jared Okelo requested that his Question be deferred. What is it, Hon. Member?

Hon. Godfrey Osotsi (Nominated, ANC): Hon. Deputy Speaker, Hon. Jared Okelo had requested me to read the Question on his behalf.

Hon. Deputy Speaker: I do not have that indication.

Hon. Godfrey Osotsi (Nominated, ANC): He sent a letter.

Hon. Deputy Speaker: Let me confirm if we have a letter because that is what will guide us. You cannot simply read it for him.

Hon. Godfrey Osotsi (Nominated, ANC): I have a copy of the letter he sent.

Hon. Deputy Speaker: You probably even have the original but we do not have any indication at all. It would be difficult for us to proceed in that manner. The information I have is that he had made a request that the Question be deferred. I will keep trying to locate the letter. If there will be one, I will give you an opportunity. If there is none, I will not.

Next is the Member for Subukia, Hon. Gachobe. If he is in the House, he can proceed.

Question No. 365/2020

RECRUITMENT OF CHIEF FOR WEI LOCATION OF SUBUKIA SUB-COUNTY

Hon. Kinuthia Gachobe (Subukia, JP): Thank you, Hon. Deputy Speaker. I beg to ask Question No. 365/2020 to the Cabinet Secretary for Interior and Coordination of National Government:

Could the Cabinet Secretary indicate when the Ministry will recruit a chief for Wei Location of Subukia Sub-County considering that the said location has not had a substantive chief for the last three years, thus hindering service delivery to the residents of Wei Location?

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Very well. That Question will be replied to before the Departmental Committee on Administration and National Security. The next Question is by the Member for Ganze, Hon. Teddy Mwambire.

Question No. 366/2020

HEAD TEACHERS AND DEPUTIES SERVING IN ACTING CAPACITY IN KILIFI COUNTY

Hon. Teddy Mwambire (Ganze, ODM): Thank you very much, Hon. Deputy Speaker for according me an opportunity to ask Question No. 366/2020 which is directed to the Teachers Service Commission (TSC):

- (i) How many primary school Head and Deputy Head teachers in Kilifi County are serving in acting capacity and, has the Commission paid their acting allowances from the dates they were appointed to act?
- (ii) Could the Commission explain how long a teacher should serve in an acting capacity before promotion to the substantive position as Head Teacher and Deputy Head Teacher?

Thank you very much, Hon. Deputy Speaker.

Hon. Deputy Speaker: Very well. That Question is for written reply by the Teachers Service Commission. Next is the Member for Sirisia, Hon. Major (Rtd.) John Waluke.

Question No. 370/2020

MEASURES TO DEVELOP AND PROMOTE SMALL AND MEDIUM ENTERPRISES

Hon. John Waluke (Sirisia, JP): Thank you, Hon. Speaker. I rise to ask Question No. 370/2020 to the Cabinet Secretary for Industry, Trade and Cooperatives:

- (i) Could the Cabinet Secretary explain measures being implemented by the Government to develop and promote Small and Medium Enterprises (SMEs) to enable them compete internationally?
- (ii) What progress has the Kenya Industry and Entrepreneurship Project (KIEP) made in linking emerging SMEs to global academicians, researchers and financial institutions nationally, and particularly in Sirisia Constituency and the larger Bungoma County?

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Very well. That Question will be replied to before the Departmental Committee on Trade, Industry and Cooperatives. Next is the Member for Kilifi South, Hon. Chonga.

Question No. 376/2020

OBSTRUCTION OF MITANGONI-MTWAPA ROAD BY PRIVATE DEVELOPER

Hon. Ken Chonga (Kilifi South, ODM): Thank you, Hon. Deputy Speaker. I rise to ask the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works Question No. 376/2020.

- (i) Could the Cabinet Secretary explain why the Mitangoni-Mtwapa Road (D556) connecting Kikambala, Vipingo, Majengo and Mtwapa within the vast Chonyi Sub-County in Kilifi South Constituency, has been blocked from public use by a private developer, M/s. Vipingo Ridge Ltd.?
- (ii) What measures has the Ministry put in place to ensure that the said road is open for use by the public and resumption of regular maintenance of the road by the Kenya Rural Roads Authority is undertaken?

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: That Question will be replied to before the Departmental Committee on Transport, Public Works and Housing. Hon. Members, the next Question would have been asked by Hon. Catherine Waruguru. I am in receipt of a letter from her requesting it to be deferred. That is acceded to.

Question No. 384/2020

UPDATE ON CONSTRUCTION OF NANYUKI-GWA KUNG'UA ROAD

(Question deferred)

Hon. Deputy Speaker: I will go back to the Question by Hon. Jared Odoyo. I have also received a letter from him. He said that Hon. Osotsi will ask the Question on his behalf. Therefore, proceed and ask.

Question No. 352/2020

DISBURSEMENT OF SCHOOL INFRASTRUCTURE FUNDS SINCE 2013

Hon. Godfrey Osotsi (Nominated, ANC) on behalf of **Hon. Jared Okello** (Nyando, ODM): Thank you, Hon. Deputy Speaker. I wish to ask Question No. 352/2020 on behalf of the Member for Nyando, Hon. Jared Okello, which is directed to the Cabinet Secretary for Education:

- (i) Could the Cabinet Secretary provide details and breakdown of disbursement of school infrastructure funds since 2013, including specific amounts allocated to each school?
- (ii) Could the Cabinet Secretary explain the circumstances that led to the loss of funds, estimated at over Ksh1 billion in every year, since the inception of the Basic Education Capitation Programme, giving details of the exact amount lost and the person culpable for the loss?
- (iii) Could the Cabinet Secretary further explain whether the Ministry engaged the services of the Ethics and Anti-Corruption Commission (EACC) in carrying out investigations, and if so, what progress has been made so far?
- (iv) What measures is the Ministry taking to address cases of overpricing of items meant for schools, in particular the prices of the recently conceptualised Government-funded desks and chairs, which are being procured at the rate of Ksh1, 700 per piece in some cases?

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: That Question will be replied to before the Departmental Committee on Education and Research.

The next segment in that particular Order is replies to Statements and a Statement by the Chairperson of the Budget and Appropriations Committee, Hon. Kanini Kega. Proceed.

STATEMENTS

ADDITIONAL EXPENDITURE INCURRED
UNDER ARTICLE 223 OF THE CONSTITUTION

Hon. Kanini Kega (Kieni, JP): Thank you very much, Hon. Deputy Speaker. I want to give a Statement in regard to many questions that I have been asked by Members of Parliament in regard to Article 223 of the Constitution.

The Budget and Appropriations Committee is in receipt of a brief from the National Treasury highlighting additional expenditure that has been incurred under Article 223 of the Constitution in the current financial year. As per this Article, the national Government is allowed to spend money that has not been appropriated, if the amount appropriated for any purpose under that Appropriation Act is insufficient, if a need has arisen from expenditure which no money has been appropriated or if the money has been withdrawn from the Consolidated Fund.

According to the brief that we got from the National Treasury on 15th October 2020, they have approved additional expenditure amounting to Ksh36.1 billion. It cuts across various agencies, notably monies for the Nairobi Metropolitan Services, support for free primary education, substantial support for the Kenya Airways, additional support for *Kazi Mtaani*, provisions for desert locusts, security operations among others.

The Committee observes that the submission of this brief is significant in the improvement of the Supplementary budget process as it is in compliance with the Committee's request that such information be presented early enough for approval by Parliament. Nevertheless, it is observed that for the two approvals, the submissions were done beyond the two months as it is required; namely, the provision for the Nairobi Commuter Railway and the Kenya Airways grant.

Hon. Deputy Speaker, the Committee is concerned that some of these expenditures incurred under Article 223 are not emergencies or unforeseen in nature, and therefore undermine the spirit of the Supplementary Budget process. Ideally, and according to Section 4 (a) of the Public Finance Management Act (PFM) Regulations 2015, unforeseeable and unavoidable expenditures do not include expenditures that, although known when finalising the estimates of the original Budget, could not be allocated within the allocations. Indeed, any expenditure that can be deferred to the following financial year, should not be presented in the Supplementary Budget.

Overuse of Article 223 of the Constitution, does not only undermine the credibility of the budget process but also the role of Parliament in the budget-making process. This House is aware of the efforts we put in processing the Budget and to have all this effort undone through the Supplementary Budget process undercuts the role of Parliament.

Hon. Deputy Speaker, the revenue performance is below target as reported in the Quarterly Economic Budget Review that was read in this House a few days ago. This means that the expenditure approvals will have to be met from either additional borrowing or expenditure cut. The National Treasury indicates that they are reviewing the performance of all Ministries and will be making proposals through the Supplementary Estimates.

Given the amount of expenditure incurred and that these expenditures affect a number of Multiple Discriminant Analysis (MDAs) the Committee would like to table this schedule to this House and recommend that it be submitted to the departmental committees for scrutiny in line with their respective mandates as we await the Supplementary Budget.

In view of the limited fiscal space on account of depressed economic activity and projected revenue underperformance, Members are urged to critically review the Supplementary Budget when it is presented to ensure that only the most critical expenditures will be approved. Importantly, limitations on introduction of new projects should be upheld. This House should note that upon receipt of the information from departmental committees, the Committee will be seeking approval of the House through a Special Motion, unlike previously where expenditure under Article 223 was approved together with other years' expenditure adjustments in the Supplementary Budget.

Hon. Deputy Speaker, when we received that letter from the Cabinet Secretary for National Treasury, we invited them for a session where they appeared before us yesterday. They said that they have already spent Ksh17 billion, they have approved Ksh34 billion and they are expected to spend more, but they did not tell us where they are getting the money from. They requested for more time for them to give us the actual Supplementary Budget for them to tell us where they are getting the money from.

This House can remember that we have a huge fiscal deficit amounting to over Ksh800 billion coupled with underperforming revenue. So, this is a critical issue that we request the

departmental committees to critically look into so that by the time we will be making the final Motion in regard to this, we will have properly interrogated the documents that were presented to us.

With those remarks, I beg to submit.

Thank you.

Hon. Deputy Speaker: Do you have any indication of which departmental committees are affected?

Hon. Kanini Kega (Kieni, JP): Yes, I do. It cuts across. There is Hon. Koinange's Committee which is handling the metropolitan services. There is Interior, Defence, Transport, Education and Treasury, to be handled by the Departmental Committee on Finance and National Planning. Health and Housing is under Transport.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Before we move forward, let me give the Floor to at least, two or three Members. Let us start with Hon. (Dr.) Makali Mulu.

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you very much, Hon. Deputy Speaker. Let me thank my Chairman for that presentation and make some observations.

Hon. Deputy Speaker: Please, make them brief.

Hon. Makali Mulu (Kitui Central, WDM-K): If you look at the Constitution, you realise that Article 223 comes after the issue of the Appropriation Act. This means that the spirit is that even as you implement Article 223, Parliament would already have appropriated resources. The intensive use of Article 223 is abuse to the budget-making process. So as to take care of the fiscal deficit, I would urge the departmental committees to look at the whole budget and find areas where we can reduce what is already in the Budget so as to accommodate these expenditures arising from Article 223.

In reality, the spirit of the Constitution is not to use Article 223 as an alternative to budget-making process.

I submit. Thank you.

Hon. Deputy Speaker: Let us have Hon. Murungi Kathuri.

Hon. Kathuri Murungi (South Imenti, Independent): Thank you, Hon. Deputy Speaker. I also want to thank the Chairman of the Budget and Appropriations Committee for being honest with what is happening in the National Treasury.

This morning, in all the newspapers, the Cabinet Secretary for National Treasury has told us to brace ourselves for tough times in this country. He is telling us to brace for tough times, yet he is also spending a lot of money even before the Committee approves that expenditure, therefore, he is misadvising us. He is the one making us suffer. You cannot spend all those billions without approval and then you come to cry to the citizens. How do we help? Hon. Chairman and your Committee, please rein in on those people.

As we speak, even staff of Members of this House have only been paid for two months. They are going for the Christmas and New Year festivities with no money. The National Government Constituencies Development Fund (NG-CDF) itself has not disbursed any money to the constituencies. Some constituencies still have pending money from the last financial year.

In audit reports, the Auditor-General declares that those citizens have not gotten value for their money. Once money is appropriated in the Budget, like what we do in the NG-CDF, and then the financial year ends without the projects being implemented, the Auditor-General terms this as citizens did not get value for their money. We are very much afraid of the National Treasury. The

Committees to save us are the Budget and Appropriations Committee and the Departmental Committee on Finance and National Planning.

I thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Let us have Hon. Wanyonyi. If we can be brief, maybe more Members will get the opportunity to contribute on this.

Hon. Ferdinand Wanyonyi (Kwanza, FORD-K): Hon. Deputy Speaker, I am a very sad Member of Parliament. As my colleagues have mentioned, we are going for a very long recess yet the NG-CDF Committee, where I am a Member, has not received money. I am told that there will be some cut yet the Budget and Appropriations Committee which is here, is quite competent to assist the National Treasury in proper appropriation of funds.

I think I am getting lost because even when we call the Cabinet Secretary of the National Treasury, he does not even appear. I remember sitting in a place waiting for him to come and explain why we had not been given money for the NG-CDF. Members are here. They are going home. He could not even turn up. Something should be done in the National Treasury. I ask the Budget and Appropriations Committee to be a bit tougher. The Committee should rein in on these guys. They are saying they are going to borrow money. From where? This country is in big debt already. We have problems everywhere. We are getting embarrassed. As Members of this House, through you, we do the job. We have to oversee various Ministries. Money is being spent left, right and centre on things that are not priority for this country. Therefore, something must be done. This House must stand up to be counted in these times because we are having a lot of embarrassing questions. They ask us what we are doing.

Hon. Deputy Speaker, I thank the Budget and Appropriations Committee. Let them do more than they have.

Thank you.

Hon. Deputy Speaker: All right. Let us have Hon. Mutunga Kanyuithia. Be brief, Hon. Members.

Hon. John Mutunga (Tigania West, JP): Thank you, Hon. Deputy Speaker, for giving me this opportunity.

I belong to the Budget and Appropriations Committee and I would like to defend my Chair on only one issue – the fact that he actually came out very strongly yesterday before the Cabinet Secretary on issues of this House. He brought out our matters to the Cabinet Secretary very articulately. I believe the Cabinet Secretary promised to do something about it before the middle of this month.

Having said that, there are issues that this House needs to be very careful about. Every year we pass a Budget with a huge deficit. Every year, we do so consciously as a House. We always tell the Government to borrow. We are the ones who pass it. Something needs to be done. We need to be conscious of what is happening in this country because if this country does not borrow, we cannot implement a single development project. If you look at the amount of revenue we generate, it is barely enough to pay the debts and salaries. We have to borrow. It is an issue that we have to discuss as a House and make a very serious decision about.

Hon. Deputy Speaker: Okay. Let us make progress. I see Members still want to speak to it, but the problem is that you debate rather than make comments. We do not need to open it for debate. Let us send it to the relevant Committees. They will look at it in detail. I know you have Members who form those Committees.

Of course, the Budget and Appropriations Committee will engage with the National Treasury in the normal manner, including on issues of the Supplementary Budget. So, let us move

to the next one, which is by the Chairperson of the Departmental Committee on Administration and National Security.

Let us be brief on this one so that we move to the next item.

SHOOTING OF EZEKIEL ODERA DURING DEMONSTRATION AT MALABA TOWN

Hon. Paul Koinange (Kiambaa, JP): Hon. Deputy Speaker, on Tuesday I promised the House that I would respond to a Statement request by Hon. Kaunya because it was a very urgent issue because of the demonstration and there was a person who was shot at Malaba.

On the alleged shooting to death of Ezekiel Odera by a police officer, I wish to share with the House a preliminary report on the investigation carried out by the Independent Policing Oversight Authority (IPOA) on the matter. This is a rapid response investigation's report into shooting leading to the death of Ezekiel Odera, which occurred on the evening of 27th November 2020, allegedly by Malaba Police Station officers at Road Block Junction in Malaba Town. The authority took up the matter on its own motion following information received through social media. The complaint was registered as IPOA/CMU/002743/2020. The rapid response investigation established the following:

- (i) The officers from Malaba Police Station booked out on patrol to Malaba Town on 27th November 2020 at 1900 hrs.;
- (ii) The two police officers arrested a civilian who was not wearing a face mask and began beating him within the Road Block Area hence attracting a crowd which protested against the action by police;
- (iii) The arrested person refused to be placed in the Land Cruiser and the police officers left him;
- (iv) One civilian threw a stone at the officers while they were heading to their vehicle;
- (v) Corporal Mwaura, who was in blue police uniform, was hit by a stone on the back, and he turned and shot directly at the crowd;
- (vi) Ezekiel Odera sustained gunshot injuries after the shooting and he was rushed to Kocholia Sub-County Hospital where he succumbed to the injuries;
- (vii) Ezekiel Odera was part of the crowd that had not been arrested as per the allegation received;
- (viii) Corporal Mwaura was arrested and is currently in custody at Adungosi Police Station; and,
- (ix) The matter is pending and under investigation by District Criminal Investigations Officer (DCIO) in Teso North.

Hon. Deputy Speaker, the IPOA has so far accomplished the following tasks:

- (i) Visited Kocholia Hospital and obtained certified medical treatment notes;
- (ii) Attended a meeting between the county police leadership and community leaders at Malaba Police Station to broker peace following the planned continued demonstration – members of the community complained bitterly about the overstaying of the Deputy County Commissioner (DCC) and the state of corruption at the police station;
- (iii) Visited Malaba Police Station and obtained the following four certified OB extracts regarding the matter – incident report, duty roster, arms movement register, and recorded statements from six witnesses;

- (iv) Sketched the scene of incident;
- (v) Visited the deceased's family and informed them that the authority has taken up the matter for investigations;
- (vi) Identified officers who went for the operation for statement recording; and,
- (vii) Compiled a rapid response report.

The following tasks are pending: Attending postmortem and obtaining the postmortem report scheduled for 1/12/2020, which has already taken place; recording statements from persons who will have witnessed the postmortem and any other potential witness; sermon eight police officers who went for operation in the area where the incident took place, and the officer in-charge of the armory; interview and statement recording; recoding statements of the suspect officer; obtaining remaining police documents like ballistic report and status of police investigation and compiling a full investigation report.

In conclusion, let me indicate that the rapid response investigation revealed that, indeed, a civilian was shot by a police officer at the Road Block. As such, it is recommended that a full investigation be carried out in the matter to unravel the exact circumstances that led to the said shooting with a view to taking necessary action.

Finally, let me state that officers of the IPOA have since held a meeting between the community leaders and senior police officers at Malaba, led by the Officer Commanding Police Division (OCPD), in which many recommendations were made and have been looked into. The area is now calm. Normalcy has returned. We await for response from the Cabinet Secretary of the Ministry of Interior and Coordination of National Government. We decide to make this advance information because we are going on recess.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Very well. That is well said. Let us have the Member of Teso North, Hon. Oku Kaunya, having the first shot.

Hon. Oku Kaunya (Teso North, ANC): Thank you, Hon. Deputy Speaker. I appreciate the response from my Chairperson with respect to the fact that it is an interim report from IPOA. It is more reflective of the incident that took place on the ground than what was reported in the police station in the OB. The OB reported that the police officer shot in the air and that he was shot in the chest and the bullet went through his back. That is contradictory because from experience, there is no way a bullet shot in the air comes back and hits the chest and exits from the back. The IPOA interim report is more reliable. I expect that justice will be served to the family of the late and action taken with respect to the statement I had given. There should be transfer of the officers who have overstayed in that station because they have lost productivity and are now focused on corruption, rather than work.

There is information that there are officers who have been in Malaba Police Station since 2008. There are complaints by the public. Last week on Friday evening, officers arrested illicit brewers and those without masks. The scenario is that they are taken to the station to stay there over the weekend as demands for cash ranging from Kshs3000, Kshs5,000 and Kshs10,000 are solicited from them. Because the cells are full and these people are suffering, some end up paying so that they are released. Those who end up in court on Monday are those who cannot afford to give the cash. I appreciate this interim report and expect that we will see justice in the final report.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Pukose.

Hon. Robert Pukose (Endebess, JP): Thank you, Hon. Deputy Speaker. I want to thank Hon. Koinange for that interim report. I understand that the Committee has been going round the

police stations in the country and they have noted complaints and the duration that officers have been in those stations. It is a widespread issue. I want to request the Committee to come up with a recommendation that can be a policy within the National Police Service that officers do not stay for more than three years in a station. There are officers who have been in stations for 12 years. Some of those officers having stayed for that...

Hon. Deputy Speaker: These officers were taken there by Hon. Oku Kaunya.

Hon. Robert Pukose (Endebess, JP): I know, but I understand that he appreciates our complaints as a former officer and Deputy Commander of the Administration Police. Our people are facing this challenge. I want to ask the Chairperson to offer a solution. I also have officers who have overstayed in Endebess, and the Chairperson is aware of that issue. They should be transferred all over the country.

Hon. Deputy Speaker: Let us have Hon. Dawood. Hon. Members, let us be brief so that we can have other Members who wish to contribute.

Hon. Rahim Dawood (North Imenti, JP): Thank you, Hon. Deputy Speaker. I appreciate the answer by the Chairperson. However, it will not suffice because we must change our policing. They cannot shoot at citizens using live bullets whatever the provocation. There should be a policy that they shoot in the air and not at the people.

Secondly, we should not criminalise people without masks. Why do you take them to the congested stations where they will be infected with COVID-19? We should come up with a better policy.

Hon. Deputy Speaker: Hon. Opiyo Wandayi.

Hon. Opiyo Wandayi (Ugunja, ODM): Thank you, Hon. Deputy Speaker. That was a good Report from the Chairperson, Departmental Committee on Administration and National Security. If whatever is contained in that Report is correct, and I believe it is, then I think it raises a lot of issues. As much as we want to look at the public, we must also look at the welfare of these officers. It is important that we visualise the situation that the officer was in: He is armed with a gun, the crowd is approaching menacingly and a stone has allegedly hit the back of the police officer. We should look for ways of equipping police officers in addition to training them appropriately. We should have a policy of police officers going to control crowds armed with proper equipment such as PPEs and teargas canisters. If we do this, when a police officer is attacked, he will likely throw a teargas canister rather than shoot to disperse the crowd. Let us look at this issue holistically. If we look at the interest of the public, which we must protect at all times, let us also realise that these police officers are human beings. If their lives are threatened in the manner it is being suggested, they should be supported with proper equipment to defend themselves without harming the public.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Thank you. Let us move to the next Order

PROCEDURAL MOTION

EXEMPTION OF BUSINESS FROM A RESOLUTION OF THE HOUSE

Hon. Amos Kimunya (Kipipiri, JP): Hon. Deputy Speaker, I beg to move the following Procedural Motion:

THAT, this House orders that the business appearing in the Order Paper as Order Nos. 10, 11, 12, 13 and 14 be exempted from the Resolution of the House of

3rd November 2020, regarding prioritisation of business during the period 3rd November to 3rd December 2020, being a Thursday Morning, a day allocated for business not sponsored by the Majority or Minority Party or business sponsored by a Committee.

Hon. Deputy Speaker, as Members would be aware, on Tuesday, Members stayed up to close to 11 p.m. processing very important Bills; namely, the Tea Bill and the Statute Law (Miscellaneous Amendments) Bill. I want to register my thanks for their commitment to stay that late. It would be good to process those two Bills to conclusion this morning.

We are also fortunate to be in receipt of an important Bill, and as Members may recall, it was included in the State of the Nation Address. It is critical for unlocking the affordable housing programme – The Sectional Properties Bill. It is from the Senate and the Committee has dedicated time to look at it. We would like to report progress so that we make a determination this morning.

There is also another major item that we would need to approve before we proceed on recess; Approval of the Accession to the African Charter on Democracy, Elections and Governance. We are a regional player in Africa and Kenya needs to show the rest of Africa that we are at the forefront by endorsing some of these commitments.

We have considered this to be of high priority and we want to appeal to Members with Private Motions to give part of their time this morning. This is so that we can process this then we go back to Members' Private Motions. As the House Business Committee, we will continue prioritising Private Members' Motions. If there will be need to create a specific day to clear some of the matters in the pipeline, we will do so.

I want to assure Members that, indeed, nobody should panic, if they have a Motion, Petition or Bill pending. I will be moving a Motion this afternoon to save all the pending Bills, so that they do not lapse because of the Session being over. We will process them quickly hoping that by February, things will be better and we will have more time to clear business. So, I appeal to Members to give part of their Private Members' business time this morning so that we can process the urgent national matters, then get back to the national matters proposed by Members.

I beg to move and request Hon. Junet to second.

Hon. Junet Nuh (Suna East, ODM): Hon. Deputy Speaker, I second.

Hon. Deputy Speaker: Very well.

(Question proposed)

(Question put and agreed to)

Next Order!

MOTIONS

ESTABLISHMENT OF DATABASE CENTRES IN CIVIL REGISTRATIONS CENTRES IN THE COUNTRY

THAT, aware that the Constitution and the Kenya Citizenship and Immigration Act, 2011 provide that every citizen is entitled to any document of registration or identification issued by the State to citizens including a birth certificate; further aware that Article 53(2) of the Constitution of Kenya provides that a child's best interests are of paramount importance in every matter concerning

the child; cognizant of the fact that issuance of birth certificates during civil registration associated with children is a challenge across the country due to among other issues, missing information for the parents and children as a result of missing and improper documentations, damaged manual documents, and lack of registration of children born outside hospital environments; deeply concerned over the delays and long queues at civil registration centres and the challenges affecting registration of children by the Ministry of Education using the National Education Management Information System (NEMIS) in the country; this House urges the Government to establish database centres in all civil registration centres for purposes of storing all the necessary information required for issuance of birth certificates to all children and puts in place administrative mechanisms to ensure that every child is automatically issued with a birth certificate before the child attains the age of three years.

(Hon. (Ms.) Mary Njoroge on 5.11.2020)

(Debate concluded on 26.11.2020 - Morning Sitting)

(Question put and agreed to)

Hon. Deputy Speaker: Next Order!

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

THAT, this House do agree with the Report of the Committee of the whole House on its consideration of the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 15 of 2020).

(Question put and agreed to)

Hon. Deputy Speaker: The Mover to move the Third Reading. That is Hon. Majority Leader.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Deputy Speaker, I beg to move that the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 15 of 2020) be now read a Third Time.

I request Hon. Pukose to second.

Hon. (Dr.) Robert Pukose (Endebess, JP): Hon. Deputy Speaker, I second.

Hon. Deputy Speaker: Very well.

(Question proposed)

*(An Hon. Member walked along the aisle when
the Deputy Speaker was on his feet)*

Order! Who is this? You know, it is difficult to identify a Member with a big face mask. Sometimes that becomes luck for them. I will not mention their names because I am not able to clearly see who they are. I do not want to do guesswork. Having confirmed that the House is properly quorated, I will now put the Question.

(Question put and agreed to)

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

Next Order!

REPORT OF THE COMMITTEE OF THE
WHOLE HOUSE ON THE TEA BILL

THAT, this House do agree with the Report of the Committee of the whole House on its consideration of the Tea Bill (Senate Bill No. 36 of 2018), subject to recommittal of New Clause 32A.

Hon. Deputy Speaker: Order Members! Freezing includes not speaking to one another.
(Question put and agreed to)

Hon. Deputy Speaker: Next Order!

SENATE AMENDMENTS TO THE SECTIONAL PROPERTIES BILL

Hon. Deputy Speaker: Hon. Members, this is a Bill that has only one clause. I believe we can canvass and finalise it in record time, if the Leader of Majority Party will be brief in moving it. We will save time. We have a few other issues--- Sorry! It is the Chair. Chair you can move it quickly, we get over it.

Hon. (Ms.) Rachael Nyamai (Kitui South, JP): Thank you, Hon. Deputy Speaker. I promise to move it very fast. I beg to move the following Motion:

THAT, the Senate Amendments to the Sectional Properties Bill (National Assembly Bill No. 23 of 2019) be now considered.

The Sectional Properties Bill (National Assembly Bill No. 23 of 2019) is a Bill that seeks to provide for division of buildings into units to be owned by individual proprietors and common property to be owned by proprietors of the units as tenants in common and to provide for the use of management of the units and common property, and for connected purposes.

This Bill was passed by the National Assembly on Wednesday 9th October, 2019 and thereafter conveyed to the Senate in accordance with provisions of Article 110(4) of the Constitution. Subsequently, the Senate considered the Bill and passed it with an amendment on Thursday 9th October, 2020. Hon. Deputy Speaker, the amendment was thereafter conveyed to the Departmental Committee on Lands on Thursday, 15th October 2020. The Committee subsequently considered the amendment on 2nd December 2020 as contained in this Report.

The Committee observed that the Senate Amendments to Clause 12 (5) of the Bill seeks to ensure that the sub-division or the consolidation of the sectional plans are properly demarcated in

accordance with the survey plans prior to being amended and subsequently registered by the registrar.

The Committee noted that the amendments passed by the Senate are an improvement to the Bill. I was persuaded that the original sectional plans as endorsed by the surveyor should guide the sub-division or consolidation of the sectional plans to ensure the maintenance of the standards and regulations.

(Hon. Kizito bowed along the Isle, and then crossed the Floor instead of bowing at the Bar)

Hon. Deputy Speaker: Order, Hon. Member! It is not about bowing. It is about going all the way to the Bar. The Member for Shinyalu, you know that. You are a seasoned Member. Please, do the needful. Even if you are seriously attracted to any Member on the other side, you must go round the whole Chamber.

(Hon. Kizito went to the Bar and bowed to the Chair)

Hon. (Ms.) Rachael Nyamai (Kitui South, JP): The Committee noted that the amendments passed by the Senate are an improvement to the Bill. I was persuaded that the original sectional plans as endorsed by a surveyor should guide the sub-division or consolidation of the sectional plans to ensure that the maintenance of standards and regulations are the same before they are registered by the registrar.

We also noted that most of the time, the Chief Land Registrar is not a surveyor. We, therefore, found these amendments to be extremely important. I urge the House to agree with the Senate Amendments to the Sectional Properties Bill (National Assembly Bill No.3 of 2019).

I beg to move and ask the Leader of the Majority Party to second.

Hon. Deputy Speaker: Leader of Majority Party, you have the Floor.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Deputy Speaker, I beg to second the agreement with the Senate Amendments.

As I alluded to in the moving notes on the Procedural Motion, this is one of the Bills in respect of which we have had little contestation with the Senate. They have improved the Bill through that amendment. We agree with it and hence we do not want to belabour the point. We introduced the Bill here and debated it. They have only added an extra clause, which is non-contestable.

I urge the House to kindly pass it. We do not even need to debate. We should pass this Bill so that we allow ourselves to go into the Committee of the whole House to formalise the Bill and have it signed.

With those few remarks, I beg to second.

(Question proposed)

(Question put and agreed to)

Hon. Deputy Speaker: Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[The Deputy Speaker (Hon. Cheboi) left the Chair]

IN THE COMMITTEE

[The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu) took the Chair]

THE TEA BILL

(Recommittal of New Clause 32A)

The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu): Order, Members. We are getting ready for the Committee of the whole House. The Members, who are walking out, kindly do so in a hurry as we get ready for business.

(Several Hon. Members withdrew from the Chamber)

[The Temporary Deputy Chairlady (Hon. (Ms.) Jessica Mbalu) left the Chair]

[The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya) took the Chair]

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Members, we are now in the Committee of the whole House to consider the Tea Bill (Senate Bill No.36 of 2018).

New Clause 32A

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairlady, I beg to move: THAT, the Bill be amended by inserting the following new clause immediately after clause 32—

Offences relating to body corporate	32A. (1) Where an offence under this Act is committed by a body corporate or any other association, the offence shall be deemed to have been committed by a director, a partner or any other person involved in, or acting or purporting to act in the management of affairs of the body corporate or association.
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(2) It shall be a defence to a charge under this section where the court is satisfied that—

- (a) the act or omission constituting the offence took place without the person's knowledge; or,
- (b) the person took reasonable steps to prevent the commission of the offence.

The justification is that the offence relating to the body corporate, as we had explained the other time, was not clear. We have now separated.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Dawood, do you want to contribute?

Hon. Rahim Dawood (North Imenti, JP): Yes. Thank you Hon. Temporary Deputy Chairlady. If you read part (b) of the clause, I think it should have been left without that because the courts are there to interpret the law. Therefore, when it is already providing a defence ... I do not understand why the defence has already been provided. It should be completely removed.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Dawood, come again please.

Hon. Rahim Dawood (North Imenti, JP): Hon. Temporary Deputy Chairlady, I do not agree with number (b) because if there is an offence committed and it is going to court, it should be the court to decide whether the defence is good enough or not. However, already in (2) it says it is a defence to the charge where you are charged under No. (1). Therefore, I think it is contradictory to me. It does not work.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Maybe, the chair will have some time to clarify. Hon. Maanzo, do you want to speak to the same?

Hon. Daniel Maanzo (Makueni, WDM-K): Yes. As a practitioner of law, I would like to say that what is happening here is called the lifting of a veil of a company. Ordinarily, this offense may be committed by an individual or by a company. Therefore, in the event an individual commits it, then it is straightforward what Hon. Dawood is saying. However, in the event it is committed by a company, and the company has been sued or the representatives of that company have been charged in a criminal court, then if they were never aware during their defence, then they would show who was responsible. If they took steps to prevent it, then they are not liable. Moreover, I think it is in order. It is correct because it is going into uncharted territories. We have not legislated on this part of law and it has now come out clear in Parliament so that the court does not cause misinterpretation or is not used to let people escape unnecessarily. Therefore, this amendment is perfect the way it is. I support it.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): I hope Hon. Dawood's concerns are rested. However, let us have Hon. Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): Thank you Hon. Temporary Deputy Chairperson. I aptly support this Bill. In this country, many things have been done in the names of corporate bodies and the individuals behind them go scot-free. I think this brings a situation where you know that as a leader in the corporate body you will be held accountable. I do not think the concern of Hon. Dawood is really a serious as he thinks because No. 2 says:

(2) It shall be a defense to a charge under this section where the court is satisfied that... This means that his concern that the court should decide is carried in that.

Therefore, I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Chair, do you want to say something? You can use the next mic.

Hon. Silas Tiren (Moiben, JP): Thank you very much and I thank you for the support. I also think it is high time we separated. My colleague, thank you very much for bringing this out very clearly. That is because, all the time, people have been hiding behind institutions or corporates. Therefore, this time it is that if you try to do something and hide inside the corporate organisation or inside the constitution, you will be held liable. Therefore, let us support it and move forwards. Thank you.

Hon. Members: Put the Question!

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Should I put the Question?

Hon. Members: Yes.

(Question, that new clause be read a second time, put and agreed to)

(The new clause was read a Second Time)

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

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): I will go on to call upon the Chairperson to move reporting. Hon. Tiren.

Hon. Silas Tiren (Moiben, JP): Thank you Hon. Temporary Chairperson. I beg to move that the Committee doth report to the House its consideration of the Tea Bill, Senate Bill (No. 36 of 2018), and its approval thereof with amendments.

(Question proposed)

SENATE AMENDMENT TO SECTIONAL PROPERTIES BILL

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Members, we will move to the next Bill. We will move on to consider the Senate Amendment to the Sectional Properties Bill, (National Assembly Bill No. 23 of 2019).

Clause 12

Senate Amendment

THAT, clause 12 of the Bill be amended by deleting sub-clause (5) and substituting therefor the following new sub-clause—

(5) Before registering a proposed sectional plan or sub-division or consolidation, the Registrar shall amend, in the manner prescribed by the regulations, the original sectional plan as endorsed by the surveyor.

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

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

(Senate amendment to Clause 12 agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): I now call upon the Mover to report. The Leader of Majority, I think you can go to the next one. Maybe, the technical people can work on them.

Hon. Amos Kimunya (Kipipiri, JP): Okay. Hon. Temporary Deputy Chairperson, I beg to move that the Committee doth report to the House its consideration of the Senate Amendment to the Sectional Properties Bill (National Assembly Bill No. 23 of 2019), and its approval thereof without amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

(The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu) in the chair)

REPORTS AND THIRD READING

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let us have the Temporary Deputy Chairperson report to the House. You will start with the Tea Bill.

Hon. (Ms.) Soipan Tuya (Narok CWR, JP): Hon. Temporary Deputy Speaker, I beg to report that the Committee of the Whole House has considered the Tea Bill (Senate Bill No. 36 of 2018), and its approval thereof with amendments.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. The Mover to move the agreement with the Report.

Hon. Amos Kimunya (Kipipiri, JP): Tea Bill?

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Yes. We are on the Tea Bill. The Mover to report the agreement to the report.

Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said report. I also request Hon. Tiren to Second the Motion for agreement to the report of the Committee of the Whole House.

Hon. Silas Tiren (Moiben, JP) seconded.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let us have the Mover of the Bill move the Third Reading.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Speaker, I beg to move that the Tea Bill (Senate Bill No.36 of 2018), be now read the Third Time.

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I also request Hon. Tiren to second.

Hon. Silas Tiren (Moiben, JP) seconded.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let us have Hon. (Ms.) Mbarire.

Hon. (Ms.) Cecily Mbarire (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. Today is one of my happiest days as an MP because we have managed to walk a very long walk on the Tea Bill. I know that, as a Departmental Committee on Agriculture and Livestock and by extension the entire House, we have done what is right for this country and tea farmers. I want to, in a special way; coming from a county and constituency where tea farming is key, thank the Government for taking a lot of interest in tea.

I particularly thank Hon. Peter Munya, the Cabinet Secretary (CS) for Agriculture, who has been very consistent in the fight for the tea reforms. I also thank our Committee Members who I know were under immense pressure to fall into certain traps of certain cartels, but we stood our ground and were firm. I thank the Chair, Hon. Tiren, who offered proper leadership in that Committee and the entire membership of the Committee and especially MPs from tea growing zones. They sat for long hours to ensure that we did the right thing for tea farmers.

To the farmers, it is time to make it happen and we are looking forward to doing the same in the coffee, milk, fishing and cotton sectors. The time to make Guaranteed Minimum Returns (GMR) possible without even having to go to a referendum for the Building Bridges Initiative (BBI) is now, and we have already started with the Tea Bill.

With those many remarks, I thank you Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): We are only giving comments on Third Reading. Let us have the Hon. Member for Seme.

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Temporary Deputy Speaker. I also want to say how important this is. Although this is in the Tea Act and probably restricted to the tea areas, this principle particularly of unveiling the people behind certain acts in corporations could extend and probably, our Departmental Committee on Justice and Legal Affairs should ensure it is extended across so that people do not hide behind corporate bodies and do things and get away with them. I hope that this will now not be restricted to the Tea Act, but be extended across the board. It will be a great contribution to our fight against corruption.

I thank you, Hon. Temporary Deputy Speaker.

(Question put and agreed to)

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

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. Let us move to the reporting of the Senate Amendments to the Sectional Properties Bill (National Assembly Bill No. 23 of 2019). Chairperson!

Hon. (Ms.) Soipan Tuya (Narok CWR, JP): Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Senate Amendments to the Sectional Properties Bill (National Assembly Bill No. 23 of 2019), and approved the same without amendments.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Mover of the Bill to move the agreement with the Report.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I also request Hon. Caleb Kositany to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Caleb Kositany (Soy, JP) Seconded.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Next Order!

MOTION

ADOPTION OF REPORT ON APPROVAL OF THE ACCESSION TO THE AFRICAN CHARTER ON DEMOCRACY, ELECTIONS AND GOVERNANCE

Hon. Katoo ole Metito (Kajiado South, JP): Thank you, Hon. Temporary Deputy Speaker, I beg to move:

THAT, this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on its consideration of the Accession to the African Charter on Democracy, Elections and Governance, laid on the Table of the House on Tuesday, November 17, 2020, and pursuant to the provisions of section 8(4) of the Treaty Making and Ratification Act, 2012, approves the Accession to the African Charter on Democracy, Elections and Governance by the Republic of Kenya.

Hon. Temporary Deputy Speaker, this is one of the six African Union Charters that were supposed to be ratified by the African states. Kenya had previously ratified five of them and this is the sixth one. If this House ratifies this Treaty, Kenya will be compliant to all the six AU charters as follows:

- (i) The African Charter on Human Rights and People's Rights.
- (ii) The Protocol to the African Charter on the Human Rights and the Rights of Women in Africa.
- (iii) The African Youth Charter.
- (iv) The African Charter on the Rights and Welfare of the Child.
- (v) The African Union Convention on Preventing and Combating Corruption.

Those five have been ratified by Kenya.

The sixth is the one before the House and it is on the African Charter on Democracy, Elections and Governance. This treaty is basically about adherence to the universal values and principles of democracy and respect for human rights. It promotes the respect for the rule of law, periodic free and fair elections, consolidation of democratic institutions and the rejection of unconstitutional changes of government.

It has 53 Articles and because of time, I will rush through a few of them. It is also good to note that it is long overdue because it was adopted by the Assembly of Heads of State and Government of the African Union (AU) on 30th January 2007 and we are now in 2020. It entered into force on 15th February 2012 after ratification by 15 African States. As of March this year, 34

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and 46 States had ratified and signed the Charter respectively. Kenya signed on 28th June 2008 and the commencement of the accession process of the Charter was approved by Cabinet on 19th March this year. Then, it was processed through this House.

If you go through the Articles, especially 4, 5, 6, 7, 8, 9 and 10, they outline declarations by State parties of their intention to promote democracy, rule of law and human rights; ensure constitutional rule and transfer of power; ensure the full enjoyment of human rights; strengthen the human rights organs of the African Union; eliminate all forms of discrimination; promote sustainable development in their policies and programmes and entrench the principle of the supremacy of the Constitutions in their jurisdictions, respectively. This is very important because, at this moment, we are talking of constitutional changes as a country. This treaty talks of entrenching the principle of the supremacy of the Constitution.

Under Articles 11, 12 and 13, the State Parties undertakes to promote a culture of democracy and peace within their respective jurisdictions, including by ensuring transparency, which is very critical and accountable administration, strengthening political institutions; creating conducive conditions for civil society organisations to exist and operate within the law. Of late, I have not heard much of the civil society in this country. This Charter is emphasising on the creation of conducive conditions for the civil society organisations to exist and operate within the law; and integrating civic education in educational curricula.

Articles 17, 18, 19, 20, 21 and 22 contain undertakings by the State Parties to hold regular, transparent, free and fair democratic elections and to—

- (a) Establish and strengthen independent and impartial national electoral bodies responsible for the management of elections. This is debatable because we have seen what is happening in the United States of America (USA). They just finished their elections and there are claims they were not independent or impartial. This treaty emphasis on the creation and strengthening of those impartial national electoral bodies responsible for the management of the election.
- (b) Establish and strengthen national mechanisms that redress election related disputes in a timely manner. I think this has always been emphasised in our country because, should there be a dispute, we always head to the Supreme Court for that purpose. I think there has been redress in a timely manner as entrenched in our Constitution.
- (c) Ensure fair and equitable access by contesting parties and candidates to state controlled media during elections. We have seen this in the region with one of our neighbours, the United Republic of Tanzania, that has finished its election.

Kenya is going into the election in the next, maybe, one-and-half years and this is the same for Uganda and Somalia. As a region, this needs to be very clear because we are all parties to the AU. The issue is having fair and equitable access by contesting parties and candidates to state controlled media during elections. At times, as we ratify these treaties as State Parties in the region, maybe, there is need for actual implementation. This is because it is not just enough to put ink on paper. So, as a region, a lot needs to be done.

- (d) Ensure that there is a binding code of conduct governing legally recognised political stakeholders, government and other political actors prior, during and after elections. It is good for Members of this House to know that from experience, we always rush to read and acquaint ourselves with these very important codes of conduct in the 11th hour. It is when the membership in the House is not more than 10 Members. When we go out there, we are the stakeholders and players. Then we find they are not friendly or act against us.

Articles 23, 24, 25 and 26 outline an agreement by State Parties on various acts which constitute an unconstitutional change of government that may attract sanctions from the African Union. Under the provisions, State Parties agree to not harbour or give sanctuary to perpetrators of unconstitutional changes of government and to bring perpetrators of such changes to justice or take necessary steps to effect their extradition.

This is very critical. Allow me to finalise by saying we should ratify this treaty and implement it. It will enlarge our democratic space in terms of elections, human rights and democracy.

Hon. Temporary Deputy Speaker, because of time, I want to end there. I beg to move and, with your permission, allow Hon. (Dr.) Lilian Gogo to second.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. (Dr.) Lilian Gogo, you have the Floor.

Hon. (Dr.) Lilian Gogo (Rangwe, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. I rise to second this Motion that has been moved by the Hon. Chair, Departmental Committee on Defence and Foreign Relations. It is on the African Charter on Democracy, Elections and Governance.

I will second it on the basis of its compliance with our Kenyan Constitution. Also, on the obligation the Charter has on its transparency and accountability on matters governance, and its provisions for the independence of the Judiciary. We have realised lately that there has been talk on matters of the independence of the Judiciary. This Charter addresses this well.

It further provides for implementation of our programmes that promote democratic principles and practices. It also adopts legislative and administrative measures that guarantee the rights of women, ethnic minorities, and immigrants, persons with disabilities, refugees and displaced persons, including marginalised and vulnerable social groups. It does provide for setting up of institutions to fight corruption. This very Charter condemns the unconstitutional change of government and provides for a possible framework for international prosecution of persons who forcefully take over government through domestic legal channels. It allows for regional mechanisms to be invoked if domestic mechanisms fail to prosecute such individuals. I have already mentioned that the Charter is not in conflict with any provision of the Kenyan Constitution. It is consistent with Kenya's constitutional values and objectives and various statutes that have been enacted and are in the Constitution.

On matters policy, the provisions of the Charter are consistent with the Constitution. State obligations have been domesticated through various laws and institutions in Kenya. I want to specifically mention the Elections Act 2011, the Political Parties Act 2011, the Independent Electoral and Boundaries Commission Act 2011 and the County Government Act 2012. Kenya holds periodic elections as provided for in the Charter.

Allow me to mention that on financial implications, provisions of the Charter have been domesticated with the domestic legal framework. Therefore, financial obligations will continuously be catered for through normal budgetary estimates of the relevant institutions and, consequently, the implementation of the Charter will be under the collective responsibility of the Office of the Attorney-General and the Department of Justice, the Ministry of Foreign Affairs and the Ministry of Interior and Coordination of National Government.

With those few remarks, I beg to second.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): The first one is the Member for Makueni, Hon. Maanzo Kitonga.

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Temporary Deputy Speaker. I am very happy to support the approval of Accession to the African Charter on Democracy, Elections and Governance. When we were at the university, the Banjul Charter, which was the African Charter on Human Rights, was very popular. It was done in Banjul and the Chair has alluded to the fact that now, we are on the 5th Charter. Therefore, there have been a number of charters. They have been very useful to the country bearing in mind that this started in 2007, and bearing in mind the coups which have taken place in some parts of Africa. Being part of the African Union and even having chaired it at one point, it is important to have a general guideline or an agreement between States so that when one State falls short of this, there are issues as to when another State is trying to organise itself. That is why you have seen bodies like the AMISOM going to one country to help quell conflict.

In 2007, Kenya was in a real crisis after the elections. That is why now we have come up with the BBI to make sure that, in future elections, there is no need to fight after an election. In fact, the best example which the whole of Africa can take is the election of President Kibaki in 2002. He won the election and the Opposition then was also happy for him.

In fact, I remember that time President Uhuru Kenyatta conceded to the election and it sorted out a lot of electoral issues and he took up as the Leader of the Opposition. Life went on and he lived to fight another day and, sure enough, ten years later, he became the President of the Republic of Kenya. Therefore, this is to ensure that after an election...

That is why you have heard that this particular Charter is within our own Constitution and many other municipal laws we have that govern the county and national elections so that after an election, there is no likelihood of a fight or strife.

Ordinarily, what happens when there is civil war in any country in Africa or in the world is that, women and children suffer most and the economy of the country sinks. Already, the economy of the world is sinking because of COVID-19 and one of the worst things to happen is with all the COVID-19 complications, after an election, a country goes into war. After 2017, Kenya was almost going to war. This side of the House and the other side were very nasty to each other and it was a very uncomfortable position up to the time the handshake happened. If Kenya went like that, I am wondering, with the complications of COVID-19, where we would be today as a nation. I have even heard the President confess that one of the stabilising things that happened to his Government was the handshake. We wish things would be like that in future for many countries in Africa. Things will be like 2002 in Kenya where you win an election and you bring all Kenyans together and you work and take care of all Kenyans. I think President Kibaki will live to be a very good example to many presidents in the continent.

I dare challenge members of this House, because I know some of them here will end up being presidents. I think the best role model one could ever have is President Kibaki. The Chair, Hon. Katoo, worked very closely with him. Hon. Katoo, I wish you well and I am sure you learnt well from President Kibaki. I wish many other nations could copy from what President Kibaki did. That is why we are looking into a future where there are discussions for everybody to be carried on board; where everybody's ideas are important and where we develop the country without discriminating and make sure that every Kenyan is happy. If we do that, I believe from this African Charter on Democracy, Elections and Governance, we are going to have a better Africa and a better world. I thank you, Hon. Temporary Deputy Speaker. I beg to support.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let me have the Member for Endeless, Hon. Pukose Robert.

Hon. (Dr.) Robert Pukose (Endeless, JP): Thank you, Hon. Temporary Deputy Speaker. I think this is a very historic day for this country that the current Parliament is assenting to the African Charter on Democracy, Elections and Governance. When you look at the articles of this Charter, especially the objectives in Article 2... There are 13 objectives. Among them is to promote adherence by each State Party to the universal values and principles, democracy and respect for human rights. That is very important.

Article 2(10) talks about condemnation and total rejection of unconstitutional changes of any government. This is very important and it is good that when we look at what we are assenting to we must be alive to what these matters are. Article 3(6) talks of promotion of gender equality in public and private institutions. We must also respect this and be able to ensure that we have gender equality.

It talks of effective participation of citizens in democratic and development processes; governance of public affairs; transparent and fairness in the management of public affairs; condemnation and rejection of any acts of corruption related offences and impunity; all these refer to the Maputo Declaration of 2003, which Kenya is a signatory.

It also talks of strengthening political pluralism of the roles, rights and responsibilities of legally constituted political parties, including political parties in the Opposition, which would be given a status under the national law. When you look at the BBI, we are talking about issues of creating the office of the official opposition, which I think is a good improvement. However, Article 10 in Chapter 4 says that the State Parties shall entrench the principle of the supremacy of the Constitution in the political organisation of the State. It goes further to say that the State shall protect the right to equality before the law. The equal protection by the law is fundamental precondition for a just and democratic society. The State party shall ensure that the process of amendment or revision of their Constitution reposes the national consensus obtained if need be, through a referendum.

Many of the players in this BBI are asking for national consensus. This is what this Charter is talking about. We must have a consensus. Everybody is equal and must be listened to, whether it is the church, civil society or any political party. We must have a national consensus, when we are making amendment to our Constitution. So, we must be alive to what we are assenting to. We are assenting to matters that make it mandatory for us to make sure that we have listened to each other and, if we are going to do any constitutional amendments, there must be consensus.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let me hear the Member for Mandera North, Hon. Abdullahi Sheikh.

Hon. Major (Rtd.) Bashir S. Abdullahi (Mandera North, JP): Thank you, Hon. Temporary Deputy Speaker. First and foremost, I want to start by saying that I fully support this Motion which is about the African Charter on Democracy, Elections and Governance. Basically, it is an initiative by the African Union. The aim of this Charter is to provide African solutions to African problems. There are a number of Articles in the Charter that dwells mostly on the issues of governance, human rights and elections. Of course, this thing was adopted by the African Union in 2007. We have actually delayed for some time now. It is very unfortunate, but it is never too late. We should have done it much earlier, but it is not yet late. We are now doing it and I am sure the House will find it prudent to agree with the Committee.

The most important part of this thing is the issue of governance and elections. Currently in this country, we are talking about amending parts of the Constitution. Why are we amending this part of the Constitution? It is because we have seen problems that have bedeviled this country earlier on with the issues of elections. Elections happen and then, all of a sudden, we have conflict, chaos and people known to say 'I won', and others saying 'I have not lost'. So, the whole idea is to ensure that we strengthen the issue of governance.

This Charter also talks about independence and holding governments to account. I have noted that it specifically talks about the independence of the Judiciary. The jury is still out there. What do we mean by the independence of the judiciary? In the BBI structure now, different individuals are interpreting the issue of the independence of the Judiciary differently. But this Charter advocates and guarantees the member States to ensure that the judiciary is independent. One of the things that BBI is focusing on is the issue of the Ombudsman. How independent is it? Is it independent in terms of appointment or is it independent in terms of functions/performance? We seem not to understand when we talk about the independence of the Judiciary. How independent is the judiciary in terms of appointments, its function or the job that an individual is supposed to perform? Is it independent? The other thing is this: They talk about the coups that used to happen before or people not accepting results. This is about African nations. So, when you look at the entire agreement, it is actually very good. The most important part is this: Are we going to implement as African States?

All the Articles in the Charter are in tandem with our Constitution; they are not in conflict with our laws and regulations. We have also seen the African Union itself not being able to stamp its authority on many African countries that go against the same Charter that they have signed and ratified. So, we are talking about an African Union which is toothless. This is very good. It is in paper and quite in order, but how do we implement? Do we have African courts where we can try people who are in violation of governance and election? We do not have. So, I think it is very good and, as a country, it is the right time that we ratified this Charter. We will ask the House to agree and approve the Agreement.

Thank you very much.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let me have the Member for Funyula, Hon. Oundo Ojiambo.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Temporary Deputy Speaker. I rise to support the adoption of the Charter on Democracy. Democracy is the hallmark of a modern society. Democracy means that every man has a say; the majority have their say, but the minority must also be listened to. The issue of democracy in Africa has been a case of study for many years. Indeed, the just concluded elections in Tanzania give a glimpse of the mutating face of democracy in Africa.

The ongoing campaign chaos in Uganda gives a glimpse on how people or Africans regard democracy. So, as we stand here today, Kenya is a member of the democratic society and, therefore, it behooves it to subscribe to the Charter. As we do so, we must not lose the fact that Kenya has gone through a turbulent period in an attempt to adhere to democracy. Prior to the removal of Section 2 of the Constitution, Kenya was more or less a one-party State, that the KANU regime never allowed any form of opposition. But with the repeal of Section 2A, we ushered in the multi-party democracy. For the two elections of 1992 and 1997, there was no much of an election because the results were already pre-determined. Probably, the only time this country has ever held a truly democratic election, where the winner was acknowledged and appreciated by everyone, was the election of 2002 where Hon. Mwai Kibaki became the President of the Republic

of Kenya. Thereafter, our attempts on democracy and the will of the people has ended up falling short of expectations. That is why you find that in the 2017 election, the Supreme Court observed and clearly ruled that the elections were not held in compliance to the law and democratic tenets.

We do believe that signing this Charter and the reforms that we are undertaking through the Building Bridges Initiative (BBI) will help solve the problems we have had about the management of elections and cases where the will of the people is subverted by some amorphous system, that seems to have had to make up its mind on who becomes the presidential winner and who does not become.

Hon. Temporary Deputy Speaker, of course, during the last elections, we heard of *vifaranga vya komputa* where the scores were consistent, namely, 54.3 per cent in very many results. We do believe that we are not just signing the Charter for purposes that it has been brought to us to approve and have the Government sign. We trust and hope that those charged with shepherding democracy... The hallmark of democracy is where in an election the winner is acknowledged as the winner and the loser accepts that they have lost and seek other legal means to challenge the victory or otherwise. We hope that once we conclude the BBI, we will have set a stage for this country to espouse and adhere to democratic credentials as a country that respects the will of the people. What happened in 2007 was a shame and a blow to this country. We hope that the empty rhetoric being bandied around by some sections of the political class will not bring this country to that level again.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): The Member for Kamukunji, Hon. Yusuf Hassan.

Hon. Yusuf Hassan (Kamukunji, JP): Thank you, Hon. Temporary Deputy Speaker.

I support this particular important Convention, namely, the African Charter on Democracy, Elections and Good Governance (ACDEG). This is a very timely Convention for us given the fact that it supplements our 2010 Constitution, the Constitution which underpins the importance of constitutionality, democracy, respect for human rights and the rule of law. We are a modern society that has rules and regulations which put us among the civilized nations of the world. I particularly would like to highlight Article 3 which forms the basis of this particular Charter. It says that state party should implement this Charter in accordance with the following principles: respect for human rights and democratic principles and it also emphasises on exercise of state power in accordance with the Constitution of the state party and the principles of rule of law.

Hon. Temporary Deputy Speaker, it is also important to point out an issue that has bedevilled Africa, issues of *coup d'état* and violence in elections. One of the articles emphasises that once we commit ourselves to this Charter, we will not allow seizure of power by forceful means through a military *coup d'état* or any other means. This particular Charter is so important for us if we look at what is happening around us now. If you look at what has happened in Tanzania, what is happening in Uganda, what is happening in Ethiopia and what is happening in Somalia, this Charter is relevant and important in underpinning the African Continent's commitment to democracy and stability. Without having legislations, institutions and the processes that respect democracy and the rule of law, our continent is not going to be stable and peaceful and would never achieve its full potential.

Therefore, I welcome and encourage our Parliament to accept and approve this important Charter, which would reemphasise, energise and empower us more as we move forward to face many of the challenges that we face as a country.

I thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well, let us have the Member for Nyaribari Chache, Hon. Richard Tong'i. Please use the next microphone. Move to the next one Hon. Tong'i. I think we have some issues with the mics, but they are being looked into. You can use the Dispatch Box.

Hon. Richard Tong'i (Nyaribari Chache, JP): Thank you, Hon. Temporary Deputy Speaker for indulging me and, of course, the technology challenges therein. As the Vice-Chairperson of the Departmental Committee on Defence and Foreign Affairs, I stand to support this Motion. I support it because I believe in it.

The world over we all are good people, but unless we put systems in place, even good people become bad people. We are working towards ensuring that we are putting systems in place, which will mitigate or discourage people who would have otherwise had been good people becoming bad people. We have seen countries failing not because they were meant to, but because they did not put systems in place to safeguard the democracy and the desire of the majority of the people. Take an example of the United States of America (USA) today, because of the systems that they have put in place, they are going to have a seamless transitional power from one president to the next one. I would not want to imagine what would have been if they did not have that kind of a system in place where the system works and people know what they are supposed to do, without having to wait for the command or the directive of the president.

Hon. Temporary Deputy Speaker, that is what we are aspiring to do as African leaders. We have seen, in the past, how many African countries have gone under. They would have been saved if we had had this kind of a system in place. The Charter is meant and is attempting to address the challenges that come with bad leadership. If we cannot measure it, then we cannot be able to reward it. The ratification is meant to ensure that all African countries and their leadership are going to speak in one voice in reference to the Charter after it has been signed. My colleagues who have spoken ahead of me have given examples of the countries in Africa which have messed and destroyed their economies, which have killed their people, which have maimed their women and which have killed the children all in the name of fighting for power. That will be a thing of the past once we have passed this Charter, which is going to be anchored under the African Union (AU).

The Charter, among other issues, is attempting to address the economic challenges. Once we agree amongst ourselves, and sit on one table, that we are having one of the biggest economies by virtue of the resources that God has given us and that we have what it takes to drive this economy of Africa to the next level, then we are not going to continue whining and complaining. We have what God and Mother Nature have given us which should be able to drive our economies to the next level. Scientists have done research and come up with findings that the next big growth in terms of population and economy will be in Africa. How prepared are we? Like Mother Teresa said, "If each of us would only sweep our own doorstep, the whole world would be clean". If as leaders we contribute and do our bit, the rest of the story will be good. The other African countries would have succeeded.

I have seen the interest on the part of my colleagues who want to contribute to this Motion. I support it because I believe in it. It will address the challenges that we have as a country and Africa as a whole.

I support the Motion.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let us have Hon. Ghati Dennitah.

Hon. (Ms.) Dennitah Ghati (Nominated, ODM): Thank you very much, Hon. Temporary Deputy Speaker for the opportunity to support this Motion.

Today is the International Day of Persons with Disabilities. I celebrate the resilience of persons with disabilities in this country.

This Motion on the African Charter on Democracy, Elections and Governance that has been fronted by the Departmental Committee on Defence and Foreign Relations is coming at a time when we will be celebrating the International Day of Human Rights on 10th December. It is quite timely that we are discussing and debating it in this House.

This Charter seeks to address the challenges and issues that we have as a continent, especially when it comes to issues of post-election violence, governance, elections and many other issues that Kenya is signatory to. Kenya is a signatory to many charters, treaties and conventions that seek to promote the welfare of her people. In this regard, as I support this Charter, Kenya has made quite a number of strides to promote the rights of Kenyans. The signing and ratification of this Charter will definitely go a long way in ensuring that human rights democracy is not a thing of the past.

It is in this regard that we have brought in the issue of the BBI. The BBI seeks to strengthen some of these issues that we are talking about. It proposes to address issues of historical injustices. I am happy with the Motion on this Charter because it does not seek to change the Constitution of this country. It seeks to augment and support the Constitution of Kenya. That is exactly what the BBI supports. It does not seek to destroy the Constitution, instead, it supports it.

Kenya is not a signatory to only this Charter on electoral governance. As we celebrate the International Day of Persons with Disabilities and the resilience of persons with disabilities in Kenya, there is also a protocol that is currently with the Executive. This is the Protocol on the Rights of Persons with Disabilities to the African Charter on Human and People's Rights. After we are done with this Charter, I appeal that the memo that is currently in the Cabinet finds its way to this House, through the Departmental Committee on Labour and Social Welfare, so that we also look at that Protocol on the Rights of Persons with Disabilities and enhance their concerns.

Hon. Temporary Deputy Speaker, as we always know, Kenya has no shortage of laws. It is my hope that Kenya will sign the African Charter on Democracy, Elections and Governance. It is one thing to sign a protocol and another thing to ratify it. Signature does not ensure that you have ratified it. Kenya has to sign and ratify the Protocol by making sure that we domesticate some of these concerns that we are a signatory to.

As we enjoy the day for persons with disabilities, allow me to take this opportunity to thank and celebrate them in this country.

I support the Motion.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. The next Motion is on people living with disabilities by Hon. Dennitah Ghati. We join you in celebrating them. Let me have the Member for Nandi, Hon. Tum Chebet.

Hon. (Dr.) Tecla Tum (Nandi CWR, JP): Hon. Temporary Deputy Speaker, I want to contribute to Order No.15 which is a Motion on Provision of Assistive Devices and Required Medical Items Free of Charge to Persons with Disabilities.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Member for Ndhiwa, Hon. Martin Owino. Most Members do not have cards. Let me have Hon. Mishi Mboko.

Hon. (Ms.) Mishi Mboko (Likoni, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to support this Motion on Approval of the Accession to the African

Charter on Democracy, Elections and Governance. I support it because it is in tandem with the Constitution 2010.

The many proposals which are drafted in this Charter are already domesticated in our country's laws. I am a believer of democracy which is about the rule of the people for their benefit. I believe that democracy is not only about election and voting, but it also involves the public or citizens in development issues. This Charter also talks about democracy and rule of law. We have bilateral and multilateral relations within African nations. Having such a Charter will enable us to have commonalities in law regarding democracy, elections and governance. Therefore, there will be order. There will be no anarchy in the systems the way it is right now without the ratification of this Charter.

This Charter also talks about elections. As a country, we witness a lot of challenges, especially during and after elections. If we ratify this Charter today, in case we have any of kind of problems, our African nations who are Members will be the first people to intervene.

This Charter will strengthen our relationship with those Members who have ratified it. When you talk about human rights, you cannot fail to talk about women's rights, rights of people with disabilities and youths. We witness a lot of violation of women's rights or in general, human rights, especially during armed conflicts such as the genocide in Rwanda and Burundi. We witness so many wars in the African Continent. For instance, what is happening in Somalia, Egypt, Sudan and Ethiopia. Ratifying a Charter which encompasses all the African nations to have a common voice in democracy, elections and governance is a very important thing. It is all about governance. How do you govern and respect the rule of law? How do you respect the Constitution which is the mother law in any country or nation? For instance, if a country which is a Member of this African Charter violates human rights or Constitution, then any member state has a right to intervene to ensure that those citizens experience or enjoy the rule of law.

Right now, what is happening in Uganda is really pathetic. As the East African Community (EAC), we really cry when we see scenarios that demonstrate some kind of dictatorial or authoritarian leadership and yet we are here as a country. If we have such ratification or such a Charter, we will have an opportunity to even intervene and correct the president or the governors or the leadership of that nation.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Order! Just a moment, Hon. Mishi. There is an intervention by the Member for Yatta.

Hon. Charles Kilonzo (Yatta, Independent): Thank you, Hon. Temporary Deputy Speaker. I rise on a point of order. The Standing Orders are very clear that we are not supposed to negatively mention countries which are friendly to this country, but we might refer to them indirectly. Despite the fact that what she is saying is true, is the Hon. Member in order to mention what is happening in Uganda on the Floor of this House?

The Temporary Deputy Speaker (Hon. Jessica Mbalu): Hon. Mishi Mboko, you may proceed.

Hon. (Ms.) Mishi Mboko (Likoni, ODM): Hon. Temporary Deputy Speaker, treaties, conventions and protocols are ratified so that the member States of those treaties can assist each other. Today we are seeing people being killed in Uganda. People are dying of hunger because of the violence there. As a member State, we can intervene in terms of providing humanitarian assistance. We can provide some medication facilities to assist our neighbours. That is what I meant.

The Temporary Deputy Speaker (Hon. Jessica Mbalu): Very well. You have one more minute.

Hon. (Ms.) Mishi Mboko (Likoni, ODM): Thank you, Hon. Temporary Deputy Speaker. Now that I only have one minute, I will wind up by saying that I support the ratification of the African Charter because it will also emphasise on our unity, collaboration and cooperation in so many ways and in terms of the development agenda.

With those remarks, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let us have the Member for Turkana, Hon. Emanikor Akai. Today the women seem to be doing very well.

Hon. (Ms.) Joyce Emanikor (Turkana CW), JP): Thank you, Hon. Temporary Deputy Speaker. At the outset, because we are talking of the African Continent, I would like to congratulate Hon. Dennitah Ghati for her election as the African Representative to the Commonwealth to represent people with disabilities.

Back to the Motion, I support the ratification of the Sixth African Charter, which is on democracy, elections and good governance. Thirteen years down the line, it is long overdue. Kenya already signed, but we need to ratify it as Parliament.

I will be very brief because most of the issues I wanted to touch on have been dealt with by my colleagues. One is on objective No.11 in Article 2, which talks of promotion of gender balance and equality in governance and development processes. This is also emphasised in Chapter 4, which deals with democracy, rule of law and human rights. Article 8 of that Chapter says that no state shall discriminate on any basis including gender, ethnic, religious and racial among others. That is self-explanatory. We fight for gender equality and gender balance because it is a human rights issue. In order for us to achieve holistic development, we must involve all sectors of our communities equally.

Hon. Temporary Deputy Speaker, the fifth objective in Article 2 talks of promoting and protecting the independence of the Judiciary. The independence here means freedom from improper influence of other branches of government, and freedom from partisan interests. In essence, it is about separation of powers. Judicial independence is a safeguard for the rights and privileges as enshrined in our Constitution. It prevents the Executive and the Legislature from encroaching on these rights.

Hon. Temporary Deputy Speaker, because many people have linked this Charter to the BBI, and we have no objection to the BBI, the independence of the Judiciary is very important. Stalking or micromanaging the Judiciary through an ombudsman will be against global norms, as even required in this Charter.

With those few remarks, I urge that we ratify this Charter. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. Let us have Hon. Maoka Maore, the Member of Igembe North.

Hon. Maoka Maore (Igembe North, JP): Thank you, Hon. Temporary Deputy Speaker, for the opportunity say a few things about this Report.

When the Committee perused and went through the details of this Charter, we found it to be quite timely, although belatedly. Many of us who have African heritage have been stigmatised and viewed as not being able to manage our affairs. If you will recall the 1885 Berlin Conference that partitioned and organised the scramble for Africa, they coordinated the rule for 60 years—the colonial rule. It seems that it is a permanent legacy or stigma; we have been independent for 60 years but we are still on the slumber of colonialism or neo-colonialism when it comes to mentality of most of the affairs that we do or handle as Africans.

This Charter happens to be timely in the sense that it will institutionalise the foundation of African governance, elections and democracy. Governance should be entrenched in our society

and institutions. When you talk of institutions, you remember last month when the Democrats won in the United States of America elections and the incumbent started saying he wanted to resist, the quick quip from Mr. Biden was that America had institutions which could flash out trespassers into the White House when needed to do so. As we have watched, slowly, the transition that will be there on 20th January 2021 is automatic. There will be a transition, whether or not there is grumbling by the incumbent. It is because the institutions that are supposed to make sure elections are respected are there. So, that is what is lacking in Africa. Unfortunately, Kenya has been made an experiment by this thing you call the 2010 Constitution whereby everybody who has partaken of the cake of the civil society, whether in ideology or in lifestyle, wanted to experiment something. They put all of it in our Constitution. Ten years later, we are having indigestion with it. When we want to do changes on it, still they want to cause problems in the next election.

I will give a quick example. We have the proposal to have 360 Members of Parliament. Then there is a gap: we may not even know the number of the next Parliament. That is a recipe for an experiment on how chaos can be organised.

As we agree on this Charter, matters that we undertake generally, from coast to coast, in Africa, should be universally acceptable. For that reason, I support the idea that we entrench this Charter into our laws so that we can have a predictable behaviour when it comes to democracy, elections and governance in Africa.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): The Member for Laisamis, Hon. Arbelle Malimo, you have the Floor.

Hon. Marselino Arbelle (Laisamis, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. I want to support the Report of the Departmental Committee on Defence and Foreign Relations on Kenya's accession to the African Charter on Democracy, Elections and Governance. This Charter will promote Africa on active participation of women, youth and persons with disabilities in the development of this country, and equally governance. As you are aware, today, youth constitute a big percentage of our population. Unfortunately, we have not safeguarded the youth and persons with disabilities for employment. There is an influx of this category of people migrating from Africa to Europe. By so doing, it is very unfortunate that on a daily basis, the boats they use to cross to Italy and other countries deemed to be countries of honey and milk, are drowning. It is very unfortunate that those countries that they aspire to go deliberately force those boats to capsize in the seas. This Charter will give us a voice to speak on our youth so that those countries are held accountable for the injustices inflicted on African youth going to look for greener pastures.

Hon. Temporary Deputy Speaker, Africa has always been categorised as a Third World Country. Other countries have been categorised either as developed or developing. As a continent, we are not yet there. It will be prudent that this Charter is adopted, so that African countries can come together. Many years ago, the former President of Libya, the late Gaddafi, had a concept of a United States of Africa. It was a dream that if the African nations came together, we would have seen our common good.

Hon. Temporary Deputy Speaker, this Charter enhances the independence of our judiciary which should be fully funded. Currently, we have noted that very many cases have dragged for many years because of financial challenges.

This Charter will also address the issue of governance and interrelations between countries on cross-border issues. The other day it was discussed here that we have coast guards to take care of our water, yet people from neighboring countries (*technical hitch*)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Sorry, we have a technical issue with the microphones, but they are being worked on. Let us have the Member for Kiharu, Hon. Ndindi Nyoro.

Hon. Ndindi Nyoro (Kiharu, JP): Thank you very much, Hon. Temporary Deputy Speaker. I rise to support the Motion. One of the tenets of a modern State is to have a strong bureaucracy. Also, it is the rule of law and accountability through democracy. Before I go to democracy, it is important to know that for a strong State to thrive, the bureaucracy must be based on merit, so that the people who work for the State are people who have been chosen on the basis of their ability and merit in a manner that was not personal, but based on patronage and altruism. Having said that, the rule of law is important. The independence of the safeguard of the rule of law, the Judiciary, is also important.

On democracy, it is good to know that a modern State cannot thrive on the basis of democracy alone. It thrives on the basis of all the three tenets. The inception of democracy is connected to industrialisation and economic growth. If you were to audit some of the enduring democracies like the United States of America, and the United Kingdom (UK), you will find that they are based on industrialisation and people coming together from rural areas to a common area to offer labour. What I am trying to drive home is that in many cases, democracy is based on the politics of identity. It is better if this identity is based on something objective other than tribe and religion. States that are not mineral rich like Kenya derive their revenues from taxes. Deriving revenues from taxes means that we have to make the enterprise grow and spur. It is from conversations on taxes that space is opened up for people to talk about who should lead them and in which direction they want to be led. Having audited our country from its inception at Independence, 2002 is a year we can cite as a period that democracy reigned in our country. We can also cite 2007, 2012 and 2017. The problem with our democracy in Kenya is not the population, the Independent Electoral and Boundaries Commission (IEBC) or the safeguard of democracy, the problem with our democracy is that some of the candidates refuse to concede defeat. I urge everyone who goes through an election that you do not go there with pre-determined results. Therefore, I hope the people, and especially those who are spearheading the BBI campaign, can come to a point of realising that our country is greater than any individual. If we go for elections and you realise that your votes are not enough, it is courteous to go home and stay with your wife rather than to bring violence.

I support.

The Temporary Deputy Speaker (Hon. (Ms.) Hon. Odulo Odhiambo, kindly have the Floor.

Hon. (Prof.) Jacqueline Oduol (Nominated, ODM): Thank you, Hon. Temporary Deputy Speaker for the opportunity.

At the outset, I want to say that I support this Motion. As we look at the Charter on Democracy, Elections and Governance in particular, I support on account of key and central issues of transparency, accountability and good governance. As we look at issues, especially on governance, Kenya and the rest of Africa are looking at the idea of exercising vested authority that is transparent and accountable.

It is an opportunity for those who are in Kenya and Africa as a whole to be charged with the responsibility of contributing in a way that is positive. We should ensure that we do not just talk about democracy, elections and governance in a vacuum but we also deal with concepts in the context of adhering to the principle of ensuring that we engage in a way that reflects our values. All of us in Kenya, including Members of Parliament, allude to this when we talk of the Building

Bridges Initiative. We are not just talking about good governance, but we would also want to ensure that governance itself is seen to address issues of inequality. We are talking about governance that is contextualised in the history and concerns that have been there, and not making general statements or settling at the point of conceptualisation without application.

On promotion of gender and equality, the key reason for accession to the Charter on Democracy, Elections and Governance is that when we talk about good governance, we are talking about everyone. We not only look at it from dimensions of those who might be marginalised on account of their ethnicity, and sometimes on account of their level of income or status in the class system, but also of their gender and age.

In the context of dealing with the BBI to help us engage in dialogue, we acknowledge that when promoting good governance, we want to see who has authority to make decisions and to implement. That would address the existing concerns in a way that is fair. There is a lot of discussion about the challenges that we have, and statements have been made on behalf of the female gender; particularly as we look at the manner in which we would see equal representation of women particularly in political governance.

We sometimes do not acknowledge that it is the manner of implementing elections. It is the manner and culture of those who seek leadership positions. It is the perception that people have of those who are seen to be ready for that leadership.

Therefore, as I support this, I would want that those who look at the Building Bridges Initiative (BBI) and seek to support it or not because of gender, remember that they need to recognise that what we would like to implement would be one that equally embraces all Kenyans. This is irrespective of their gender and particularly those who are seen to be excluded because they are female.

With these...

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): You support. Let me have the Member for Rarieda, Senior Counsel, Dr. Otiende Amollo.

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Thank you Hon. Temporary Deputy Speaker. As a lawyer, as a person who is a member of the Forum of Parliamentarians of the Great Lakes Region on Democracy and also as a person who did my thesis on the African Charter, I fully support this for five reasons. However, I will be brief. First, this is an important tool for election observers. Second, it is also one that takes us beyond just regular elections to emphasise the need for free, fair and legitimate elections. In addition, Hon. Ndindi Nyoro will remember the word “legitimate”. Third, it also sets a commonality of standards that we can use when we believe one State may have gone against those principles and it is a mode of intervention.

Hon. Temporary Deputy Speaker, I want to emphasise only two things that have been spoken to. First, on Article 10 on the question of a referendum. Some of my colleagues have misinterpreted this. It is emphasised that:

“10. The idea of amendment of a Constitution should repose on national consensus obtained if need be through referendum.”

It is not that you create consensus to avoid a referendum. The referendum itself is the vehicle for consensus. Indeed, if you did otherwise, it would be undemocratic. You cannot agree and say now we have all agreed, we are going for a referendum and we do not want anybody to oppose. That is exactly the opposite of what is advocated for. By definition, referendum is a choice. In addition, if the majority rejects the idea of the draft, then that is democracy. It is not democratic to refuse anybody the choice.

Second, is to speak to the issue of an independent judiciary and that is in Article 2. Moreover, I have heard many of my colleagues talk about the idea of the Ombudsman. Let me assure them that if there is one person in this country who knows the work of the Ombudsman it is me. There is nothing undemocratic in having an Ombudsman to help the Judiciary be accountable to the people. This is because judicial power under Article 1 is delegated power.

Moreover, if it is proposed in the BBI Article 172(a) that you are to have an Ombudsman who is nominated by the President but approved by the Senate and who therefore becomes part of the Judiciary to be an internal check in the Judiciary, there is nothing in eroding the independence of the Judiciary. In fact, it strengthens the independence of the Judiciary. I can assure you that as an Ombudsman, I spent five years trying to check on the excesses of judges and magistrates. Moreover, on every attempt, they would cite "we are independent". It led us to suggest to the Chief Justice to appoint an internal Ombudsman. As we speak today, none of those opposing the idea of an Ombudsman has ever suggested that the Ombudsman who has existed administratively in the Judiciary in the last five years is an erosion of independence. If it were, the Chief Justice himself would not have appointed them. However, in this case, the Ombudsman is to be appointed not to control the Judiciary but to help the Judiciary to be accountable to the people. The Ombudsman would be an *ex-officio* member of the Judicial Service Commission (JSC), would file annual reports to the JSC itself and to Parliament. How can that be an erosion? That is indeed emphasising the principle in Article 2 in terms of ensuring that the Judiciary- like Parliament and the rest of us - is accountable.

Hon. Temporary Deputy Speaker, I support.

The Temporary Deputy Speaker (Hon.(Ms.) Jessica Mbalu): Very well, former Ombudsman. Let us have the Member for Seme. You are on an intervention, Hon. Nyikal Wambura.

Hon. (Dr.) James Nyikal (Seme, ODM): I rise on Standing Order 95. This is an important debate and I think all of us are supporting it. However, considering the time, can we call upon the Mover to reply?

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): I am forced to put the Question on that.

Hon. Members, the Member for Seme rose on Standing Order 95 to call upon the Mover to reply and so, I will put the Question.

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

Mover to reply. For this matter. It is officially concluded.

Let us have Hon. Kilonzo, the Member for Yatta.

Hon. Charles Kilonzo (Yatta, Independent): Thank you, Hon. Temporary Deputy Speaker. I thank all those Members who have supported and those who would have wanted to support, but did not get the opportunity.

As a Member of the Committee, we noticed that the picture in Africa is not improving despite 34 countries having signed this Charter on Democracy and 46 having ratified it. We realised that it is one thing for a country to sign and ratify the Charter and it is another to put it in practice. We have seen countries sign, ratify and then throw charters to the dogs. If you look at what is happening across the member States, it is a very bad picture. The basic principles are adherence to universal values, principles of democracy, respect for human rights, respect for rule of law, periodic free and fair elections, establishing strong democratic institutions in countries and

rejecting unconstitutional changes of Governments. However, it is a very sad picture when you look at the member states.

So, as we would want countries which have signed to adhere to these principles, the days when a country would sit back and not bother at what is happening are gone. The purpose of this Charter is, therefore, to make member States to make it our business to know what is happening in our neighbours across Africa.

Without mentioning countries, in the last two elections and there is also an election which is coming in a neighbouring country... Some of them have ensured there are no independent election bodies to monitor elections. In another country, you cannot petition a presidential win and yet they have signed this Charter. Some of those countries have no free and fair elections. I have seen another country where a presidential candidate has to suspend his election.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Member for Yatta, as much as we are appreciating your reply and contribution to this, please, can you put on your mask. Let us protect each other.

Hon. Member for Yatta, you can use the microphone ahead of you.

Hon. Charles Kilonzo (Yatta, Independent): Thank you, Hon. Temporary Deputy Speaker. I was saying, we have seen what is happening in one of the countries which is about to have elections. A presidential candidate had to suspend his campaigns because he is always being harassed by the police and being arrested. We have seen another one which just concluded an election. They have a constitution which is outdated, whereby if you win an election as a president, nobody can petition you and yet those countries have signed this Charter. We have also seen countries where there is no freedom. They have an election going on but there is no freedom.

We saw as late as last week in a neighbouring country policemen driving around in the city shooting their own citizens just because they were supporting another presidential candidate. We want to encourage the countries that have signed into this not to sit back. The days when AU used to say member States should not interfere in affairs of another country are gone. This is because if you do not interfere, then you have a problem on your door. You will have refugees on your door.

This Charter says that it does not support unconstitutional means of change of governments. But let us look very carefully in some regimes where government or the political class has hijacked its own constitution. We saw a good case in another country further north of South Sudan where there was an uprising by the citizens of that country and the military had no choice but to join them and remove that regime. Yet, that country had signed into this Charter.

What I am trying to put through is that 34 countries have signed and 46 have ratified, but very few are doing anything about implementing the principles of this Charter. It is very saddening to see another country one of our neighbours, where a presidential candidate was shot and obviously it was political. He spent so much time in Nairobi hospital and finally went back to that country to run for elections. We all saw what happened; those were not elections.

All is not lost. We also saw in Malawi where elections were stolen by the then government. The court seemed to have worked and a petition was filed. The sitting president lost the election. They went back to election and a new President was elected. That is what we want to see.

As I move, it is true that Kenya signed into this. I am not saying we are perfect, but as a Committee when we went through what we have done, we saw we have established institutions which seem to be working. Even where they fail, it is not failure by the institutions, but the political class. Therefore, I wish to move.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): You beg to reply.

Hon. Charles Kilonzo (Yatta, Independent): I wish to reply.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. Thank you for the reply. Hon. Members, the House is not properly constituted for us to put the Question on the approval for the Accession to the African Charter on Democracy, Elections and Governance. This was moved by the Chairperson Departmental Committee on Defence and Foreign Relations. I order the Question to Order No.14 be deferred.

(Putting of the Question deferred)

Hon. Members, allow me to appreciate the Members who wanted to contribute to the Motion. We are guided by our own Standing Orders and I am sure they will get a chance in another sitting. May be when we move further to implement, we will have your voice on this. They are Hon. Edith Nyenze, Hon. Wanjiku Gakuya and other Members.

ADJOURNMENT

The Temporary Deputy Speaker (Hon (Ms.) Jessica Mbalu): Hon. Members, the time being 1.00 p.m., the House stands adjourned until this afternoon at 2.30 p.m.

Thank you.

The House rose at 1.00 p.m.