

PARLIAMENT OF KENYA**THE NATIONAL ASSEMBLY****THE HANSARD****SPECIAL SITTING**

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Thursday, 29th April 2021

The House met at 10.00 a.m.

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

PRAYERS

Hon. Speaker: We can commence business.

BILL*Second Reading*

THE CONSTITUTION OF KENYA (AMENDMENT) BILL

(Hon. Clement Kigano on 28.4.2021)

(Resumption of Debate interrupted on 28.4.2021)

Hon. Speaker: The Chairperson, Departmental Committee on Justice and Legal Affairs.

Hon. Clement Kigano (Kangema, JP): Thank you, Hon. Speaker. I would like to register my congratulations to His Excellency the President and *Baba* for their great ingenuity in coming up with the Building Bridges Initiative (BBI) Taskforce, which has led to this very first popular initiative Bill under Article 257 of the Constitution.

Straightaway, I would like to dispel any illusions that there is a mix in the format or effect between Articles 256 and 257 of the Constitution, 2010. The Bill before this House is exclusively under the provisions of Article 257. It is being formulated pursuant to the sovereign authority under Article 1 of the Constitution. Article 1 provides that all sovereign power belongs to the people of Kenya. For my reference, let me refer to them as Wanjiku.

The use of the word “sovereign” in this Article is not accidental. It is intended to bear some impact. The people exercise that sovereign power either directly by themselves or through their elected representatives. Here, we are dealing with direct exercise of authority.

Hon. Speaker, I have looked at the definition of the terms “sovereignty” and “sovereign”. There is a dictionary called *Black’s Law Dictionary*. Its definition is in line with another authoritative journal from Cornell Law School’s Legal Information Institute. Both surmise sovereignty as a political concept that refers to dominant power or supreme authority.

The whole of that is respectively underpinned. It goes on to say that the sovereign is the one who exercises power without limitation. This means when the people of Kenya exercise authority to formulate a Bill under Article 257 of the Constitution, they have no limitations whatsoever.

The Concise Oxford English Dictionary is also in accord with that definition. It defines sovereignty as supreme power or authority. Then it goes further - and this is important - to define sovereign as the supreme ruler. That is why in places like England, the Queen is referred to as sovereign. Here, Wanjiku is the sovereign.

Article 1 of the Constitution is coached in a manner that it has alternatives. The alternative is the exercise of power through an institution like this House pursuant to Article 256 of the Constitution. The phraseology is disjunctive; direct or indirect are not the same. It is not “direct and indirect” but “direct or indirect” and those two are different. Here, we are on the first phrase which is direct exercise of Wanjiku’s sovereign authority.

Therefore, this House unequivocally has no power to amend or alter the Bill in its present form or in any other way. In fact, it does not even have the residual power everybody calls inherent to amend or interfere with the structure or architecture. Let us not talk about the schedule or Articles 87 or 89 of the Constitution. No! You have no power. If Wanjiku predicted or intended the House to have power to amend it, it would have been easier to expressly say so. Wanjiku would have said so.

Therefore, Article 257 of the Constitution is exclusive and self-regulatory. You may think there is a lacuna, but that is the intention of Wanjiku. There is no lacuna as far as Wanjiku is concerned. I looked at inherent and this is what we sometimes call the wild or unruly horse. But here I cannot see any verse or place for inherent authority. As I have said, as an institution created by Wanjiku, we are her servants. This House is a servant creature of Wanjiku. We have a singular and joint noble duty to scrupulously and jealously guard against the interception of Wanjiku’s initiative. Her wish is independent and she has the sole authority.

Hon. Speaker, again, I emphasise without apologies for repetition that we cannot amend this Bill in its present form or substance thereof. The Bill remains intact as transmitted to us by the county speakers by way of certifications. We must, whether we pass it or not, transmit it wholesome for the people to hold referendum on it. In fact, we must ensure what was brought forward is the same that goes to the people and when we have majority, the referendum is carried.

I must emphasise here that there may be errors of mis-description of Article 87(7) being called Article 89(4) or a Cabinet Secretary being referred to as a Cabinet Minister. Those are not material and do not change what Wanjiku intended to say. They do not go to the root. The Attorney-General under the revision of laws or our Speaker under the Standing Orders, which I am not certain, can deal with that. I leave this to him because he has general and inherent powers to help this House and Bill because this is a case of a rose by another name. These are what we call in law errors apparent on record drawing analogy. These are errors that are apparent on the face of the Bill but do not go to the root of the substance or intention of Wanjiku. So long as we do not kill that intention, these are superficial errors that do not affect the tenure of the Bill.

In our noble calling, we as Members of this august House and leaders in this country must live by example. We are singularly, jointly and constitutionally enjoined to invoke, implement and protect the concept of national values and principles of governance as set out in Article 10 of the

Constitution. We must adhere to the ethos that are pertinent thereto. We must be objective and not subjective to ulterior political considerations, interests or leanings when we are dealing with this Bill. We should not create sideshows or trivialise this Bill. What I saw with respect to yesterday were some disruptive matters that do not relate to the tendencies. Senator Linturi had nothing to do with this House. He is in the other Chamber. I am insinuating that if you do not care about national interests, then you have no place in this House because this House is created by Wanjiku and Wanjiku tells us to value it in Article 10 of the Constitution. I do not want to set out what is set out in Article 10, but we are State officers. Therefore, we are bound by the ethos. Each one of us is familiar with the ethos that we must apply objectivity in interpreting the Constitution and passing our laws. Good faith must obtain in enacting, applying or interpreting the law. Again, you cannot sever this from public policy.

One of the national values talks about patriotism, national unity, sharing, and rule of law, democracy and participation of the people. We cannot allow because Ruiru with 500,000 people is given two constituencies... I am giving an example. It is represented by one Member of Parliament here, Hon. King'ara. Tharaka Nithi County where my learned friend, Hon. George Murugara comes from has 400,000 people. It is represented by three Members of Parliament. I am giving that by way of example. I am talking about population. That is the sort of inequity that we are trying to stabilise. If we find that, that is not satisfactory to any party, then result to Article 256. Bring an amendment under Article 256 of the Constitution. In any case, when we are talking about the schedule being placed there or there, let me again say this: If you look at Article 89(1), it is couched in mandatory terms: "There shall be 290 constituencies." Therefore, IEBC has no authority or jurisdiction to bring them to 291 or down to 270. If you look at the name, it says it is Independent Electoral and Boundaries Commission. It talks about boundaries and not creating constituencies. The word "constituency" is not included in that name because it meant and it is intended not to create them. They can only change the set years, the name or the boundaries and not add or deduct. Now that Wanjiku has decided... Whether it is a village or here, it is Wanjiku's decision. Wanjiku can even remove you from this House. I do not want that to happen but Wanjiku can say that we are removing people with disability and we want everybody to compete. Wanjiku can say that.

(Laughter)

Hon. David ole Sankok (Nominated, JP): *(off record)*

Hon. Clement Kigano (Kangema, JP): Hon. Speaker, protect me from another distracter here. I think he does not want me to make my point. It is the type I was talking about yesterday. With a lot of respect to Hon. Sankok, we must also be mindful of Chapter 6 that the consideration we must have is the mandate that has been bestowed to us by Wanjiku. If we do what some parties are thinking that we can amend the Constitution, we will be subjugating Wanjiku to an inferior role when we are told she is the supreme authority. That will be an attempt to rein in on Wanjiku by substituting her wishes with ours. We cannot do this. This is coming to us in all forms under the guise of pursuit of other political extraneous irrelevant matters to the Bill. Any such schemes are ill-motivated and an affront to Wanjiku's sovereignty and to the nation and the people of Kenya. The intended beneficiaries of such distractive overtures are bound to pay. Therefore, let us guard against becoming busy bodies. Our duty here is to implement Wanjiku's wish. I have spoken about the schedule. I will say it again, the word itself excludes the creation of constituencies. Whether Wanjiku creates them under the schedule or at paragraph one, that is her wish.

Now, I want to comment on the institution called Ombudsman. This would be comparing our jurisdiction to others. That institution is widely accepted in the greatest democracies in the Commonwealth in the world. In fact, in India, it goes further to include even private corporations. They are forced to have the ombudsman. Many European nations, Sweden and many others have discovered that this is the in-thing. We must not kill it. Indeed, even us as legislators we have the Ombudsman. The people of Kenya are the ones who watch us. They say: “You will not come back if you do this or the other! Or we want to remove you”. The people of your constituency and the people of Kenya are the institution. They are the ones that supervise us. When you go to the Executive, with due respect to my learned Vice-Chair, he was the first in that institution called Ombudsman.

I also want to say, more amendments pursuant to Article 257, can be said to be unconstitutional. There is nothing unconstitutional with Wanjiku. Enjoy her power, exercise her power and you cannot say she is unconstitutional. Even when you say the courts would do it, the courts were created by Wanjiku.

(Loud consultations)

Please, ask me those questions through the Speaker. Do not keep distracting me. His Excellency President Uhuru is a person under Wanjiku. *Baba* is a person and he is under Wanjiku too. If you try to distract us by saying they used money, listen, money belongs to Wanjiku. All the money. In fact, Wanjiku can do what she wants with her money. There is the Auditor-General. There is everything to audit the use of money by Wanjiku’s agent. It is not a sanction that Wanjiku is limited. In fact, if you read the constitutional history of the American people, the word “constitution” comes from the use of money. If you read the history of the American people, the model of the republican constitution is formed because of money. Wanjiku is the one who authorises whether Hon. Sankok, Hon. Kigano or anybody will use this money. There is the audit of it. We cannot have these sideshows, that money was used, or this was done. Wanjiku can do nothing illegal in this country.

Before I conclude, we have a major Report here. I agree with that Report though there is a dissent. The Joint Committee was united in their approach to the mandate that this House entrusted us with. For the sake of simplicity, we have lifted a page from the Report, which is worthwhile. It contains the issues that the Committee dealt with. If you look at these issues, I will be requesting the Clerk, through you, for the sake of anybody who wants to contribute, to look at the issues that are contained there. It has the genesis of the issues that are covered by that huge Report. All the issues are explained under this huge paper. Let me thank my colleagues, my Vice-Chair, the members of JLAC and Members of this House. I also want to point out that I wish to give special thanks to Senator Sakaja who was a member of the Joint Committee from the other House for his dissent. It is absolutely illustrative. I also thank...

Hon. Speaker: I am giving you an additional one minute. Just check the light. The yellow shows you have one minute. The red shows you have 30 seconds.

Hon. Clement Kigano (Kangema, JP): I will use 30 seconds to thank the House for listening to me and my colleague for extending some distraction. He has now kept quiet.

Thank you very much. I beg to support.

Hon. Speaker: Very well. Can I get the Vice-Chair? Fifteen minutes for any other Member speaking. Remember that.

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Thank you, Hon. Speaker and thank you for giving me this opportunity to support the Bill as moved and as elucidated by the Chair. For the 15 minutes... Can I remove this mask?

(Hon. (Dr.) Otiende Amollo removed his face mask)

Hon. Speaker: Yes.

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Thank you. At the outset, it is important to point out...

(Loud consultations)

If the consultations could reduce, the ultimate recommendation of this Report is that both Houses approve the Bill without amendments. That is on page 169. It is true that there are Members who have spoken prematurely on this, not knowing the conclusion of this Report. The Report does not recommend any amendment to any part. I will explain. We were unanimous on the 32 issues that the Chairman has spoken to, except one which had a divergence of opinion and what we did was to include both shades of opinion. They are both in the Report. In the course of these consultations, we identified some minor typos and I will speak in terms of how they are dealt with. It is the role of any committee that is tasked with such work to identify what could be the pitfalls in that journey. That we did. If you are irresponsible, you ignore them and hope that no one will notice. Sometimes, it has disastrous consequences. But if you are responsible, you identify them and see how to resolve them. If you read the entirety of this Report, where we have identified pitfalls, we have suggested how to overcome them. That is what some people misunderstand and think it is sabotaging the Report and the process. That is actually facilitative not disruptive. It is to protect this document from any possible fraud thereafter. Especially, if one reads the Report completely, one will see - and I will come back to this at the end - there are only six minor errors of typos and they are on page 99 of this Report. We decided that we cannot touch two of them because they would require us to put ourselves in the place of the promoters. We cannot substitute ourselves for the intention of the promoters.

The other four, in the Bill before us, you will see that three of them are actually not in this Bill. There is only one and I will speak to it and it is quite minor. So, I want to let the people know that there are no major issues in terms of the inconsistencies or typos as may have appeared. The fact that we identified them does not magnify them. They are very easy to deal with. I assure the nation and this House that the Committee was unanimous on all the 31 issues. There was no division between the Senate and the National Assembly at all throughout our deliberations. You will see in the signature page that it is signed across the board.

Hon. Speaker, we agreed, and even after consulting with the experts, that this is a popular initiative under Article 257. The question of who initiates it is irrelevant to whether it is popular or not. We agreed that in all the countries where you have popular initiative, it is an additional measure. Constitutional amendments usually could be proposed by Parliament or by the Executive. Popular initiative gives any other person the opportunity, but does not exclude the first two. Even this Parliament can choose to initiate an amendment by popular initiative rather than inside this House. So, the issue that the Executive may have initiated it does not take away the fact that it is a popular initiative.

We agreed that while the role of Parliament is restricted, it is not ceremonial. It is not ceremonial because if you look at Article 94 (1) and (3), you will see that Parliament is the sieve through which anything that becomes law in this country must come. Parliament is restricted when it is popular initiative but it is not ceremonial. I will explain that a little more. Parliament cannot substitute its views for the views of the promoters. Therefore, Parliament cannot make any substantive change to a document that has come through popular initiative. Parliament, on close reading of Article 94 (1) and (3) has that inherent authority to correct any errors of form or typo which are consistent with the intentions of the promoters and which does not substitute the intention of the promoters. So, if the promoter meant Article 89 (7) and it reads Article 87 (7), which does not exist, Parliament can in its discretion correct that. As to whether we choose or not, that is for us. It depends on whether that typo has any grave legal consequences. As I will show later, in our case, it does not.

Hon. Speaker, we agreed unanimously that in this process, a referendum is a must. This document must be taken to the people in a referendum. That is agreed. We also agreed that public participation is not perfunctory, it is not salutary; it is substantive. It is substantive, first, because it is a constitutional requirement. If we do not do it, then the process is in danger of nullification. It is also necessary because it helps us identify some of those gaps and how we deal with them as we have. More importantly also, it helps us make up our mind whether we want to vote yes or no. It helps the country to make up its mind whether it would want to vote yes or no.

We did examine some very specific issues which have been raised as unconstitutional. One is the question of the Judiciary ombudsman, two is the question of removal of vetting of Ministers and Permanent Secretaries (PSs), three is the question of regulation of professional fees, and four is the question of the manner in which the two-thirds gender principle has been put in the Constitution. I am happy to tell you, Hon. Speaker, and this House that after thorough examination - and you will see that in the Report and even after engagement with the experts that we had engaged with - we came to unanimous conclusion that none of those provisions are unconstitutional. Some people may find them undesirable but undesirability and constitutionality are two different things. As long as it is constitutional, if the people agree with it, then it is okay.

I want to say this and I want to say it categorically, and this is where the one issue of constitutionality arises, as a matter of law, and this is where I disagree with my Chairman, a constitutional amendment can be unconstitutional in two ways.

(Applause)

It can be unconstitutional if it does not follow the process that is already in the current Constitution before it is amended. It can be unconstitutional because it results in something that does not accord with constitutionalism. If today there was a popular initiative that suggests that we must exterminate one of the 43 ethnicities in this country, as it happened in holocaust and elsewhere, it would be unconstitutional even if it came through this House and was adopted because in substance, it is unconstitutional. In this House, if we decided that the presidency will only rotate in one ethnic group, it would result in that. I am not speaking to the document yet, I am speaking to the theory. Constitutional scholars agree that you can have a constitutional amendment that is unconstitutional.

Hon. Speaker, what we have done - professors of law like Hon. John Mbadi are saying it is not true but that is okay because that is their view - I am talking about the law. Hon. Mbadi, you have not stepped in law school and so, just allow me to proceed.

In our case, there were issues that were raised about the fairness of Schedule 2. There were issues that were raised about constitutionality and there were issues that were raised about completeness. I will not speak to them because they are in the document. To be fair, there are equally Members, including lawyers, who do not agree with me and they are entitled because in law, there is no strict answer to anything. There are those who believe that no constitutional amendment can be unconstitutional.

What we have done, and that was the midway path, we put the view on constitutionality and the view on unconstitutionality. What we did not do is there was a serious push by some of the Members of the Committee to suggest that we sever Schedule 2 and remove it. However, we all agreed that because Schedule 2 is part of the document and we had agreed that we cannot make substantive changes to the document, it must go with the document. Therefore, what it has done is that it has given Members of this House the opportunity to look at it and make up their minds. What is important is that it is merely an observation. It has nothing to do with the document itself. For the document, it must go as it is.

As I am closing, Hon. Speaker, and this is my last point, I would like to speak about the minor errors. I urge Members to look at page 99 of the document where we identify some of what we call “minor errors and typos.” Ultimately, looking at that list, there is only one typo in the Bill that we are considering. That is in respect of Clause 51. Clause 51 refers to Article 204. The only thing it does not do is indicate that it is looking at Article 204(6). So, we have two options: We can either exercise that jurisdiction here or just insert the word “Sub-Article 6” or we can leave it. I submit that whether we exercise it or leave it, it is of not much consequence because even if we do not change it, the very Constitution that we have encourages a purposive interpretation of the Constitution.

Anyone looking at this amendment will see that what was intended to be amended was Article 204 (6). So, even if we do not invoke that jurisdiction that we have for correcting typos, form and error, it is of no consequence. It is very clear because it talks of the sunset clause. In the entire Article 204, no other sub-article talks of the sunset clause. So, I submit that it is perfectly in order to pass the document without any amendment because any typo is inconsequential anyway.

With that, I want to go to the final unanimous recommendations of the entire Committee on page 169. The first one states that having considered the Constitution of Kenya (Amendment) Bill, 2020 and the submissions received thereon, the joint Committee recommend that the National Assembly and the Senate pass and approve the Bill. The second one states that Parliament should subsequently enact legislation to provide a framework on the processing of a Bill to amend the Constitution by popular initiative.

Hon. Speaker: Very well. Hon. Otiende Amollo, many people may have forgotten that you were a member of the Committee of Experts that came up with the current Constitution. There is an Article in the Constitution that every Member should always have at the back of their mind. That is Article 103 on how a Member may lose their seat. Article 103 of the current Constitution has sub-articles 1(a), (b), (c), (d), (e), (f) and (g). Thereafter, it skips to sub-article 3. That is the point that Hon. Otiende Amollo is talking about. If you were to look at that Article, would you talk about sub-article 2? It does not exist. Just look at that Article. There is no sub-article 2. It jumps to sub-article 3. It was passed as part of the Constitution of Kenya which was promulgated. It is important for people to understand some of the issues that Hon. Otiende Amollo was speaking to. Some of them may be inconsequential. They do not have much import even if they are left to stay as they are.

We agreed that everybody who cares or desires to speak to this Bill will do so. I will not use the normal method of picking someone on my left then on my right. I am looking at the requests. They are 54 in number. My screen shows the first 16. All of them appear to be on my left. The early bird catches the worm, is that not it? First come first served. I am announcing this so that nobody asks why I am only giving an opportunity to people from one side. That is what is shown on the screen. The requests have now increased to 57. Let us be fair. Let us just give an opportunity to people as per the requests.

What do you mean there is an error? Hon. Pukose says he was among the first to come and yet, he just walked in when we were counting to see whether we have quorum. There were others who had put in their cards earlier. That is what it means. Hon. Members, it is good to announce this so that we know.

The first one on the list is the Member for West Mugirango, Hon. Kemosi.

Hon. Vincent Kemosi (West Mugirango, FORD-K): Thank you, Hon. Speaker. I was the first one here this morning.

I had opportunity to look at the Report in its entirety. Right from the beginning, I want to make it very clear that there are some proposed amendments which I agree with.

(Hon. David Gikaria crossed the Floor without bowing)

Hon. Speaker: Hon. Gikaria, it is never done that way. You cannot move from there. You have suddenly forgotten you are already in the House.

Hon. Vincent Kemosi (West Mugirango, FORD-K): Hon. Speaker, there are some proposed amendments which I do not agree with.

Clause 5 of the Bill proposes to amend Article 31 of the Constitution on privacy to include the right of people not to have their personal data infringed. That is a good provision because it will protect the privacy of Kenyans from their data being infringed. Recently, we had the *Huduma Namba* whose data is being stored by the Government. This provision will go hand in hand to protect the privacy of the said data.

Clause 6 of the Bill seeks to amend Article 80 of the Constitution to provide for expeditious investigation, prosecution and trial of corruption cases. This particular proposal provides that under the Constitution, this House can enact legislation to provide for expeditious trial of corruption cases. In my view, this particular provision or proposal can as well be captured in an ordinary legislation or statute without providing for the same under the Constitution of Kenya.

Clause 9 of the Bill proposes to amend Article 88 of the Constitution to mandate the Independent Electoral and Boundaries Commission (IEBC) to ensure that not more than two-thirds of the candidates of a political party are of the same gender. This provision serves the right purpose and will go a long way to solve the issue of gender parity, which has not been resolved, although it is provided for under the Constitution of Kenya. The question that begs is this: If people of a certain gender are not eager to run for parliamentary seats in an election, what happens to a political party? Can a political party force a certain gender to contest so as to realise that very particular provision? That is not very clear.

Further, Clause 16 of the Bill proposes to insert a new Article 107 on the Leader of Official Opposition in the Constitution. The Leader of the Official Opposition should be the person who received the second greatest number of votes in a presidential election. This is a good provision because it will not only provide vibrancy of the House, but will go a long way to check the

Executive or the majority side of Parliament. This provision was there in the previous Parliaments. In the recent past, we have seen that the absence of the Leader of the Official Opposition has made this House not to be as vibrant as it used to.

This is not a new aspect in different jurisdictions because in the parliaments of Uganda, the United Kingdom (UK), India, among others, the Leader of Official Opposition is a candidate who secures the second highest votes. I agree with this provision because it will not only provide vibrancy, but will also oversee the Government in Parliament and, more particularly, in the National Assembly.

Clause 27 of the Bill seeks to amend Article 140 of the Constitution on extension of hearing of presidential petitions. Currently, the Constitution provides 14 days which are not enough for judges and lawyers to make submissions when there is a dispute or when a presidential petition has been filed. The extension to 30 days will provide ample time for judicial officers such as judges to interrogate the matters which will come before them. From that, they will make quite a comprehensive and amicable judgement.

Hon. Speaker, Clause 28 of the Bill proposes to insert new Articles 151A, 151B, 151C and 151D to provide for the Office of the Prime Minister and Deputy Prime Ministers. The Prime Minister will be appointed from among the elected Members of the National Assembly. Further, the National Assembly shall have an opportunity to confirm the Prime Minister nominee. However, there is a provision that the second nominee for the position of the Prime Minister shall assume office, if the National Assembly will not confirm his or her candidature. I do not like this provision. That means that once the first and the second nominees are not confirmed, the President has powers to appoint the Prime Minister without reference to the National Assembly. This is not a good provision because the role of the National Assembly is captured under Article 95 of the Constitution of Kenya. It is proper for the nominee to be confirmed by Parliament.

Clause 29 of the Bill proposes to amend Article 152 of the Constitution to provide for mixed Cabinet with some members from amongst the Members of the National Assembly. The proposed amendment read together with Clause 25 of the Bill seeks further to re-name the Cabinet Secretary as the Cabinet Minister. This is a very important aspect. Of all the things that really impressed me in the Bill, this particular provision is fantastic. I came up with an appeal which proposed the same. It went through the First Reading in December 2019 in this House but due to Coronavirus, it has not proceeded. I am happy because when the task force or Committee came to Nyamira County, I appeared before them. I submitted what they have captured here. I am very happy. This provision will go a long way to ensure that the Cabinet Ministers are appointed. They will be Members of this House. By so doing, this House will not only be vibrant, but also the Members of the National Assembly will have an opportunity for their issues to be raised and answered on the Floor of the House.

Clauses 32 and 33 of the Bill seek to amend Articles 154 and 155 of the Constitution to remove the requirement of vetting of the Secretary to the Cabinet, as well as the Principal Secretaries. This is a matter that needs great attention. We vetted a PS yesterday here. You saw how the debate went. It is proper for this House to be given its role under Article 95 of the Constitution of Kenya. Among the roles is to vet the PSs, as well as the Secretary to the Cabinet among other officers who will occupy various offices in the Government of Kenya.

I agree with some of these proposed amendments. However, I also came across some clauses which are not well captured and do not resonate well with me. The first one is Clause 10 of the Bill which seeks to amend Articles 89 and 97 of the Constitution to increase the number of members who are elected from constituencies from 290 to 360. I find this proposal

unconstitutional. As my learned colleague, Hon. Otiende Amollo, rightly put it, some proposed constitutional amendments can be unconstitutional, if they do not adhere to the process of the provisions of the Constitution. On this particular issue, Article 89 of the Constitution of Kenya provides on how the delimitation of boundaries is done.

For instance, the Schedule of the Bill does not make sense on how they came up with these constituencies. If you look at the 2019 population census *vis-a-vis* the proposed amendments, you will find that Kwale County whose population is 866,820 has been given three constituencies yet Kisii County whose population is 1,266, 860 has not been given any constituency. Further, Kajiado County whose population is 1,117,840 has been proposed to get three constituencies whereas Migori County, where somebody who said yesterday that he is a promoter of the Bill comes from, has a population of 1,116,436 but no constituency has been given. Homa Bay County has a population of 1,131,950 but it has not been given a constituency. The criterion that was used to arrive at the creation of these constituencies is questionable.

Finally, I have an issue with Clause 41 of the Constitution of Kenya (Amendment) Bill, 2020, which seeks to amend Article 168 of the Constitution to make provisions on removal of a judge from office. It allows Judiciary Ombudsman to initiate a Motion to remove a judge from office on account of complaints received from the people. This provision is archaic and unconstitutional. It is against the tenets and principles of natural justice, that is, the right to fair hearing and right to be heard. I further submit that Article 10 of the Constitution, as far as the Judiciary and its independence is concerned, falls under the eternity clause which by practice is un-amendable.

As I conclude, you said yesterday that you would make a ruling or deliver the way forward on the issues which were raised on points of order. I beseech you to point out or make a ruling on the following issues:

(i) Whether a proposed constitutional amendment can be declared unconstitutional for contravening the provisions of the Constitution; and,

(ii) Whether the Constitution of Kenya contains best....

Hon. Speaker: Hon. Kemosi, please, organise yourself because 15 minutes is a long time. I will give you an opportunity to contribute for one minute. The Clerk-at-the Table, please, show him the one-minute light.

Hon. Vincent Kemosi (West Mugirango (FORD-K): Thank you, Hon. Speaker.

(ii) Whether the Constitution of Kenya contains the best structure of the Constitution which is also known as eternity clauses. In simple words, it is known as un-amendability of certain clauses.

(iii) Finally, whether Chapter 10 of the Constitution - that is the Judiciary and its independence - is protected by eternity clauses.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, just to remind you so that we do not have to keep asking for one extra minute, when you see the yellow light, know that you have one minute or 60 seconds. When you see the red light, know that you have 30 seconds. Do not rush when you see the yellow but just know that you have a remainder of one minute.

The next one on the list is Hon. Opiyo Wandayi.

Hon. Opiyo Wandayi (Unguja, ODM): Thank you very much, Hon. Speaker for giving me this chance to express myself on this very important Bill. We are indeed...

(Several Members requested to speak)

Hon. Speaker: Members who are placing their requests on intervention button, please, do not go to the intervention button. I know you are trying to short-change the system to pretend that you are intervening. No! Press the normal contribution button because you will have your chance to speak.

Hon. Wandayi, your minute is restored.

Hon. Opiyo Wandayi (Unguja, ODM): Thank you, Hon. Speaker. At the outset, I want to say that this is indeed a historic Bill as many of us have already pointed out. This is the first time that, as a country, we are amending the Constitution through a popular initiative. It has never happened before, but it is happening now.

As we debate on this Bill, we must not lose sight of the background. We must understand where we are coming from. From a number of submissions, I can see that people are forgetting where this country is coming from. It was not an ordinary thing or something that can just be wished away that on the 9th of March 2018, two persons - one of whom, of course, had rightfully been sworn in as President and the other one whose victory was perceived to have been subverted - willingly came together to shake hands to save the country. That is not something to be taken lightly. It calls for utmost patriotism for such a thing to happen. Therefore, as we debate this Bill, we must at all times remember where we are coming from as a country because I can see us easily forgetting that.

Hon. Speaker, I was honoured to serve in the 11th Parliament and you will agree with me that in that Parliament, we fought throughout. If it was not fighting inside here, it was in the streets and elsewhere. Some of us were fighting because of lack of opportunity for dialogue. Dialogue that would have enabled us to carry out these reforms that we are now able to push through this process of amending the Constitution under the BBI framework. Therefore, we must pay singular tribute to President Uhuru Kenyatta and Hon. Raila Amollo Odinga. We have to. We owe it to them that we are in a position to debate in a conducive atmosphere so as to be able to change the Constitution.

Constitution making or changes are never easy things. If you are a student of history, you will agree with me that even the acclaimed First Amendment of the United States of America Constitution never came easily. By the time it was being adopted in December 1791, a lot of haggling and push-and-pull had happened. Therefore, the kind of push back we are seeing in this process is not unusual. It is to be expected. But what do we do as a country? We need to focus on the future.

Personally, I cut my political teeth, if I may call it so, on the trenches and I can tell you, it was not in some boardroom or such like place. I can tell you that it is not easy to get an opportunity such as the one we have currently to be able to talk as a people and to chart the way forward for our country in the interest of the present generation and generations to come. So, as a Parliament, we must seize this moment and provide the way forward for our people. People have been talking about this document, the BBI Bill, and whether it is perfect or not. There is no man-made thing that is ever 100 per cent perfect. It is only God's creation which can be said to be perfect. Therefore, even as we amend this Constitution, there will always be room to amend it again and again and again.

The other question is this: Does it incorporate everybody's wishes, interest or feelings? The answer is no! Personally, there are things that I would have wanted to be in this Bill, but they are not there. I am sure there are many other Members here who would have wanted other things to be in this Bill, but they are not there. So, what do we do? Do we throw the baby with the birth

water? We cannot. That would be irresponsible of us. So, it behooves all of us to look at this Bill as a first step in our journey to creating a nation that is cohesive and that is at peace with itself.

Again, we must appreciate that even the liberties and democratic gains that we have attained in this country have always been incremental. They never come overnight. We take what we get and we move on hoping that there will be another time to secure others.

One of the most positive things that I can point out in this Amendment Bill without necessarily belittling others is the matter of the enhancement of allocation to our counties. Some of us understand the problems of concentrating power and resources at the centre. We understand very well. People have been saying and asking what makes it difficult for the current Government under the current Constitution to enhance the allocation to the counties beyond 15 per cent say to 40 per cent? That is an academic argument. Why do I say so? We all know, because we are all taught in elementary economics, that resources are always scarce. So, when you have resources, you must prioritise. Hon. Speaker, the priorities change with circumstances. So, we do not want to leave this to the whims of whoever is in Government to decide whether to make it 10, 20 or 30 per cent. We want to compel him or her, through the Constitution that, at the very least, he or she must take 35 per cent to the counties. Only a person who is not able to see clearly will deny that some work has happened in the counties. We know there are problems of systems and of corruption, but the money that has gone to the counties so far has done something. It is visible. It varies, of course, from place to place. But we must appreciate that this amendment will enable our counties to get enhancement of resources from 15 per cent to 35 per cent.

The argument whether the country will be in a position to generate resources is neither here nor there. That is not under our purview. We are making this Constitution so that whoever is in power can implement it. Therefore, as we move forward, we must remind ourselves that constitution-making process is not just a matter of law or legalese. This is a political process, through and through. So, we must always appreciate the fact that we are doing it for a purpose and we must also understand where we are coming from. That is why, Hon. Speaker, when you even hear me speak out there, I speak very passionately because I know mischief can be played. There is room for mischief in every process and it can be clothed differently. So, when we sense that there is an attempt, however minute or little the attempt is, to either subvert or derail or to make this process not move in the manner it should, we must call you out. We must say it as it is. Where we have reached, we only need support from those of us who mean well for the country so that we do not engage in sideshows. We need to focus on the ball and ensure that the country gets the Constitution it deserves.

Finally, I am happy that from here, this Bill is heading to the people; it is heading back to Wanjiku as was very eloquently illustrated by the Chairman. It is our hope and wish that no more hurdles are going to be placed on the path of this process. And whoever is out there listening to us must understand that this is not child's play, that we can allow anybody to bring side shows and academic arguments. We want everybody who is responsible to ensure that this process is smooth. We need to head to the referendum as quickly as possible so that Kenyans can pronounce themselves on the Bill and we move forward as a country. Those of us who want to mix up issues, who want to bring in matters as irrelevant as the 2022 elections into this process, I am sorry for them. The year 2022 will come and pass but this Constitution, God willing, will survive. It will take care of the interest of the current generation and the generations to come, regardless of who will be in power.

Hon. Speaker, with those very many remarks, I wish to support in totality this Bill and look forward to having it passed overwhelmingly. Thank you.

Hon. Speaker: Member for Mathira.

Hon. Rigathi Gachagua (Mathira, JP): Thank you, Hon. Speaker. I rise to speak on behalf of the great people of Mathira Constituency who are my employers and who inform my thinking on a day-to-day basis in whatever I say in this House. We are in unprecedented times. As we speak here about constitutional amendments, there are many Kenyans who have gone without food; there are many Kenyans without masks; there are many Kenyans who do not know where they will get the next meal; there are many Kenyans staring at death not because of COVID-19, but because of hunger; and, there are many Kenyans who have been thrown out of their houses because they are unable to pay rent.

The Kenyans from my constituency are telling me that they would have wanted us to have a Special Sitting to discuss how they will be fed, how they will pay rent, about their lives and how they can stay away from death. Those Kenyans are of the view that, in terms of priority, any money available to this country should be applied to them so that they can get vaccinated. That way, they will be protected from possible death. They will have an opportunity to live on and look after their children and even educate them. It is for that reason that they tell me, and I subscribe to that view, that in terms of priorities, we have got them upside-down.

Secondly, I heard the Chairman of the Departmental Committee on Justice and Legal Affairs talk very passionately about Wanjiku. He talked about her rights, needs and powers. He has been too busy with this Report that he has not had time to travel to the countryside. Had he gone to Murang'a where he comes from, he would have been told that the name of the lady had been changed from Wanjiku to Wagio. Wagio, Hon. Speaker, is a lady who is overburdened and cannot take an extra burden anymore. She cannot be Wanjiku anymore! She is Wagio. That Wagio does not want an extra burden. The implementation of these proposed amendments will add an extra burden to Wagio. Wagio is not breathing. Her back is about to break and she is staring death as a result of hunger, the COVID-19 pandemic, and the measures that have been put in place to make sure that people do not infect one another.

I have looked at these amendments. I have read the Report very keenly - more than 10 times. We have been told that these amendments will address the issue of inclusivity. From what has been proposed, I see that the offices that are being created are for one coalition. There before, governments were formed by coalitions when it was said we did not have inclusivity. I do not know how the new positions coming from one side of the coalition will address inclusivity. In my thinking, probably, naively, I thought that the formation of 47 county governments addressed the issue of inclusivity in totality so that every county has funds, its own government and is able to deal with its unique challenges on a daily basis.

Looking at the schedule that details how constituencies will be delineated, I want to say that, at the outset, the people of Nyeri, where I come from, have no business supporting these constitutional amendments because of discrimination. They were discriminated against because when the BBI proponents went to seek their views, they did not tell them to give views about creating extra constituencies, the formulae for their creation and the criterion. Kieni Constituency is 52 per cent of Nyeri County. I have seen other counties being proposed to have some extra constituencies. Mathira, which I represent, is a very big constituency. I am sure if the BBI proponents did not hijack this responsibility, but left it to the IEBC, the people of Nyeri, the people of Kieni, and the people of Mathira would have had a great opportunity to appear before the IEBC and put up their case using figures and statistics and get constituencies. As it is, if these amendments go through, the people of Nyeri are cooked. They are nowhere. I must tell the

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proponents that they will have a very difficult time in Nyeri. It is not easy coming to tell people to support something when they feel discriminated. I talk for the people of Kieni. I have two farms there in Kabaru and in Kakuret. Although my brother and friend, Hon. Kanini Kega, is supporting that we go ahead and leave out the people of Nyeri, I must talk for the people of Kieni where I am a resident and where I have a farm. We shall have a problem with this document. We do not want discrimination in this country. We would have wanted to appear before the IEBC and put up our case and we would have been heard because we have sufficient reasons to be heard. As it is, we were not heard.

So, I want to tell Hon. Wandayi that it is good. Let the proponents be ready to go to Wagio, there is no Wanjiku. They will find Wagio. Wagio is hungry. The late Bob Marley said that a hungry man is an angry man. As you overburden the people in a difficult time when they are dying from COVID-19, when there are issues and the real issues have not been addressed; when they have no food, they do not know what to tell their children and you are going to tell them to create positions for people to overburden them, you will find angry people. Angry people are not very nice people. I wish you the best of luck. I have firm and clear instructions from my employers to oppose these amendments.

Thank you very much.

(Applause)

Hon. Speaker: Member for Nyando.

Hon. Jared Okelo (Nyando, ODM): From the outset, Hon. Speaker, let me thank you for this opportunity. Together with the proponents of the BBI Bill that is before the House, I join them.

We, as a nation, must firstly backtrack and get to understand how we ended up here. The country, after the 2017 elections that was marred with a lot of illegalities and irregularities, if the Supreme Court decision is anything to go by, did invite a lot of divisions amongst the Kenyan people. Some of us who still believe that we were denied our victory, took a different tangent that was not in sync with the peace and tranquillity that a nation should have. But through wisdom, our two principals came together, buried their differences and reached a common goal to have this country united and once again move as a one unitary society. That is what gave birth to the handshake and consequently the BBI as a document. If there is anything that the handshake that brought about peace will be remembered for is this BBI. We intend to have the Kenyan people, through a referendum, add their weight and voice so that we can once again midwife a constitutional amendment. Just like 2010, we are again in a constitutional moment.

We were not born and created for constitutions. Constitutions are just, but guiding principles on how people can transact and relate with each other. If there are areas where the Constitution does not act and work for us, it is our responsibility to make necessary amendments because no constitution the world over is cast on stone. Time such as this has emerged. We, as Kenyans, are making changes in areas where we feel the shoe pinches. We have worn this shoe for the last 11 years. Even the Constitution proposes eight years to carry out amendments. We are at 11 years now. So, we are actually time barred to make necessary changes that work for us. As is democratic, the naysayers must always be there. We will listen to them. We will not have any given time when all legislative pieces will be presented, adopted and passed. Otherwise, this House will have no work. For those who think that their visions and their views have not been captured here, there will be a second amendment, a third amendment, and a fourth amendment. Just like the United States of America are beyond their 21st amendment, this is not the last time.

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We have had an elaborate process to get to where we are today. The Kenyan voices have been heard. That is what has been put in this document. So, the views that are constantly heard that certain individuals are forcing in the throat of Kenyans a document, is not true. Lots and lots of public participation exercises were carried out. People presented their views from across the width and breadth of this nation. Those who are promoters of this document did not go out there to come up with their own views. They collected Wanjiku's views. Therefore, we as a people who have been given the mandate to lead must always tell the truth that this is a document that is reflective of the wishes and aspirations of the Kenyan people.

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

[The Temporary Deputy Speaker (Hon. Patrick Mariru) took the Chair]

We know that the end game here is a referendum. I know certain views have been advanced that after this, the document can be taken to the house on the hill and be assented to and it becomes law. That can never be so. That cannot stand. The Kenyan people must have their voices heard through a referendum. Even the naysayers will be heard. It is not so automatic that once it appears before the Kenyan people it must pass. No! Kenyans will be given an opportunity to express their views on this document by way of voting. So, for those who think that this is not in sync with their desires, they can vote no and that is still democratic. Some of us, including myself, who are ardent supporters of this document, will vote yes. Up to now, we believe that we have the majority. That does not mean that we shall side-line the minority. We will hear you. We shall give you another opportunity in the nearest future, as we come up with our second amendment so that those views can also be incorporated.

Amendments are always carried out to reorient people's lives. It is not something that is coming from the blues. These are areas where we have identified. The voluminous Bill has gone in-depth to try to dissect fundamental issues that bedevil this country. One of them is divisive elections. No country can develop if after every five years, they have to be subjected to rounds of violence. No investor, domestic or foreign, will put his capital investment in a country that is staring at violence and destruction of property every five years. That can never be. So, we are trying the much we can, under the circumstances, to fix these emerging issues that would prevent this nation from making rapid flights on its economic progress. We know that with this document, we are on the right path.

Hon. Temporary Deputy Speaker, a process must inevitably have supporters and non-supporters and that is why people meet at the ballot to express their views. One fundamental reason why I will strive to support this Bill to the hilt is the mere fact that additional funding will go to our counties. An increase of the sharable revenue from 15 per cent to 35 per cent is a monumental amount of money and it is going to support a lot of devolved functions in the counties. Hospitals will be built and there will be adequate medicines. Roads will be worked on and water will be provided. In my constituency, water is still a problem even though on the flipside, we have flooding every year. If the county government will get additional funds to provide water services, then places like Nyando Constituency will be confined into history books as the status of waterlessness that we eternally have will change.

Hon. Temporary Deputy Speaker, I want to suggest to the Senate, the Council of Governors and the other stakeholders, including the Ministry of Devolution, that devolved funds should take the tangent of the NG-CDF funds where money can only be disbursed when they are plugged onto

projects. If you keep giving governors and county assemblies money and they have to sit down to determine the direction that money goes, we will continue to have pilferages. It is very difficult to pilfer the NG-CDF because it is tied to projects. All over the country, you see nothing but the NG-CDF funded projects. I wish the NG-CDF could also be increased from 2.5 to 5 per cent, so that we can address the plight of our schools, chiefs and their assistant chiefs and the police, who take care of our security arrangements in the constituencies.

The establishment of the Youth Commission to address the concerns of our youth from the grassroots is a welcome move. Joblessness amongst the youth is a time bomb. It has been said severally that the youth, without any tangible income, will one day become disastrous to this country. The Youth Commission will have all the CVs of the youth and try to put them into jobs and address their problems as they emerge. Those who would wish to do businesses will be given money so that they can be engaged. They are the productive lot of our society and we cannot wish them away.

I am happy there will be a moratorium spread on the Higher Education Loans Board that is expended to students in various universities and colleges. Seven years upon graduation is ample time to put their houses in order so that when they start repaying the money to the Government, they will have stabilised and will not be hard pressed on meeting this obligation.

The Ward Funds that will be under the purview of the members of county assemblies (MCAs) will go a long way in addressing issues at the ward-level. This is something that we all stand in solidarity to support.

Hon. Temporary Deputy Speaker, there will not be a moment like this one. The Constitution making process is not a one stop shop and an easy thing to achieve, especially when you have people who have gone through an electoral process and have fought tooth and nail in order to seize power. This is the only moment we have seen protagonists come together to address the problems that have emerged in this nation for way too long. This process is not about the Right Hon. Raila Odinga, who has sacrificed it all to ensure that this country has a semblance of peace. It is not about President Uhuru Kenyatta, but about the Kenyan people addressing issues of concern, so that the country can move forward as one united nation.

With those remarks, I support.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Members, I want to reiterate what the Speaker communicated earlier on to the House, that, on this Motion, we shall strictly follow the rota. If you want to know where you are in the rota, you are at liberty to check at the screen on the Clerks' Table. I will strictly follow that rota regardless of whether two or three Members come from one side.

Hon. Peter Masara, Member for Suna West, you have the Floor.

Hon. Peter Masara (Suna West, Independent): Thank you, Hon. Temporary Deputy Speaker. With my 15 minutes, please, allow me to remove my mask because everyone has their masks on.

Thank you for giving me this chance. I also want to thank the people of Suna West for electing me so that I can be part and parcel of this historic moment of changing the Constitution for posterity. This is the first time that a popular initiative is happening in Kenya. In 2017, over 16 million Kenyans voted for the two brothers, His Excellency Uhuru Kenyatta and His Excellency Raila Amollo Odinga. They delegated their powers, authorities and rights to them to speak on their behalf. When they decided, as people who competed during the presidential election, to sit together and agree on matters of this country, I can say that is a big blessing.

Changing a Constitution has never been easy anywhere and those who believe that the status quo is benefiting them will always come out to oppose what people want. The BBI Amendment Bill, 2020 has brought a lot of good things to us. Clause 11(a) on shared prosperity in this proposed amendment Bill is going to help us because the State will be mandated by the Constitution to promote the blue economy. I come from the lakeside and this will mean that fishermen around Lake Victoria in Nyanza and Migori in particular will have their interests taken care of.

Hon. Temporary Deputy Speaker, I want to speak to Clause 50, which seeks to amend the Constitution to increase the percentage of money to be allocated to the counties from 15 per cent to 35 per cent. I have a background of the former local government where we used to receive small amounts of money through what used to be called the Local Authorities Transfer Fund (LATF), which changed the areas where councillors used to work to enhance development of the people. The NG-CDF has improved development in all areas of Kenya. If you walk around every constituency, you will find signposts of projects done using the NG-CDF.

Clause 11 talks about how people messing with public money are going to be penalised. If the allocation of funds to counties is increased from 15 per cent to 35 per cent, then inclusivity will be realised in the sense that every area, be it in Turkana, Mombasa, Migori or Baringo, is going to enjoy the fruits of the national cake in terms of development.

Hon. Temporary Deputy Speaker, I want to speak to Clause 54 on the Ward Development Fund. As at now, the ward representatives operate at the mercy of the governors. If you do not sing a good tune which the governor entertains, your area is not allocated money. But now moving forward, all ward representatives will receive 5 per cent of the money allocated to their counties. It means that each village will receive money from the national Government through the Ward Development Fund (WDF). With the WDF entrenched in the Constitution, MCAs will perform their oversight role. They will be able to point at areas where the governor is not doing well without necessarily being punished for doing that.

I will also speak to Clause 63. It seeks to introduce Article 237A to create a Youth Commission. For the first time in the history of this country, we are going to create an independent commission which is going to cater for the interest of the young generation of this country. The youth form the biggest percentage of the population of this country, but when people discuss development interest, nobody thinks about the youth. The Bill talks of mainstreaming the youth perspective in planning and decision making. For the first time, interests of the youth are going to be mainstreamed so that they participate actively and independently in decision making. Paragraph (c) of the proposed new clause says that the commission will advise the county and national governments on design, implementation and evaluation of policies and programmes to secure sustainable livelihoods for the youth.

At the moment, the youth do not know how to live because they do not have hope. When this Bill is passed, the county and national governments will be forced by the Constitution to look at how the livelihoods of the youth can be sustained. I want to remind this Parliament that women have their commission which supports them. Persons living with disabilities (PWDs) have those who support them and teachers have a commission which supports them. For the first time, the youth are going to be given an opportunity to be part and parcel of decision making. If you look at the composition of that commission, four members must be youths. It means out of the six members, the majority will be youths. That means decisions that will be made by this commission will favour the youth.

I support this Bill because it is going to promote the preservation and dissemination of African morals, traditions and cultures among the young. This bit is very important for this country. As I speak, many youths do not understand their cultures or African cultures. They have been westernised to the extent that they do not know what belongs to Africa. If we pass this Bill, the Youth Commission will ensure that it promotes, preserves and disseminates information related to the African culture. If you ask the current generation why somebody needs to respect their parent, they do not understand. Therefore, as we make this Constitution, we must understand that it is for the current generation and generations to come. Opposing it is not a problem.

I am a Christian and I know that according to the Bible, for things to work the way they are working now, it forced God, who is very merciful, to eject Lucifer from heaven and send him on earth so that heaven could be a real heaven. Therefore, we encourage those who oppose this Bill, but we know that when President Uhuru Kenyatta and Raila Amolo sit together, my friend, nobody can defeat their initiative. That assurance I have. I discussed with the people of Suna West and they told me that as long as Raila Amolo Odinga and Uhuru Kenyatta support the initiative, they are going to vote for this Bill 100 per cent at the referendum, so that they can receive money for development. This is also so that the interests of the youth can be protected and for WDF is established.

I am happy that from the mood of the House, very few people are going to oppose this Bill. Hon. Sankok told me earlier today: “Hon. Masara, I am not going to oppose this thing because youths’ interest is catered for. The rest of the things we will get one day.” For the first time, Hon. Sankok is going to contest and maybe come second so that he can be nominated.

Thank you, Hon. Temporary Deputy Speaker. I support the Bill in its entirety.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Next on the list is Hon. Osotsi Godfrey.

Hon. Godfrey Osotsi (Nominated, ANC): Thank you, Hon. Temporary Deputy Speaker, for the opportunity to contribute to this historic matter of amending the Constitution of Kenya. I want to start by thanking the joint Departmental Committee on Justice and Legal Affairs of both the National Assembly and the Senate for the good work. I have had the opportunity to go through this Report and it is one of the best reports that I have ever read in this House. The Committee has tried to capture every small detail in the Bill. It has dissected every issue that required to be dissected. Parliament managed to assemble what I would call a committee of experts. In the joint Committee, we have around 28 members, out of whom 18 are lawyers of great reputation in this country. The Report they have submitted to us is competent, professional and good for this House. I would encourage fellow Members of Parliament to take their time and read the Report, so that the contributions we make are informed by the Report and not by what other people write out there.

The second thing is that we are dealing with constitutional issues contained in the BBI Report. We still have legislative, policy and administrative issues which I want to ask the House to expedite. Particular Bills that we are supposed to deal with should be brought to this House so that we can finalise the BBI matters as soon as possible.

Thirdly, I have been among the Members who have been saying that Parliament cannot be a bystander and a rubberstamp. However, reading through this Report and listening to the contribution of the Mover and Seconder, I am convinced that there is no room to amend this Bill. This Bill belongs to the people of Kenya. Our role under Article 257 is to pass or reject it. It would then go to the people of Kenya to make a decision.

There has also been a concern raised by some people as to whether this Bill is a popular initiative. If you read through this Report, it gives a very good historical background of where we started from. We started with divisive elections of 2017, where we had two leaders who got cumulative votes of 15 million Kenyans supporting them. When these two leaders in their own wisdom decided to have a handshake, which had an agreement signed through a joint communique between the two, that is where we started. For those who are saying that this does not qualify to be a popular initiative, I think they are not with us in this country. We have two leaders voted for by Kenyans with 15 million votes. Those 15 million votes were the people of Kenya. That is where the legitimacy of this Bill is coming from. This is a people initiative. Our role is to pass this Bill to the people in a referendum and Kenyans will make their decision known.

I want to raise another issue that we have been hearing from the media. Last week, we were fed with information that some county assemblies passed Bills which were not authentic. If you read this Report, it is clear that Bills that went to county assemblies and were passed were authentic. More than 24 counties passed this Bill.

I want to thank the Speaker of the National Assembly for being wise. He constituted a committee that came up with guidelines for delivery of the county assembly returns. Those guidelines were gazetted on 18th November 2020. They captured the possible administrative gaps in this process. All that has been captured in this Report. What we have been hearing in the media about some non-authentic Bills being passed by some county assemblies is not true. I am asking Members not to rely on rumors when they come to debate here. Read through the Report. Most questions that we asked yesterday are fully captured in this Report.

Article 1 of the Constitution of Kenya says that all sovereign power belongs to the people of Kenya and shall be exercised in accordance with this Constitution.

The second part says that sovereign power will be exercised directly or through democratically elected representatives of the people.

The third part says that this sovereign power is delegated to three State organs, namely, Parliament, National Executive and the Judiciary.

The Constitution under Article 94 gives this House the legislative authority derived from the people of Kenya and exercised by Parliament. Since we are not amending this Bill, but passing it as it is, it will not be right for any other individual or any other organ to shoot down the people's initiative. I am saying that because Article 157 gives the Judiciary powers just the same way Article 94 gives us the people's power. We also expect that the Judiciary will do the same and deliver this to the people of Kenya. It will be unfair that Parliament that represents the people of Kenya passes a document without amendments and then a judge, one person or a bench of judges, shoots down this initiative. It shall be unfair. Now that we have a new Chief Justice, I am asking our Judiciary not to take Kenyans in circles. Let us give Kenyans what they want to have.

If I go to the substance of the Bill, Chapter 4 talks of privacy of citizen personal data. This is a very progressive provision because of where the world is going to. It is mandatory for countries under the United Nations to have a legal regime on matters to do with personal data. As we are aware, the country passed the data protection law and we have a data protection office. This is a very progressive amendment which I wish once the Bill is enacted into law, it should be implemented expeditiously.

Hon. Temporary Deputy Speaker, let me also talk about Chapter 6. It talks about the fight against corruption. It has recommended that corruption cases will be handled expeditiously. We know of corruption cases that have even taken 20 years like the Goldenberg scandal, the Anglo Leasing and others. We want to be clear that such cases should take a maximum of two years to

be concluded. People accused of corruption should return money or put in jail. Corruption is the biggest cancer in this country. Therefore, this provision is very progressive in the fight against corruption in this country.

Chapter 9 talks about the office of the prime minister, two deputy prime ministers and ministers being drawn from this House. It is a very progressive amendment. We have all been frustrated because ministers sit outside this House. We now have a chance where a prime minister will sit in this House and we will ask him or her Questions. We will also have ministers who are going to be asked Questions directly instead of waiting for months, years for issues to be dealt with.

Chapter 11 talks about an increase of shareable revenue from 15 to 35 per cent. This is very progressive because our county systems especially for smaller counties like where I come from, Vihiga, are having challenges of financial management. However, with an increase in this amount, we are going to have counties operating almost seamlessly. This is a very progressive amendment. Talking about a constituency which my colleagues have talked about here, I managed to find out how the constituencies were being allocated. I was told by one of the experts that they based the formula on population data to find out how many constituencies can be allocated to a county. There was an outcry that the Ligale Commission may have given more counties to some areas than others. So, they were seeking the balance of what should have been given. I thought we should have used constituency data and not county data. We have some constituencies which are big, but they are sandwiched within smaller constituencies in a county. For example, where I come from, Vihiga County, we have a constituency called Hamisi, which has a huge population, but it suffered because of the low population of Vihiga County. It is, therefore, not among the constituencies that have been considered to get extra constituencies.

Hon. Temporary Deputy Speaker, even after this Constitution is passed, the IEBC will still have an opportunity, maybe, in 2024, to create more constituencies or rationalise the areas which have been disadvantaged like Hamisi and others.

I want to end by saying that this is a very important process. We are asking our brothers from the Tangatanga side to support this process. Hon. Rigathi talked about this and said he is rejecting it. However, I am told that Mt. Kenya Members of Parliament who made a proposal to Ruto asked him for the position of prime minister. Where are you going to get that prime minister if you do not support this Bill? Thank you, Hon. Temporary Deputy Speaker.

I support.

The Temporary Deputy Speaker (Hon. Patrick Mariru): We shall now have Hon. Aisha.

Hon. (Ms.) Aisha Jumwa (Malindi, ODM): Asante sana, Mheshimiwa Naibu Spika wa Muda. Mimi nimesimama kupinga kwa dhati huu Mswada. Nataka niseme kwamba... Naomba uniruhusu nitoe *mask*. Nataka nianze kwa kuliweka vizuri suala la mchakato mzima kutoka mwanzo wake mpaka hapa tulipofikia.

Utaratibu ambao ulitumika kufikia hapa tulipokuwa na Mswada, ripoti zimekuwa katika hali ya kukanganyana, kutoka Bomas 1, KICC, na Bomas 2. Ripoti zote zilikuwa zinakanganya. Tumesikia kwamba Mswada ambao ulipelekwa katika *County Assemblies*, yaani mabunge ya kaunti ili kuzungumziwa...

(Consultations)

Hon. (Ms.) Aisha Jumwa (Malindi, ODM): Asante.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Proceed!

Hon. (Ms.) Aisha Jumwa (Malindi, ODM): Asante. Kuhusu Mswada ambao ulipelekwa katika mabunge yetu ya kaunti, tulipata kujua kwamba Mwenyekiti wa IEBC alipata *copy* moja, ikawa *gazetted*. Lakini zile ambazo zilipelekwa katika *County Assemblies* kuzungumziwa zilitoka katika *Secretariat ya BBI*. Zilipofika kwa Mwenyekiti, Bw. Chebukati, hazikuwa *Bills* ambazo zimekuwa *gazetted*. Mimi nataka niseme hilo peke yake linamaanisha kwamba tayari sheria ilikuwa imehujumiwa. Hii ni kwa sababu zile *Bills* ambazo zilipelekwa kule katika mabunge yetu ya kaunti nyingine zilikuwa sawa ilhali nyingine hazikuwa sawa. Kwa sababu hiyo, mimi napinga. Hatujui hata leo tukipitisha huu Mswada kama Bunge la taifa kama kuna ukweli kwamba Mswada huo tumeupitisha ndio utapelekwa katika *referendum* yaani kura ya maoni. Inaonekana kuna Miswada mingi maana kila leo inatolewa hii kesho inatolewa ile. Kwa sababu hiyo hakuna uaminifu katika mchakato mzima huu wa BBI.

Jambo ambalo limenistaajabisha si kwamba eti tumevunja sheria kama Bunge. Lakini ni jambo la aibu kwamba kikao cha dharura ama kikao hususan, kinaweza kuitwa ili Wabunge wakatize muhula wao wa mapumziko kuja kuzungumzia mchakato wa BBI badala ya kuzungumzia matatizo yanayo mwathiri mwananchi katika hali hii ngumu ya maisha katika nchi yetu hii ya Kenya. Tungekuwa leo tunazungumzia angalau ripoti ya kutoka kwa wizara ya Afya na mchakato mzima ambao serikali yetu kupitia Mheshimiwa Uhuru Kenyatta imeweka kumhusu mwananchi. Lakini leo tunazungumzia...

(Hon. Mbui Robert rose on a Point of Order)

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order! Order, Hon. Aisha! What is out of order Hon. Mbui Robert?

(Hon. Wamalwa spoke off record)

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Hon. Wamalwa! It is time for Hon. Mbui Robert.

Hon. Robert Mbui (Kathiani, WDM-K): Thank you Hon. Temporary Deputy Speaker. I am on a point of order. I have listened very keenly to my sister, Hon. Member for Malindi. She has stated on the *Hansard* that Members of Parliament have been called back from resting. Hon. Temporary Deputy Speaker, I want it to go on record that we were not at home resting. We were stopped from being in Parliament because of COVID-19. Therefore, we have come here to deal with the issues of BBI not because we have come from resting. Had we not closed, we would have been in Parliament. Is she in order to say that we are coming from resting?

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order! Order, Hon. Mbui! You are clearly giving certain information to Hon. Aisha. It is not a point of order. Hon. Aisha, proceed.

Hon. (Ms.) Aisha Jumwa (Malindi, ODM): Mheshimiwa Naibu Spika wa Muda, Kiswahili kitukuzwe. Tumetoka kwenye mapumziko na tukaitwa hususan kwa kikao maalum. Kwa hivyo, hapo hakuna hoja ambayo inatatiza. Labda pia ningekushauri ukapata mafunzo ya darasa la Kiswahili maanake ni lugha ambayo inatambulika na inaeleweka kikatiba.

Wananchi katika taifa letu wametupa nguvu zao kuweza kuwasemea katika Bunge hili. Leo wananchi wanaumia na ugonjwa wa korona na *Oxygen* katika hospitali zetu hakuna. Watu wamechukua *loans* na wanakufa na *depression*. Watu wana mizigo mikubwa. Leo sisi tunakuja hapa kuzungumzia *Bill* ambayo kwanza inaongezea mzigo Wanjiku ambaye tayari saa hii ana

mzigo wa kutulipa mishahara sisi Wabunge 416. Tunazungumzia kumwongezea mzigo wa 650 wa Wabunge. Wabunge tunaupata mishahara wetu kikamilifu. Lakini walioko kule nje wanaumia. Ukiangalia biashara ya utalii na *Transport Industry*, utapata watu ambao wamefinyiliwa. Sekta nyingi za watu ambao wanafanya biashara katika nchi hii ya Kenya zimeumia. Ni mikakati gani ambayo sisi kama Bunge ama kama taifa, kwa niaba ya mwananchi wa chini, tumeweka? Ukiangalia hakuna.

Bibilia inasema katika Kitabu cha Mathayo 6:33 kwamba tu tafute ufalme wa mbinguni na vyote tutaongezewa. Lakini katika taifa la Kenya, tunasikia kwamba tafute BBI na mizigo yote tutaongezewa. Tutaongezewa ushuru kwa sababu ya kuwalipa Wabunge 650. Tutaongezewa mizigo ya kodi. Ni jambo la kusikitisha sana. Tunapokaa hapa Waheshimiwa, nawaomba tufikirie mwananchi kwanza. Mimi naamini kwamba hakuna aliyesema anahitaji Wabunge 650 katika Bunge la Kumi na Tatu linalokuja. Ndio maana tunasema Mswada huu au Ripoti hii ni ya kukataliwa. Ninaamini Wananchi kule nje wananiona. Tukipitisha, watakaoumia ni wananchi. Sisi tutakuwa starehe hapa hata kama tuko mia saba na watatulipa. Kwa hivyo, mimi nataka niseme kuwa wananchi kule nje wajipange na wajue kwamba huu ni mzigo wao. Sio mzigo wa Wabunge ambao wamekaa starehe ndani ya Bunge hili letu la taifa.

Kwa hivyo, mimi ninataka kusema kuwa jambo hili litawarudia wananchi. Ninataka kuongee na taifa kwamba hakuna atakayeweza kuutoa huu mzigo kwa wananchi isipokuwa wao wenyewe.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Next is Hon. Ole Kenta. The Member for Narok North.

Hon. Richard ole Kenta (Narok North, ODM): Thank you, Hon. Temporary Deputy Speaker. I am greatly honored to get this opportunity to also contribute to this historic Motion. The history of this country is full of instances and constitutional moments when this country could have put things right. Just before Independence, we had the Lancaster House Conference. That was the conference that divided Kenya in the middle, when land rights were destroyed. During that conference, land that was supposed to go back to the people who had been deprived of those lands, was abrogated and denied by the independent Government. So, that was the first time the Kenyan Government lost the opportunity to bring Kenyans together.

After Independence, there were piecemeal amendments. In 1996, they attempted to change the Constitution to stop President Moi from taking over the leadership of this country. Fortunately, it failed because the founding President blocked it. In 1992, there was the change of Section 2(A) of the Constitution to re-introduce multi-partyism. In 2010, we had the Constitution which was very progressive and was said to be 80 per cent perfect and 20 per cent problematic. I think that was one of the issues that were supposed to be resolved. Right now, as my colleagues have said, this is a moment that must not pass us. I would like to request my colleagues to debate this matter with the sobriety that is meant for any leader worth his salt.

This is not a political competition. It is not a matter of who is right or wrong. It is about how we can bring our people together. How do we ensure that the segregation that has been there for so long is vanquished? I have heard of a Wanjiku, maybe I can also introduce a Naserian for the Maasai people from Narok North Constituency, that I represent. My instructions as Gachagua's from his constituency is that I support this Bill. Why? The first two proponents who are Kenyan citizens like anybody else, the President of this country, Hon. Uhuru Kenyatta and the former Prime Minister, Hon. Raila Odinga, are citizens like any other. They came together to bring this country together.

I remember one time when we went to welcome Hon. Raila Odinga at the airport, the kind of death that we witnessed on the streets of Nairobi is something that should never be repeated. So, when they came together, my people and community at large realised that time for them to stand with these people is now. Why do I say that? These are the two giants of the Kenyan political scene that can bring this country together. When they brought this initiative, there was public participation. The Kenyan people agreed with them and several issues were brought to the fore that have been terrorising this country.

I am shocked when I hear my colleague say that there was no consultation. As far as I am concerned, this team went all over the country. Unfortunately, some of the Kenyans decided to boycott the hearings. So, one cannot boycott a hearing and claim that they were not part of the process. I think this is not the right thing to do and is hypocritical. There are many issues and I would like to go to the substance of the amendments. One of them is the extra 70 constituencies and Narok is getting three. We are supporting this because of increased resources which will assist our people.

The only problem is that the people of Narok must decide for themselves the boundaries of the constituencies and how they want to be governed. Nowadays, there is a tendency of people from elsewhere coming and curving for themselves areas to contest at the expense of the local people. I think the most important thing is that the local people's interests must be taken care of. So, if anybody believes that they can disenfranchise the people of Narok or anywhere else, they will not be fostering peace, but creating a situation of bad blood and eventually flare up crashes which have stopped since 2007.

I would like to caution that as we create these constituencies, let them be for the ordinary local people and no other people. Looking at these constituencies, Narok has three and some counties have six. Yet, those with six want to take what others have. For example, if we have three in Narok, they want to take one or two. So, where will the local people be left? If you go to Kajiado, they also have three, which they want to deny the local people. Then, they will go to Eldoret and do the same thing. So, how do we foster peace as far as this is concerned? I support, but it must be an initiative for the local people.

This is an opportunity for the marginalised people, the disabled, women and others. For example, the Maasai have been marginalised since Independence and now they have a chance to play a bigger role in issues affecting this country politically, economically and socially. I believe when it comes to employment, we should ensure that every community, as long as somebody is qualified, gets an opportunity to serve this country. Then there will be no reason for any misunderstanding.

Let us be honest that it destroys a country the moment there is an employment opportunity and the same names appear in all the opportunities. This creates a situation where some communities feel left out. Therefore, we must realise that we are equal as far as this is concerned. So, when we talk about cohesion, it is important to ensure that the Constitution protects the people equally. We can make a Constitution and if there is no goodwill from the leadership to ensure what we do is constitutional, then it will be meaningless. Of importance is the implementation of all things that benefit all Kenyans and not necessarily a particular section.

We have talked about peace and it can only be there if there is justice and fair play. For example, in the last elections, there was a clear manifestation of rigging where people were deciding they want to elect so and so and somebody else manipulated computers and made his own appointments. So, to avoid such situations, we must ensure that the electoral process is fair, just and the choice of the people is respected and not the choice of political appointees.

When it comes to the issue of leadership, we had said severally here and elsewhere that we have lost leadership as far as the cabinet is concerned. I am saying this because the ordinary person cannot access a Cabinet Secretary because this is a stranger.

This is somebody who has come from nowhere. He has no link and no connection with the people of Kenya. When we bring the cabinet back to the people's elected representatives, I think we are going somewhere. These are the people who are respected and trusted by Kenyan. The issue of bringing the cabinet back to Parliament has been the wish of most Kenyans. Even the people who are opposing this Bill should think twice because they might be getting opportunity to survive. The leader of the official opposition is going to be number three in Parliament. Because there will be winners and losers, I believe it is important that we embrace this Constitution of Kenya (Amendment) Bill, so that those who lose will, at least, survive as leaders of official opposition. In any case, when you talk about the prime minister and deputy prime ministers, we are not overburdening Kenyans. We are lessening the burden because it will be a concentrated Government where you will be a parliamentarian and at the same time a minister. So, you are not going to have a cabinet secretary outside and then you have a Member of Parliament. This arrangement will lead to a reduction of the cost of running the Government. It will also expand opportunities for many Kenyans. If for example, the President is from the Central region or the Rift Valley, of course, the people of the Coast region will get an opportunity to either have a prime minister or a deputy prime minister or something like that. So, there is a bigger pool to tap from and this will bring satisfaction to the people.

Hon. Temporary Deputy Speaker, there is the issue of counties. We always say that we have taken services closer to the people. I know with good management county governments will ensure that the resources we are sending to the counties benefit the electorate. The wards are the axis of development. It is the political axis of any county. The MCAs have been relegated to the periphery by governors. So, if we give them a certain amount of money out of the 35 per cent allocation to the counties, they will do something. If we take 35 per cent of the resources to the counties, it will create a wider development scope. It will be of benefit to the people of Kenya.

We have also talked about the issue of petitions. If we increase the time for a petition against presidential election results for it to be heard within 30 days, it will provide adequate time for resolving such matter. There will be no unnecessary tension and delay in determining such matters. It will make Kenya peaceful. There is also the issue of petitions against parliamentary election results. In fact, dragging an elected Member of Parliament through judicial processes from the High Court to the Court of Appeal and to the Supreme Court would destroy that person financially and politically. So, the fact that we are going to have such matters finalised at the Court of Appeal means that a lot of resources and time will be saved.

Hon. Temporary Deputy Speaker, my colleagues who are not siding with us on this Bill must realise that the Bill is beneficial to the country. They are not politically motivated, but we should stand up, as the Parliament of Kenya, and say that this is what our people want and not what our masters want.

With those remarks, I support.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Let us now have the Member for Kitui Central.

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to also contribute on the Constitution of Kenya (Amendment) Bill, 2020, which is a very important Bill.

As part of my opening remarks, I want to start by thanking the joint Committee which looked at this Bill and did a very detailed Report. I must confess that I have looked at this Report and it is good. It provides a lot of information which will help in adding value to this important Bill. I want to start by saying that this Bill is not farfetched. It has very progressive proposals, at the same time, there are areas I am not happy with as the Member of Parliament for Kitui Central and as somebody coming from Kitui County.

As I make my contributions, I would point out areas I am not happy with. I want to start with Clause 3 of this Bill, which talks about economy and shared prosperity. When you look at the history of this country and try to analyse why some Kenyans say they do not belong to this country, it is because of what I would call inequitable distribution of natural resources. This is one of the things which have made Kenyans feel like they have been marginalised. When you look at Clause 3, the issue of the economy and shared prosperity, this is very progressive. I want to state in this House that in Kitui County where I come from, we have been having a Class B road which has been untarmacked since Independence. It is only this year that this road has been done. I must appreciate His Excellency Uhuru Kenyatta, for seeing the need to tarmac this road. I support the Government for tarmacking this road. When I see this clause talking about prosperity, to me, it makes a lot of sense. It is very attractive to me and the people I lead. If you look at Part (c) of that clause, it talks about sustainable sources of livelihood. It says that the State shall promote sustainable sources of livelihood including agriculture, pastoralism and the blue economy. Part (d) of it says that the State shall (which makes it mandatory) promote, an economic system, that is SMEs.

Our county is very rich with mineral resources which are not exploited. So when I look at this clause which states that the State shall make sure these resources are exploited for the benefit of our people, it is very attractive. I will be supporting this Bill because of this clause. It is going to empower people economically and it will be of much help to the people.

The other matter I want to raise is the matter of representation. We have been told that we will increase the number of Members of Parliament to 360. Some Members are saying it will go to about 600. There is this argument about the cost of these positions. We need to be honest as Hon. Members. People need to take time and do a proper analysis of this proposal on matters cost. From where I sit, when you analyse the cost implications of these additional positions, there are high chances that the country will be saving money. This can be proven through analysis of data. We are saying that we are bringing ministers and assistant ministers to this House. The truth of the matter is that they will be Members of Parliament. They will possibly get additional allowances when they become ministers. So, we will be doing away with 22 cabinet secretaries who would earn full salaries, 42 chief administrative and officers. If you do the mathematics, there are high chances we will be saving money.

I have taken time to look at this thoroughly. I must say that at the end of the day, the issue of cost should not be a major issue. Even if you look at the total budget, this Parliament at the end of the day, hardly takes more than 1.5 per cent of the total budget. So, looking at that, the issue of cost does not make sense to me much. That is why I want to tie that with the issue of corruption.

The Auditor-General, every year, informs this House that we lose about a third of our budget, which is about a trillion, to misapplication, misdirection and corruption issues. If we were to sort out the issue of corruption, even the Kshs10 billion we are talking about of referendum will be unrobing the scene. Much more money is being spent or misused through corruption compared to what we are likely to use to take care of this document.

All said and done, we are talking about promoting peace and unity of this country. I do not see us achieving that by Kenyans having no sense of belonging that we belong to this country. The more we remain divided as a country, the more we are likely to continue losing resources. After every election, there will be chaos. We will waste time, businesspeople will not do their work and as a result of that, we will also be losing resources.

I want to in some extent talk about the financial issues captured in this Bill which are very progressive. If you look at Clause 12, it talks about the Senate taking over the issue of ensuring accountability in terms of counties own revenue generated resources. At that level, it means that the Senate, other than just looking at what comes from the national Government, is going to look at what counties are generating at their level, ensure that there is accountability and at the same time, look at the expenditure part of that revenue. If this is done correctly, it is going to help this country in terms of financial management.

Hon. Temporary Deputy Speaker, the second point which I think is very important is the issue of the Ward Fund. Our county assemblies are at the mercy of the governors and the Executive. Of late, there are even cases where our MCAs are not getting salaries because the governors have decided they cannot pay. This financial autonomy, what I would call independence, will go a long way in ensuring that our county assemblies do their work effectively. For now, some of them are being told: "If you do not do one, two, three, we are not going to give you money." So, this is a progressive recommendation because we want to see our county assemblies being independent in financial matters.

The other thing which is important in this Bill is the issue of the timely release of resources. Over time, there has been a lot of delays in releasing money to the counties, more so, when there are challenges to do with the Division of Revenue Bill. If we do not pass the Division of Revenue Allocation Bill in time, there has always been a delay. This Bill is proposing that once it is passed, counties will have to get their money whether this House has passed the Division of Revenue Bill or not. They are proposing that if there is delay in passing the Division of Revenue Bill, then counties should be given money on the basis of 50 per cent of what was allocated in the previous year. This sorts the issue of the delay.

The other thing which is important is the issue of the County Revenue Allocation Bill. They are saying that where the County Revenue Allocation Bill is late, counties will access 50 per cent based on what they approved the previous year. This also does allow the counties to prepare their budgets on the basis of not passing the Division of Revenue Bill, but on the basis of what they have as local needs. This is very important. This is something which is progressive.

The other point is the issue of 15 per cent to 35 per cent increase for county allocation, resources going to the county. The truth of the matter is that when we say 15 per cent, anything additional is a discretion of whoever is ruling. When we say it should be a minimum of 35 per cent, it means that there is no discretion. Therefore, whoever comes in, and we do not care who it is, will have to ensure that 35 per cent of that money goes to the counties. For some of us who come from counties where we have been in the opposition for a long time, this is very critical. We want to get our share. Let us now deal with our local issues in terms of whether the governor is misappropriating funds or not. The fact that the money will flow to the counties, irrespective of whether you voted for the ruling party or not, is a positive for this country. I urge the people to support this because we do not know who will be in the opposition today or in the Government tomorrow. Today, you are in the Government and tomorrow, you are in the opposition. Let us support this because it ensures that, at least, 35 per cent of resources find a way to the counties.

The other issue is about the Ward Development Fund. The Ward Development Fund is very important. There are members of county assemblies who never see eye-to-eye with governors. As a result, their wards have been marginalised. With this proposal, we are very sure that every ward in every county will access some minimum resources to develop it.

This is also applicable to the National Government-Constituencies Development Fund. There are so many cases against the NG-CDF. People have gone to court claiming that the NG-CDF is unconstitutional. Now that we are pushing for the NG-CDF to be part of the Constitution in Clause 52 of the Bill, nobody will go to court claiming that the NG-CDF is unconstitutional. I still believe, as a Kenyan, that the NG-CDF still remains the most effective fund in terms of ensuring that Kenyans get value for money for all development projects and programmes. I urge Members to support this so that the NG-CDF becomes part of our Constitution and it continues helping our people.

Let me talk about the politics around this Bill. There is the issue of gender equality. We have been told that there will be an additional 70 slots to take care of gender issues. I do not agree with the statement about equality of the vote. That means that the focus will be on population. The Constitution is very clear. Even as you create constituencies, there are other factors which must be considered such as geographical area which are in the Constitution. When you only talk about equality of the vote, we are being unfair to areas like where I come from. We are not very many in terms of numbers, but we have very huge tracts of land which cannot be ignored. If you are to deliver development in such an area, you require more resources in terms of logistics.

I also do not agree with the Second Schedule. I have looked at it and analysed it statistically. I must confirm that there is no scientific method which was used to come up with that schedule for additional constituencies. Kitui County has a population of 1.136 million. We did not even get a single additional constituency. We will pass this Bill, but it is the IEBC that should do the delimitation in a scientific manner without ignoring any part. Kitui County is very big. We have always demanded for an additional county and we will continue to do so. We need that county for our people to get services effectively.

As I conclude, there are good and bad things in this Bill. The issue is checking whether it is 80 per cent bad and 20 per cent good. Depending on that, we will then tell our people how to vote for the Bill. We will insist that the bad is addressed at the right time, so that our people also benefit.

With those many remarks, because I can see time is becoming an issue...

The Temporary Deputy Speaker (Hon. Patrick Mariru): Very well. Let us have Hon. Mwashako, the Member for Wundanyi. What is out of order, Hon. Washiali?

Hon. Benjamin Washiali (Mumias East, JP): Thank you, Hon. Temporary Deputy Speaker. Some of us have been very patient from 10.00 a.m. waiting to have an opportunity to speak.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order Hon. Washiali!

Hon. Benjamin Washiali (Mumias East, JP): Hon. Temporary Deputy Speaker, because you have a computerised system, will I be in order to request you to save the names of the Members of Parliament in the order which they come in the Chamber?

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order Hon. Washiali! Because of time, we are using the rota. You can check where you are on the screen down here. It is the opportunity for the Member for Wundanyi to contribute. We are contributing strictly according to the rota.

Hon. Benjamin Washiali (Mumias East, JP): I was about to conclude my request, Hon. Temporary Deputy Speaker. We will come back at 2.30 p.m. We will not get an opportunity to speak now. Is it possible or in order that you save the list of Members who have not spoken in this Morning Sitting?

The Temporary Deputy Speaker (Hon. Patrick Mariru): We cannot do that, Hon. Washiali. Whoever comes first in the Afternoon Sitting will get a chance to contribute first. That is the rule.

Hon. Benjamin Washiali (Mumias East, JP): That is not fair, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Member for Wundanyi, please proceed.

(Loud consultations)

Hon. Danson Mwashako (Wundanyi, WDM-K): Thank you, Hon. Temporary Deputy Speaker for giving me this chance to contribute to the Constitution of Kenya (Amendment) Bill, 2020 which is very important. What my friend has said is true. Some of us have sat here for a long time. It is important for every Member to get an opportunity to speak.

I want to start by correcting some information. One, there are Members here who insist that the Second Schedule of the Bill is not scientific and constitutional. There is something that Members who spoke in the morning did not tell us. They gave us the number of people in their counties without telling us the number of constituencies they have at the moment. For instance, Kitui County was mentioned. It has a population of over 1.3 million and eight constituencies. Kwale County has a population of 850,000 and only four constituencies. It appears some counties will get more constituencies, but they have few constituencies. Therefore, they deserve additional constituencies.

I support this Bill for two very critical reasons. One, Clause 63 of the Bill proposes to amend Article 237 of the Constitution to include a Youth Commission. We have a very big population of young people in this country. If nothing is done for them, then we will be sitting on a serious time bomb. We have youths who are disenfranchised. They went to school, but they cannot secure employment. We have youths who are semi-skilled, but there is nothing for them to do in the counties which they come from. As a country, if we do not enshrine the Youth Commission in the Constitution as envisaged in the Constitution of Kenya (Amendment) Bill, then we will get into bigger problems. Youths are normally used during elections to create mayhem or violence. One reason is that they are idle. The economy does not give enough skilled and unskilled jobs to our ever growing youth population. Therefore, we have no choice but to pass this Bill, so that our young people can get a Commission that will address their issues.

Secondly, it is about the constituencies. I come from a county where four of our constituencies were protected. If nothing is done, we will lose two constituencies in Taita Taveta County. Therefore, this Bill has clearly indicated in the Second Schedule that the creation of additional constituencies in Article 89(1) shall not result in the loss of a constituency existing before the commencement date of this Act. It even further emphasises that by stating that for greater certainty, any protected constituencies in the counties of Tana River, Lamu, Taita Taveta, Marsabit, Isiolo, Nyandarua, Nyeri, Samburu, Elgeyo Marakwet, Baringo, Vihiga and Busia shall not have their protected status impaired by the delimitation of additional constituencies mentioned in this Schedule. So, this Bill gives comfort to the people who come from these 27 constituencies

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that their constituencies will remain and they will continue being part and parcel of this country. The Building Bridges Initiative came up to address issues of inclusivity and so protecting these constituencies is a fundamental issue that we need to embrace.

Lastly, Hon. Temporary Deputy Speaker, as I conclude, I know that the issue of the minimum 35 per cent going to the counties has been spoken about. It is enshrined in this Bill. Truth be told, some counties in this country have felt alienated from the centre and, therefore, any additional resources to counties is a blessing. We must embrace this constitutional amendment because as the country grows in shared prosperity, the 35 per cent, which is a minimum, will continue to grow. Therefore, every part of this country will feel the growth and prosperity of our nation.

I thank you, Hon. Speaker.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. (Dr.) Wamalwa.

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Thank you, Hon. Temporary Deputy Speaker, for this opportunity. It has been a long journey. I want to quote the Chinese philosopher by the name Lao Tzu who said that a journey of a thousand miles begins with a single step. The journey to these reforms started at the steps of Harambee House, between His Excellency the President and Rt. Hon. Raila Amollo Odinga.

Hon. Temporary Deputy Speaker, I want to congratulate the Majority Leader and Hon. Muturi Kigano. When you read Article 1 of the Constitution pertaining matters of sovereignty... This is a political theory and our Constitution says that the ultimate power belongs to the people. When it comes to matters of amendment, it is the people who have the powers. They can change whatever they want. The whole process is outlined under Article 257 of the Constitution. It goes without saying that as much as we are here as Parliament, we have no powers to amend.

This popular initiative started with the four million signatures. To collect four million signatures is not an easy matter. The second phase was the verification by the IEBC. The IEBC, in its wisdom, managed to verify the signatures and forwarded it to the county assemblies. The county assemblies then forward it to the Speakers of the National Assembly and the Senate. We have no powers to amend this. This Bill belongs to the people and that is why we are a conveyor belt leading the way to the President. From the President, it goes to the IEBC for a referendum.

I want to thank His Excellency the President because the IEBC panel is in place. I have no doubt that when the referendum time comes, we will have IEBC fully constituted. There are many good things in this proposal. One, on the cabinet secretaries, if not the parliamentary system, this House needs to go the way of a hybrid system. The issue of the Questions segment is very important. We sit here today as the representatives of the people. Many times, we have challenges when it comes to Questions Time because cabinet secretaries do not sit in this House. Looking at this proposal, it says that cabinet secretaries under the hybrid system will be part and parcel of this House. This will add a lot of value as far as transparency and accountability is concerned. I beseech the Members here today to support this Bill. Who knows, maybe you will be a cabinet secretary tomorrow!

As I continue, I want to quote the words of William Shakespeare. He said that all of us on this stage are acting, but we will eventually exit. When our time comes, we will have to exit. But what legacy do we leave behind? We have been told that we are looking for shared prosperity. We do not want to preach water and drink wine.

Hon. Temporary Deputy Speaker, appointments must reflect the face of Kenya. Everybody is a Kenyan, whether one is from Mt. Kenya, Endebess, Turkana or Siaya. A lot has been going

on, but this is the time we must reflect and see truly if the shared prosperity is being practised or we are preaching water and drinking wine.

Secondly, some of us who want to be governors appreciate the 35 per cent going to the counties.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Hon. Wamalwa! It is 1.00 p.m. That is not to say that your time is gone. In the next Sitting, you will have 12 minutes. Hon. Members, we will still continue with this debate in the afternoon. So, more and more Members will get an opportunity.

ADJOURNMENT

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

The House rose at 1.00 p.m.