

PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

THE HANSARD

Tuesday, 10th March 2020

The House met at 2.30 p.m.

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

PRAYERS

COMMUNICATIONS FROM THE CHAIR

DEMISE OF HON. SULEIMAN DORI RAMADHANI

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

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

The late Hon. Suleiman Dori's parliamentary career commenced in March 2013 following his election by the people of Msambweni Constituency, Kwale County, as their representative. Subsequently, following an active and successful first term in the 11th Parliament, the people of Msambweni again voiced their confidence in his leadership, re-electing him to this august House in August 2017. During his first term in Parliament, Hon. Suleiman Dori had an illustrious career as a Member of the Departmental Committee on Lands as well as the Departmental Committee on Transport, Public Works and Housing, where he contributed immensely to the work of the two committees. He re-joined the Departmental Committee on Transport, Public Works and Housing in the current Parliament and had been serving as a vocal and dedicated Member of the Committee. He was particularly active during the consideration of Bills, Petitions and Parliamentary Questions in the Committee as well as during vetting of nominees to various State and public offices. You will recall that during the consideration of the Statute Law (Miscellaneous Amendments) Bill, 2019 in July last year, he was very active during the debate on the amendment to the Merchant Shipping Act.

The late Hon. Dori was also an active and influential Member of the Coast Parliamentary Group, where he was the Chairperson as well as the former Deputy Organising Secretary of the Orange Democratic Movement (ODM).

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

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

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

The late Hon. Suleiman Dori was a dependable leader who served his constituents with utmost commitment. He was selfless, ambitious, realistic, resourceful and committed to public service. Without doubt, the residents of Msambweni Constituency, Kwale County, this House, the entire Parliament and the nation at large, have lost a vibrant, pragmatic and dedicated leader.

The Member was laid to rest yesterday in Msambweni in accordance with Islamic tradition. May God rest his soul in eternal peace. In tribute and honour to our departed colleague, the late Hon. Suleiman Dori Ramadhani, I request that we stand to observe a moment of silence.

(Hon. Members stood and observed a moment of silence)

May his soul rest in eternal peace.

Members making your way in, please take your seats. You can take your seats temporarily for the time being so that I can read the next Communication.

DEPARTMENTAL COMMITTEE TO CONSIDER THE KNCHR (AMENDMENT) BILL

Hon. Speaker: Hon. Members, the Kenya National Commission on Human Rights (KNCHR) (Amendment) Bill (National Assembly Bill No.1 of 2020) was read the First Time on 27th February 2020. Standing Order No. 127(1) provides that a Bill, having been read a First Time, shall stand committed to the relevant departmental committee without Question put. Despite the said provisions, Standing Order No. 127(6)(a) provides that the Speaker may direct that a particular Bill be committed to such other committee as the Speaker may determine.

Hon. Members, I have since received a request to determine the suitable committee to consider the KNCHR (Amendment) Bill (National Assembly Bill No.1 of 2020). The Bill seeks to amend the KNCHR Bill No.14 of 2011 in order to merge the KNCHR and the National Gender and Equality Commission (NGEC).

Part 5 of Chapter 5 of the Constitution, particularly Article 59 (4) provides as hereunder:

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

This particular Bill is published following lessons learnt and challenges experienced during the implementation of the Constitution. You will recall that the Kenya National Human Rights and Equality Commission established under Part 5 of the Constitution pursuant to the provisions of Article 59(4) was expected to create three independent offices, that is the KNCHR, NGEC and the Commission on Administrative Justice (CAJ).

As you are aware, the Constitutional Implementation Oversight Committee established under the Sixth Schedule to the Constitution is responsible for overseeing the implementation of the Constitution. Given this background, the Constitutional Implementation Oversight Committee will be valuable in reviewing the lessons so far learned in the journey to implement the Constitution. I, therefore, direct that the Bill stands committed to the Constitutional Implementation Oversight Committee to discharge the functions specified under Standing Order No.127(3) and Section 3(a) relating to public participation. It is so directed.

Hon. Members, I notice that there are some interventions. Let us have the Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, on behalf of my family, myself and the people of Garissa Township, I take this opportunity to send my sincere condolences - despite the Leader of the Minority Party and other Members representing you and the House yesterday at the funeral of our departed colleague, Hon. Suleiman Dori. He has joined the list of our colleagues in this Session who went to live with the Almighty God, namely Hon. Nyenze, Hon. Ken Okoth and Hon. (Ms.) Grace Kipchoim.

Hon. Suleiman was a very good leader. One thing I remember about him was that he used to agitate for the people of Msambweni and Kwale in general, mainly on land issues, the titanium mining issues and community conflicts. That is the route each one of us is headed to. The Holy Quran says all lives will taste death. It is something imminent. We do not know when and how it will come.

As colleagues, there is something that we usually do for the families of our departed colleagues. The Leader of the Minority Party and I will write a joint letter to the Clerk to collect funds. You will look for a date when we can see the family as a House under your leadership.

My condolences to the people of Kwale. He had a young family. He had two children aged 6 and 4 years old. That is a very young family. We pray that the family and the people of Msambweni get strength during this difficult moment.

Hon. Speaker: Let us have Hon. Wamalwa.

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Asante sana, Bwana Spika. Kwa niaba ya familia yangu, watu wa Kiminini *Constituency* na Trans Nzoia *County* kwa jumla, ningependa kutoa rambirambi kwa familia ya mwendazake, Mheshimiwa Suleiman Dori, ambaye alikuwa rafiki yangu wa karibu. Mheshimiwa Dori alikuwa mpolo na mstaaarabu. Tunaomba Mwenyezi Mungu aibariki familia yake na aipatie nguvu wakati huu mgumu. Tunaombea watoto na mke wake kwa sababu tunajua wamelia sana. Lakini tunaomba Mwenyezi Mungu awapanguze machozi.

Hon. Speaker: Let us have Hon. John Mbadi.

Hon. John Mbadi (Suba South, ODM): Thank you very much, Hon. Speaker. On my behalf and that of my family, my constituents, the leadership of the minority side and more particularly, the ODM Party on whose ticket Hon. Dori represented the people of Msambweni for close to seven years if not more, I register our deepest condolences and sorrow for the demise of Hon. Suleiman Dori. We got news of Mr. Dori's death very early in the morning at around 6 a.m. In fact, it is my party leader who called to tell me that we had lost our Member, Hon. Dori. I

immediately reached out to you. As a party, it is a great loss to us. I register our sympathies with the people of Msambweni who have lost their committed leader.

The Leader of the Majority Party and a good number of Members managed to attend his funeral. Given the time it took between Dori's death and his burial, it was amazing to see a large number of MPs from across the country who made sure that they were there and struggled to reach there. That showed and demonstrated that Dori was a friend of many.

There was a period of time when our Party disagreed with the late Hon. Dori. This is a Member of our Party who, even after disagreeing with the Party, came and consulted with us and followed due process. Later, the Party pardoned him and he was forgiven. We did that procedurally through the National Executive Committee of the Party and as a party that respects rules and procedures. We hope and pray that the people of Msambweni will have peace and even as they seek a replacement for Hon. Suleiman Dori, they will do it in peace and get a good person who will fit in his shoes.

Thank you, Hon. Speaker.

(An Hon. Member walked into the Chamber)

Hon. Speaker: What is this outfit? Hon. Members, before I give the next few Members time to condole with the family of the late Hon. Suleiman Dori, allow me to recognise the presence, in the Public Gallery, of pupils from the following institutions:

Mwiki Primary School, Ruiru Constituency, Kiambu County and, Arap Moi Primary School, Kajiado North Constituency, Kajiado County.

Hon. David ole Sankok, you have the Floor.

Hon. David ole Sankok (Nominated, JP): Thank you very much, Hon. Speaker. On behalf of my family and the 6.5 million Kenyans living with disabilities, I want to send my heartfelt condolences to the family of Hon. Suleiman Dori. He was a great leader and I can only say that let him fly with the angels because he is one of them.

Hon. Speaker, next time we have such an issue, even for those of us who are well known professional mourners, we should respect other peoples' cultures, beliefs and religions so that we do not introduce politics in such occasions.

Thank you, Hon. Speaker. May his soul rest in eternal peace.

Hon. Speaker: Hon. (Ms.) Odhiambo-Mabona.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Speaker. I wish to take this opportunity, on behalf of my family and the Suba North constituents, to convey our condolences to the family of Hon. Suleiman Dori, the people of Msambweni Constituency and Kwale County for the loss of a very good Member.

We served with him in the last and the current Parliament. I know, sometimes as Members, people go through different things and we do not know. I used to greet him here many times and I noticed he had lost some weight which I assumed was as a result of working out.

It is good that even as we are eulogising him, we can say some of the good things that he has done for his constituents. It is a reminder for each one of us that even as we pass through here, we need to remember what our purpose is in this House. We should always remain true to our purpose because at some point, you will face your maker. What will we remember you for?

Our Muslim brothers give us a lot of challenge. Our brother died in the morning and before some of the Members even heard about it, he was already buried. It is traumatic but, at the same time, it is very fast and shows the realities of life. Check, Hon. Speaker, we are here today

continuing with our lives. That takes me back to the issue that I am saying Hon. Speaker. Let each of us consider his or her purpose even as we serve here.

With those few remarks, I convey my condolences.

Hon. Speaker: Member for Makueni.

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Speaker. On behalf of my family and the people of Makueni, I wish to condole with the family of the late Hon. Suleiman Dori. Hon. Suleiman Dori was a personal friend. In fact, he recently lost his father while both of us were travelling. We travelled back to Mombasa and he was able to lay his father to rest.

He has young children. He was very hard working and kind. Recently, I was with him at the National Government Constituency Development Fund (NG-CDP) Office. He was following up the projects of his constituency. He dealt with a number of issues which touched his constituents. Kenyans from all regions of the country live in his constituency and he was able to serve all of them equally, including the Kamba community there.

Hon. Suleiman Dori was a leader to be emulated by many and we hope that the people of Msambweni will elect another leader who is as faithful and willing to serve the way he served his generation.

Thank you, Hon. Speaker.

Hon. Speaker: The Chairperson of the Departmental Committee on Transport, Public Works and Housing, you have the Floor.

Hon. David Pkosing (Pokot South, JP): Thank you, Hon. Speaker, for giving me this opportunity. On my own behalf, that of my family, the great people of Pokot South Constituency and the great Members of my Departmental Committee on Transport, Public Works and Housing where the late Hon. Suleiman Dori served, I would like to pass my condolences to the family of the late colleague.

Hon. Speaker, in our Committee, we have lost a great contributor and a great man who was very active every time. When he was not present in the Committee, his absence could be felt because when he was present, he made valuable contributions. For example, when issues of the great people of Coast happened to be before the Committee for discussion or adjudication, Hon. Suleiman Dori was number one. Therefore, the Committee has lost a great man. Even some of us in the same Committee, when he was being disturbed by the other side, we were wondering how can people disturb such a gentleman and diplomat. So, actually, death is very cruel. We have lost a great man. We pray that wherever he goes, he rests in eternal peace.

This is an opportunity to thank the Office of the Clerk. When I received the news yesterday morning, although I was away and engaged, I managed to get to the Clerk's Office to facilitate my Members, led by Hon. Vincent Kemosi Mogaka, Hon. Kulow Maalim Hassan, Hon. Ahmed Gaal Bashane and Hon. Ibrahim Ahmed Abdisalan to attend the burial. They represented my Committee very well. My Members were facilitated immediately. This should be the spirit that we should find an opportunity where the Office of the Clerk can respond quickly on issues of emergency that affect the people. My Committee appreciates the Office of the Clerk.

With those few remarks, I pray that our colleague may rest in eternal peace. Thank you, Hon. Speaker.

Hon. Speaker: Let us now hear the Member for Kisumu East.

Hon. Shakeel Shabbir (Kisumu East, Independent): Thank you, Hon. Speaker. On behalf of my family, the constituents of the great Kisumu East Constituency and the African Parliamentarians' Network Against Corruption Kenya (APNAC-Kenya) of which Hon. Suleiman

Dori was one of its main Members, we want to send our condolences to the family of Hon. Suleiman Dori, his constituents and the people of Kwale.

He was a great man and a very humble leader. The interactions that I had with him, not only in APNAC-Kenya, but also in the Muslim Parliamentary Caucus, has enlightened me quite a lot about the ability of this great leader. We shall miss him and pray that, inshallah, the Almighty God will give him peace in heaven. Amen.

Thank you.

Hon. Speaker: Hon. Deputy Speaker, it is your chance.

Hon. Moses Cheboi (Kuresoi North, JP): Thank you, Hon. Speaker. On your behalf – because I know when you sit there it is very difficult to say what you wanted to say particularly in a debate like this – I would like to also send my condolences to the family of our late colleague, Hon. Suleiman Dori.

When Hon. Suleiman Dori served in this Parliament, he was one of the active Members both in Parliament and outside. You remember at one point he was the Chairperson of the Coast Parliamentary Group. That is to say that he was a well-recognised leader both in this Parliament and even back at home. He is one person I met four days ago. That is to say that this life is vanity. Sometimes we must work hard to achieve what we can achieve within the time that we have. Hon. Suleiman Dori also showed us a lot of things. In his funeral, as one colleague has mentioned, politics was not evident. It was done quickly. At times, we put in a lot of efforts in trying to pamper somebody who has passed on. The best thing is to quickly deal with the rites that are involved and let the family rest and the person who has died rest in peace. As I wind up, I want to thank you personally and the Office of the Clerk, because within that duration, a few Hon. Members were able to go to Mombasa and proceed to Kwale, where they participated in his funeral rites. That was kind of you, Hon. Speaker and the Membership of this House.

I thank you.

Hon. Speaker: Special request from a Member from Kwale County. Hon Tandaza, Member for Matuga, you have the Floor.

Hon. Kassim Tandaza (Matuga, ANC): Ahsante sana, Mhe. Spika, kwa kunipatia fursa hii kuwashukuru Wabunge wenzangu ambao miliweza kufika nao Msambweni jana. Wabunge wa nchi nzima, wa matabaka mbali mbali na dini mbali mbali waliweza kufika Msambweni kuweza kumsafirisha ndugu yetu, Mhe. Marehemu Suleiman Dori. Kama mnnavyojua, sisi waislamu ukiaga, ukichukua masaa matatu kabla ya kuzikwa, basi huwa umechukua muda mrefu sana. Hili ni jambo ambalo ndugu zangu wa Bunge walifahamu. Kwa mfano, ikiwa nitaaga saa tisa, pengine ikifika saa kumi na moja nitakuwa nimezikwa. Kwa hivyo, nitawaambia wenzetu kwamba, kwa sababu tunajua kuwa tuna Wabunge waislamu, wawe tayari wakati wowote mwenzao akiaga kusafiri. Janga hili lilidhihirika kwa sababu kulikuwa na Waheshimiwa kutoka Magharibi mwa Kenya, Mlima Kenya na *North Eastern*.

Mwisho, ningetaka kuwakumbusha wenzangu kuwa kwa desturi yetu, kwa matanga yetu hatuzungumzi mambo ya siasa. Huwa ni kuomboleza tu. Kwa hivyo, ijapokuwa najua tumezoea – hata sisi tumeweza kushiriki mazishi sehemu mbali mbali nchini, ambayo siasa ndio huwa mahali pake – kule kwetu, mambo kama hayo huwa hatuyazungumzii ijapokuwa mnajua kwamba sisi wapwani, ikiwa kutakuwa na shindano la kupiga domo kuzungumzia mambo ya siasa, hamtaweza kutushinda. Wakati wa mazishi huwa tunanyamaza tukiendelea kuomboleza kwa sababu hiyo ndio desturi yetu. Nawashukuru sana kwa misaada yenu, mchango wa kufika na pesa mlizoweza kutuletea. Kwa niaba yangu, familia na watu wa Kwale kwa jumla, tunawashukuru sana.

Asante sana.

Hon. Speaker: Member for Kinango, unfortunately, I confuse the names Tayari and Tandaza. They are the same. One is Tayari, the other one is Tandaza. So, one is Tayari and the other one is Tandaza.

(Laughter)

Very well, Hon. Tayari, the floor is yours.

Hon. Benjamin Tayari (Kinango, ODM): Asante sana, Mhe. Spika. Kusema kweli, kama wananchi wa Kwale na Pwani kwa jumla, timesikitishwa sana na kifo cha mwendazake Mheshimiwa Suleiman Dori, ambaye alikuwa ni mpenda kazi, mpenda wenzake na mpenda nchi yake. Mheshimiwa Suleiman Dori, licha ya kuwa alikuwa Mbunge wa Msambweni, alikuwa rafiki wangu wa karibu. Tulizungumza mengi kuhusu maendeleo na kuhusu kazi yetu tunayoifanya na amesaidia sana Wabunge wengi wa kutoka Pwani kwa kuwaonyesha jinsi ambavyo watajifundisha maswala ya Bunge ili waweze kusaidia jamii kwa ujumla. Nataka niwashukuru sana viongozi wote walioweza kufika jana kwa mazishi, ijapokuwa muda ulikuwa mfupi. Familia imeshukuru sana kwa sababu, mwanzo, hawakutazamia kwamba watapata idadi kubwa ya Wabunge kuja kumsindikiza marehemu Suleiman Dori. Kwa niaba ya familia yangu na wananchi wote wa Kwale kwa jumla, nataka niiambie familia pole. Mwenyezi Mungu awape subira na heri wakati huu mgumu na Mwenyezi Mungi ailaze roho ya marehemu Suleiman Dori mahali pema panapo lala wema

Asante sana.

Hon. Speaker: Hon. Members, I know so many of you have something you want to say about our departed colleague but, it is not possible because none of you will agree to speak for one minute. So, let those who have spoken suffice. It is not possible to have every one of us speak, unless you want to set aside the business for today to eulogise our departed friend. I believe that those of you who have spoken sufficiently represent the majority of the House.

Before we move to the next Order, allow me to recognize the presence, in the Public Gallery, of students from the following institutions: Maasai High School from Kajiado North Constituency, Kajiado County and those from Manyatta Boys High School from Kangundo Constituency, Machakos County. They are welcome to observe the proceedings of the National Assembly.

(Applause)

Next Order!

PETITION

Hon. Speaker: Hon. Tandaza Kassim again.

REGULARISATION OF GOLINI SETTLEMENT SCHEME ALLOTMENTS

Hon. Kassim Tandaza (Matuga, ANC): Thank you, Hon. Speaker. I, the undersigned, on behalf of residents of Golini, Kwale County, draw the attention of the House to the following:

THAT, residents of the then Golini Location in present day Matuga Constituency have been living on their land for many years and utilising it to sustain their economic needs;

THAT, between 1969 and 1971, land in the said location was adjudicated for purposes of registration except parcel LR. No.5003, which was registered as community land and occupied by the residents as a community;

THAT, in 1994, Golini Settlement Scheme was established on LR. No.5003 with the intention to benefit the local community that owned the land under communal land tenure system;

THAT, following complaints raised by locals regarding the process, the District Plot Allocation Committee formed a Taskforce in 2003 to look into the matter and recommend appropriate remedies;

THAT, a Ministerial Directive made on 2nd March 2007 directed re-surveying of the land in question, which process resulted in sub-division of two hundred and sixty-eight (268) plots based on the recommendations of the Golini Settlement Scheme Taskforce Report;

THAT, after the re-surveying, Kwale County Lands Board and the National Land Commission sanctioned verification of the process with a view to hear and sort out any unresolved issues and recommend how to amend and/or operationalise the Taskforce Report;

THAT, since the 2007 re-surveying, residents of Golini have never been issued with fresh allotment letters yet the initial map has not yet been abolished, leading to erroneous allocation of the land;

THAT, in 2007, the National Land Commission delivered its findings and recommendations at a public *baraza* in the presence of affected beneficiaries, noting that the said land was ancestral as evidenced by homesteads, graveyards and mature trees;

THAT, residents have sought assistance from all relevant State institutions, but no satisfactory response has been given;

THAT, the matters raised in this Petition are not pending before any court of law, constitutional or legal body.

THEREFORE, your humble Petitioners pray for the intervention of this House, through the Departmental Committee on Lands, to compel the concerned Department to consider issuing them allotment letters in respect of the Re-survey Map of the year 2007 and restrain the beneficiaries of the allotment in the first survey from selling their respective plots before full issuance of allotment letters as per the Re-survey of the year 2007 is concluded.

And your Petitioners will ever pray. Thank you, Hon. Speaker.

Hon. Speaker: Very well Hon. Tandaza Sawa. *Na yule mwingine ni Tayari Stephen.* The Petition is referred to the Departmental Committee on Lands to prioritise and give a response.

Next Order!

PAPERS LAID

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I was consulting with the Chair in charge of transport because in the midst, there was a man from the dynasty called Kositany.

I beg to lay the following Papers on the Table of the House:

The reports and resolutions adopted at the Second Meeting of the Third Session of the 4th East African Legislative Assembly from 16th November to 7th December 2019, in Arusha, Tanzania, as follows—

a) Reports tabled and adopted:

- (i) Report of the Committee on General Purpose on the oversight activity to assess the level of preparedness of partners States in the management of Ebola and Dengue Fever epidemics;
 - (ii) Reports of the Committee on Legal, Rules and Privileges on the oversight activity on compliance of the EAC Protocols and Laws by the EAC Institutions;
 - (iii) Report of the 2nd General Assembly for the Eastern African Parliamentary Alliance for Food Security and Nutrition (EAPA-FSN); and,
 - (iv) Report of the Delegation of the East African Assembly to the 141st IPU Assembly held from 10th to 17th October 2019 in Belgrade, Serbia.
- b) Resolutions adopted:
- (i) Resolution of the Assembly urging the Council of Ministers to urgently establish an emergency response fund to assist victims of floods and other environmental disasters;
 - (ii) Resolution of the Assembly requesting the Council of Ministers to produce a comprehensive report on the status of the implementation of the Customs Union and Common Market Protocols; and,
 - (iii) Resolution of the Assembly paying tribute and congratulating the Clerk, Mr. Kenneth Namboga Madete, and Deputy Clerk, Mr. Alex Lumumba, upon the completion of their service to the Assembly.
1. Reports and Bills adopted at the Third Meeting of the Third Session of the 4th East African Legislative Assembly from 9th February to 1st March 2020 in Arusha, Tanzania, as follows—
- a) Reports:
- (i) Report of the Committee on Accounts on the East African Community Audited Accounts for the Financial Year 2017/2018; and,
 - (ii) Report of the Committee on General Purpose on the EAC Supplementary Appropriation Bill, 2019.
- b) Bill:
- (i) The East Community Supplementary Appropriation Bill, 2020.
2. The 9th and 10th Bi-annual Reports on the status of alcohol and drug abuse control in Kenya.

Thank you, Hon. Speaker.

Hon. Speaker: I believe now the Committee on Regional Integration has more than a mouthful to handle. I hope members of that Committee are in the House.

Next is the Chairman of the Departmental Committee on Education and Research, Hon. Melly.

Hon. Julius Melly (Tinderet, JP): Hon. Speaker, thank you. I also wish to pass my condolences to the family of Hon. Dori, who passed on untimely. I send condolences on my own behalf, on behalf of my family and the people of Tinderet for losing such a very good Member of Parliament.

I beg to lay the following Papers on the Table of the House:

Report of the Departmental Committee on Education and Research on:

- a) The Petition regarding the release of examination results for Mr. Nicky Odongo Lubanga by the Kenya Medical Laboratory Technicians and Technologists Board; and,

- b) The Colleges and Institutes Canada (CI-CAN) Conference held in Niagara, Canada, between 5th and 7th May 2019.

I thank you, Hon. Speaker.

Hon. Speaker: Next Order.

QUESTIONS

Hon. Speaker: First Question is by Nominated Member, Hon. Wilson Sossion.

Question No. 042/2020

PROHIBITION OF SAFARICOM WORKERS TO JOIN UNIONS AND UNFAIR TERMINATION OF EMPLOYMENT

Hon. Wilson Sossion (Nominated, ODM): Thank you, Hon. Speaker. I rise to ask Question No.42 of 2020, directed to the CS for Labour:

(a) Could the Cabinet Secretary explain why Safaricom PLC has been discouraging and inhibiting its employees from joining workers' unions of their choice, contrary to the provisions of Article 41 of the Constitution?

(b) What action does the Ministry intend to take against the said company for unlawful termination of employment of several of its workers due to sickness resulting from working for long hours in an unsafe environment at its call centres?

I thank you, Hon. Speaker.

Hon. Speaker: Question to be responded to before the Departmental Committee on Labour and Social Welfare. Next Question is by the Member for Nambale.

Question No. 043/2020

OPERATIONALISATION OF NEW ADMINISTRATIVE UNITS IN THE COUNTRY

Hon. Sakwa Bunyasi (Nambale, ANC): Hon. Speaker, I wish to ask Question No.43 of 2020:

(a) Could the Cabinet Secretary for Interior and Coordination of National Government explain how the national Government intends to operationalise and implement *Gazette Notice* No.5853 issued on 21st June 2017, which established administrative coordination units, particularly in Nambale Constituency?

(b) What steps has the Ministry put in place to ensure that there is adequate human resource and facilities in the said newly established units across the country and, in particular, in Nambale Constituency?

Thank you, Hon. Speaker.

Hon. Speaker: Question to be responded to before the Departmental Committee on Administration and National Security. Next Question is by the Member for North Horr.

Question No. 044/2020

IMPLEMENTATION STATUS OF UWEZO FUND PROGRAMMES
IN MARSABIT COUNTY

Hon. Chachu Ganya (North Horr, FAP): Thank you, Hon. Speaker. I rise to ask Question 44 of 2020, directed to the CS for Public Service, Youth and Gender Affairs:

(a) Could the Cabinet Secretary provide a report on the implementation and operationalisation status of the *Uwezo* Fund programme in all the constituencies of Marsabit County since the inception of *Uwezo* Fund in 2013?

(b) How much money has since been allocated and how much has been disbursed from the said Fund for the benefit of each of the four constituencies of Marsabit County?

(c) Why are members of *Uwezo* Fund Committees in the said constituencies who were gazetted in 2019 yet to undergo the mandatory induction programme and when is the exercise expected to take place with respect to the said members?

I thank you, Hon. Speaker.

Hon. Speaker: Similarly, Question to be responded to before the Departmental Committee on Administration and National Security. Member for Gilgil, the Floor is yours.

Question No. 045/2020

IMPLEMENTATION OF HARMONISED SALARIES
PROGRAMME FOR GRADUATE POLICE OFFICERS

Hon. (Ms.) Martha Wangari (Gilgil, JP): Thank you, Hon. Speaker. I rise to ask Question 045/2020 to the Cabinet Secretary for Interior and Coordination of National Government:

What measures has the Ministry put in place to ensure the implementation of the harmonised salaries programme for the 1,774 graduate police officers in the country in line with the Declarations and Orders given under Petition No.122 of 2018 of 17th May, 2019 by the Employment and Labour Relations Court sitting in Nairobi?

Hon. Speaker: Question to be responded to before the Departmental Committee on Administration and National Security. That concludes Question Time. There are no requests for Statements.

Next Order!

PROCEDURAL MOTION

REDUCTION OF PUBLICATION PERIOD FOR A SPECIFIED BILL

Hon. Speaker: I am informed that the Majority Whip is standing in for the Chair of Departmental Committee on Budget and Appropriations Committee.

Hon. Benjamin Washiali (Mumias East, JP): Thank you, Hon. Speaker. On behalf of the Chairperson of the Departmental Committee on Budget and Appropriations Committee, I would like to move the following Procedural Motion:

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

This Motion is self-explanatory. Given the Calendar of the House, and given the timelines of the Division of Revenue Bill, it will only be reasonable if we reduce the time for publication so that Members can debate this as they go for recess. There were wide consultations with regard to this Bill. I even know that Inter-Governmental, Budget and Economic Council (IBEC) was consulted. Therefore, we do not see issues that would stop us from proceeding to reduce time for publication from seven days to one day.

I wish to move. However, as I move, I request Members to understand that there is an aspect of conflict, especially when it comes to our Calendar. Therefore, we would like to reduce this publication period so that we can debate this and have our time to go on recess as we had earlier approved in the Calendar of this House. I, therefore, wish to move. I request the Chair of the Departmental Committee on Budget and Appropriations Committee to second this Motion now that he has come.

Hon. Speaker: Hon. Ichung'wah, the Floor is yours.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Speaker. Let me thank Hon. Washiali for moving the Motion on my behalf. I was stuck in traffic.

I wish to second. As Hon. Washiali has adequately articulated and considering that we are going on a short recess at the end of next week, we need to have published and, at least, tabled a report which we hope to table by Tuesday or Wednesday morning. As per the constitutional requirements, I think the Parliamentary Budget Office is already working on the advertisements together with the Clerk's Office for public participation. Remember that it is now a constitutional requirement that even this Bill, like all others, has to go through public participation.

We are fortunate that this year and largely, there has been concurrence on the figures that are to be shared between the two levels of government. However, there are also challenges as I mentioned as I concluded debate on the Budget Policy Statement (BPS). The challenges are to do with Nairobi County on the transfer of functions. Therefore, it is important that, as much as the County Assembly of Nairobi is doing public participation on that issue, that we also give the greater public of the country an opportunity to make their presentations on the question of the Division of Revenue between the two levels of government and even on issues pertaining to the transfer of functions between Nairobi County and the national Government.

With that, I wish to second.

(*Hon. Samuel Atandi walked out of the Chamber while the Speaker was on his feet*)

Hon. Speaker: Order Members! Member for Alego, even if you are walking out, you do not just walk around.

(*Question proposed*)

(*Question put and agreed to*)

Next Order!

BILLS

THE BUSINESS LAWS (AMENDMENT) BILL

(*Hon. Aden Duale on 5.3.2020*)

(*Debate concluded on 5.3.2020*)

(*Loud consultations*)

Hon. Speaker: Hon. Members, I observe and note that there is too much noise at the front. I can see the Leader of the Majority Party, Deputy of the Majority Party and the Deputy Whip. I think there is something they are communicating across the Bar with the Leader of the Minority Party. I am sure they can do it in lower tones.

Hon. Members, debate on this Bill was concluded last week on Thursday. What remained was for the Question to be put which I hereby do.

(*Question put and agreed to*)

(*The Bill was read a Second Time and committed to a Committee of the whole House tomorrow*)

Next Order! Hon. Ichung'wah, the next Order is your business.

THE DIVISION OF REVENUE BILL

First Reading

(*Order for First Reading read – Read the First Time and ordered to be referred to the relevant Departmental Committee*)

(*The Member for Imenti Central walked into the Chamber*)

Hon. Speaker: Member for Imenti Central! Members, I wish to alert the House before you go to the next Order. You will recall that last week, I gave a Communication and guidance

on how to deal with the President's Reservations to the Law of Contract (Amendment Bill), National Assembly Bill No.1 of 2019.

Hon. Members, as you may recall, that Bill has only one substantive clause. I think the first clause is about titles or something like that. I do not think anyone has any issues or quarrel with the title. Therefore, Hon. Members, as you know, at whatever stage...

(Hon. Chelule peeped into the Chamber)

Do not run away! That is not... Look at these ones now!

(Laughter)

That is Hon. Kones or is it Hon. Chelule? Yes, Hon. Chelule. You know she opened the door and then stared inside a bit and then took off. Well, of course, I think she sat in the other House last time. I think she is used to doing that.

(Laughter)

Therefore, Hon. Members, as I did guide, the Memorandum must be supported at every stage and/or opposed by not less than two-thirds of the membership of the House. Therefore, in the event that when you go into Committee you do not raise two-thirds, essentially, the Bill would have been lost. And since it had only one clause, thereafter, I will communicate the decision of the House to the Attorney-General (AG). There is already a law in place. It was seeking to amend that particular law. So, the law still exists with all the other provisions. What will be left is for me to communicate the decision of the House to the Attorney-General (AG). However, should you have the 233 of you voting to defeat the President's Memorandum, then, of course, we will present the Bill to the President with his veto having been overridden by not less than 233 of you.

However, obviously and in fairness, looking at the Chamber, I think it will be a tall order. Therefore, the House is accordingly guided that when you get to Committee of the whole House... The Member for Emuhaya says that the House is going to mobilise yourselves into droves. Please, go ahead. I have no hesitation. That is for the information of the House.

Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE LAW OF CONTRACT (AMENDMENT) BILL

(Consideration of Memorandum from His Excellency the President)

Hon Chairman: Order, Members! Take your seats. This is going to be a very brief Bill to be transacted. It is a Presidential Memorandum. We do not have too much time. Kindly take your seats and concentrate so that you can make your decisions.

Hon. Members, I am sure you have heard the Communication from the Speaker. So, I will give an opportunity to the Leader of Majority Party, who is the mover, to move the President's recommendation to Clause 2.

Clause 2

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

THAT, Clause 2 of the Bill be deleted.

This is as recommended by His Excellency the President and as it is appearing in the Order Paper.

Hon. Chairman, whereas I would have wanted to witness this Bill, which I have moved on behalf of my friend Francis Waititu, see the light of day, after further reflection, which is informed by the reservation by His Excellency the President within the reading of Article 115 of the Constitution, I wish to move that Clause 2 be deleted. The House should be aware that Clause 2 is the substance of the Bill and I am conscious that the deletion will have the effect of killing this Bill in its entirety.

On the justification given by the President, the proposed amendments were re-introduced very prematurely. The provisions contained in the Bill were originally contained in statute law. They were severed from the Bill to allow for more...

(Hon. Members consulted loudly)

Hon. Chairman, what is happening here? There are facilities provided at the back of this Chamber. And you know, if Orange Democratic Movement (ODM) wants to consult with *Tanga* on the most frivolous purported impeachment of the Deputy President, which they cannot get because they could not impeach Cabinet Secretary (CS) Kaimenyi... You know, if you could not impeach Kaimenyi or Hon. Waiguru and then you now want to impeach the Deputy President, you are wasting your time!

Hon. Chairman: Order! Order, Leader of Majority Party. You know, unfortunately, they were consulting somewhere down here. I could not see them. Probably, next time, I will ask you to mention their names. Anyway, for today, let us leave it at that. What is your point of order, Leader of the Minority Party?

Hon. John Mbadi (Suba South, ODM): Hon. Chairman, you know, ordinarily, I would not stand on a point of order to challenge the Leader of Majority Party because we have to respect each other. It is something we have done. However, the Leader of Majority Party is misleading this House and re-writing history. There is no time the ODM Party initiated the process of removal of Hon. Waiguru. It was done by Jubilee Party and then they ran away. They went to hide in a hotel in Naivasha.

Hon. Chairman, when the time comes and we bring an impeachment Motion, it will be a serious one. It will not be a situation where you run to hide with mistresses in hotels.

(Laughter)

Hon. Chairman: Okay. I hear you. The only thing, Leader of Minority Party, I am completely surprised that you are saying you ordinarily do not want to challenge the Leader of Majority Party. I thought that is actually your business, that is, challenging each other. I am surprised that you are actually throwing in the towels even before...

Hon. Aden Duale (Garissa Township, JP): Hon. Chairman, because I defended both Waiguru and Kaimenyi, I want to confirm to the House - and go on record - that Hon. Kaimenyi's impeachment was initiated by a Member of ODM and that of Hon. Waiguru was by a Member of Jubilee Party. However, the signatures were from both sides. From what happened yesterday during the burial of our brother, Hon. Mbadi must read the signs of the times.

(Applause)

Hon. Aden Duale (Garissa Township, JP): The times! Yesterday I was in Kwale.

Hon. John Mbadi (Suba South, ODM): On a point of order, Mr. Chairman.

Hon. Chairman: I do not think I am going to allow you, Hon. Mbadi. It is because...

(Loud consultations)

Hon. Aden Duale (Garissa Township, JP): Hon. Chair, I want to confirm. I want to go on record. Hon. Mbadi must first confirm and tell the country why *Tanga* and ODM were having an informal meeting here. That is what the country wants to know. The Chair of ODM and the *de facto* fake leader of *Tanga* were talking to each other. So, they must tell the country...

Hon. Chairman: What is your point of order, Hon. Ichung'wah? And by the way, I do not know that there are factions in this House. I only know of Members of the Minority and the Majority. I am blind to the other factions. So, what is it Hon. Kimani Ichung'wah? And why are you sweating and yet, it is cool in this House?

(Laughter)

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Chairman, I must confirm and confess that I am sweating because I came in a rush. I was stuck in traffic and so I had to jog for a distance.

Hon. Chairman: That was about an hour ago. If the fever is persisting, probably you may need some attention.

Hon. Kimani Ichung'wah (Kikuyu, JP): Secondly, the Leader of the Majority Party is raising the temperatures in the Chamber! He is talking about the Orange Democratic Movement (ODM) and *Tanga*. I was consulting with the Chair, ODM, and was consoling him because of the debacle yesterday in Kwale. I had to console him because he is a member of my Committee and he was unable to read signs of the time.

Hon. Chairman: You are confusing us. You are an Alliance Alumni and I want you to differentiate: Did you say you were consoling or consulting? Those are two different things.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Chairman, let me say that again. I was not consulting! I was consoling Hon. John Mbadi because of the debacle yesterday in Kwale. Hon. John Mbadi is not just the Leader of the Minority Party. He is also my friend and, hopefully, the next governor of Homa Bay. I will support him. However, the consultation was not between the

ODM and *Tangatanga* because we cannot be consulting here as political parties. When we consult with the leader, we consult as members of one Committee - the Budget and Appropriations Committee (BAC). It is important that Hon. John Mbadi, the Leader of the Minority Party ...

Hon. Chairman: You know you are debating.

Hon. Kimani Ichung'wah (Kikuyu, JP): I was only saying that John Mbadi must read the signs of the time and also to inform the Leader of the Minority Party in the other House, Sen. Orengo, that impeaching the Deputy President who is elected by the people starts here.

Hon. Chairman: Let us stop it there. Hon. Mbadi, you have anything different? What is it again now that you have been mentioned?

Hon. John Mbadi (Suba South, ODM): Hon. Chairman, you have allowed Hon. Ichung'wah to discuss a Member of the other House which our Standing Orders disallow.

Hon. Chairman: Actually, he is out of order on that one. Proceed.

Hon. John Mbadi (Suba South, ODM): Hon. Ichung'wah could only console me for the loss of my Member but, he cannot console me for what happened yesterday. That is because what I did was to respond to his boss who also spoke in a funeral. I was looking for the immediate funeral to answer to his boss who speaks carelessly in funerals. Someone is dead, you go to his funeral and yet, we are suspecting his death.

Hon. Chairman: You have made your point, let us proceed. Let us deal with this serious matter.

Hon. Aden Duale (Garissa Township, JP): Hon. Chairman, Article 150 of the Constitution is very clear. For avoidance of doubt, each one of you sitting here and outside should read Article 150 of the Constitution in black and white. You will understand where you are heading to. Do not drive in the Thika Super Highway without brakes.

Hon. Chairman, why the President negated this...

(*Hon. (Ms.) Odhiambo-Mabona consulted loudly*)

Hon. Chairman, you know Hon. Millie is a good friend of mine. I have served with her since she was nominated to the 10th Parliament. So, she and I know very well that you cannot just think of an action when you know the end result will lead to a crash.

Hon. Chairman: Why do we not concentrate on this Presidential Memorandum?

Hon. Aden Duale (Garissa Township, JP): I want to tell the House the reasons the President gave. The proposed new provisions to Section 3 of the Law on Contract will negate the long-standing principle of contract which is relied on by lenders, borrowers, guarantors, investors and other stakeholders in the Kenyan economy, especially in the capital markets. The obvious effect will be to prolong the process of settling debts. If we remove guarantors, the process of settling debts in the case of a default through a prolonged asset raising and litigation without the assurance and the outcome will not be positive. The current system is prompt and is very predictable in terms of debt settlement. So, the President felt it is a key element in Kenya's ease of doing business. The law we have just passed, the Business Laws Amendment, is one of the laws that will help us in ensuring that Kenya becomes top in the world in the ease of doing business.

So, if this law passes, we will make investors and other players in the capital markets not to invest in our country because it will create a hindrance and it will affect the principle aspect.

I beg to move and agree with the President.

(Question of the amendment proposed)

I see the Leader of the Minority Party and you know he has precedence as per our Standing Orders. I will give some Members. Actually, I will give about six Members. Let us hear what they have to say. Let us start with the Leader of the Minority Party.

Hon. John Mbadi (Suba South, ODM): Hon. Chairman, this is really a sad afternoon in my view for this House. The presidential power to assent and return Bills was given to the President to exercise with a lot of caution.

This amendment that was proposed by Hon. Waititu was very good. If someone borrows money and asks you to guarantee that money then they fail to pay, the procedure should be that all your property should be exhausted first, then go to the guarantor. I know there is very little we can do because we require 233 votes but, the people of Kenya need to look again at this provision in the Constitution giving the President too much powers that we require two thirds to override the recommendation of the President. It gives the President absolute powers to legislate. In fact, the President can just bring a very weak Bill and we make amendments. It goes to the State House, they re-do the entire Bill and bring it back. If you fail to raise the numbers, it becomes a law. I do not think that is what the people of Kenya intended with this provision in the Constitution.

I oppose. There is little we can do but, I have to go on record that I am opposing the President's recommendations.

Hon. Chairman: I see the Chairman, Departmental Committee on Justice and Legal Affairs.

Hon. William Cheptumo (Baringo North, JP): Thank you Hon. Chairman. I oppose the Memorandum by the President. The essence of this amendment seeks to provide that in case of default by the principle borrower, then the bank or the creditor should first realise the assets of the borrower before you pursue the guarantor. Kenyans have suffered under this law. What has been happening is that banks, upon default by a borrower, do not bother to follow the borrower but, instead, they pursue the assets of the guarantor. That is the position in our law today. So, this amendment was to protect the interest of guarantors from those borrowers who have assets and, sometimes, conspire with creditors to defeat the realisation of their property.

Therefore, I stand to oppose to protect the long-suffering guarantors from SACCOs and banks. Guarantors should be protected from malicious principal debtors who are able to pay their debts, but collude with creditors who then do not demand repayment from the principle debtor.

Hon. Chairman, what is happening in this country...

Hon. Chairman: Hon. Cheptumo, you will have to summarise because you have given your reason.

Hon. William Cheptumo (Baringo North, JP): I am finishing, Hon. Chairman. We even went ahead to benchmark in other jurisdictions. In Australia, before you pursue the guarantor, you pursue the principal borrower. That is the situation in Australia. This law, indeed, was meant to protect the guarantors who actually genuinely guarantee loans for principal borrowers. It is a justifiable amendment which we need to support.

Hon. Chairman. Next is Hon. Milemba. Please, let us be brief if other Members must also speak.

Hon. Omboko Milemba (Emuhaya, ANC): I will be very brief, Hon. Chairman. This is actually another sad moment because the amendment brought to us is actually supposed to

protect the large populace of Kenyans who act as guarantors. It is not limiting in any way the space for business. All it is doing is to ensure that the assets of the principal borrower are exhausted before a lender goes after the guarantor's assets. Unfortunately, it has gone the way of Article 115 of the Constitution, which gives power to the President to possibly oversee Parliament whenever it has flaws and excesses. Unfortunately, those powers are now being used to actually make laws.

As I conclude, like one speaker said, this is a gap that Parliament must take care of because the President can now make any law. It is a matter of creating a weak law. A Bill goes to him for assent and he simply rewrites it and brings it back to Parliament. We do not get the two-thirds. We are actually surrendering the powers of Parliament.

With those remarks, I beg to oppose.

Hon. Chairman: Hon. Kimunya.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Chairman, I have heard the comments from my colleagues but on this one, I have to agree with the President. You borrow money on the understanding that you are prepared to pay and not to default. So, we must, first of all, never pass laws here that will establish a culture of almost encouraging people to default. That is why you not only give security, but you also give guarantors who are jointly and severally enjoined in the process. Hence, you cannot say that because the person has given a house as security, which is probably matrimonial, and which cannot be realised at the point of default. The bank should continue pursuing the amount due to it until they realise it. The bank should be able to go for the guarantors and even choose the most realisable assets. That is the practice globally.

I can see the sense because of the frustration and the reality on the ground as well as the several newspaper pages of auction notices. I can see the pain that the Hon. Member brought this amendment. However, we should look at the bigger picture. Kenya should not be seen as a country that is legislating to encourage people to default on payment of their debts. That is a fundamental principle. Otherwise, we will become a pariah nation. Who will trust that you will soon not be legislating on other things that affect investment? Banks use money that belongs to members of the public to lend to other persons. It is depositors' money that is being lent. It is not just the bank. John Mbadi, as a customer, deposits money into his bank account. That money is then lent out to his colleagues. If his colleague fails to pay, it is Hon. John Mbadi who will lose his deposit.

So, let us not just look at the banks. Let us look at the banks as purely an intermediary forum which take depositors' money and lend it to borrowers. We must protect both the borrower and the depositor.

Hon. Chairman, I could go on and on but for obvious reasons, let us pass this amendment. As a House, let us be careful in future as we legislate on such laws so that we do not end up putting the House into this kind of situation.

Thank you, Hon. Chairman.

Hon. Chairman: Let us hear Hon. Kioni, after whom I will give the Floor to a Member from the other side and that will be it.

Hon. Jeremiah Kioni (Ndaraagwa, JP): Hon. Chairman, I find it difficult in supporting this proposal from the President for the reason that it does exactly opposite what Hon. Kimunya has said. If you know that once you have borrowed money you will either pay or your other assets become exposed, you will be encouraged to pay more. However, when you know that you can always get your guarantors' assets, you encourage laziness from the bank. While we cannot...

Hon. Chairman: You know what Hon. Kimunya is asking is that, why then do you not create a law that does away with guarantors?

Hon. Jeremiah Kioni (Ndaragwa, JP): He had the opportunity of doing that. The one we have is the one that was done. I think he can do that later. Having said that, I think the other important thing is that the Office of the President will have to be careful not to be seen to be overusing the veto power because if it is over-done, again, it will beat the purpose for which it was put in the Constitution.

Hon. Chairman: What is it, Leader of the Majority Party? You are the one moving it.

Hon. Aden Duale (Garissa Township, JP): Hon. Chairman, Hon. Kioni also joined Parliament at the same time with Hon. Millie and Hon. Mbadi. The framers of the Constitution gave him powers from Article 93 to 95. To protect the citizens of this country from a future or current rogue Parliament, the President has been given powers under Article 115 to protect the people. While exercising his powers under the Constitution, he is questioning the powers of the President, who has been elected by the people of Kenya to protect them. Is he in order?

Members of Parliament and Hon. Kioni, nobody can force you to be a guarantor. A guarantor is a willing business unless you are Amos Kimunya whose name is guarantor. You know Amos Kimunya's name is guarantor. My name is guarantor. We do not look for guarantors. However, if you are a guarantor and the loanee defaults, you should be prepared to pay. I have finished my point of order. I am saying you cannot usurp the powers of the President under Article 115 of the Constitution. Those are his powers.

Hon. Chairman: Now let us have Hon. Kioni. Wind up, please.

Hon. Jeremiah Kioni (Ndaragwa, JP): Hon. Chairman, I cannot just wind up. He has taken all the oxygen in the room. I was going to say this. That power that has been given to the President is good, but it is meant to balance. We agree that he is a people's representative also. But all those who are seated here are also people's representatives. So, when we pass law, we pass it on behalf of Kenyans. When he makes those interventions, he makes them on behalf of Kenyans. But some balance will be useful. It is important that we do that.

I think this would have actually helped the banks. Now they are just lazy. Everybody will put his signature on that piece of paper and without forcing the person who borrowed to pay. I think it was a good amendment but, unfortunately, we are cooked.

Hon. Chairman: Hon. Owino.

Hon. John Owino (Awendo, ODM): Thank you, Hon. Chairman. What this Bill is going to do is to kill guarantors. You remember that there is no money circulating because the SMEs are not borrowing anymore. If you line up the borrower with the guarantor at the same time, nobody will guarantee anything. That is why the economy is going down. I oppose this. I am so sorry that the President could knock down such an amendment. This was going to help us in the long run.

Hon. Chairman: Hon. Members, I am now putting the Question. I have to enlighten Kenyans, and not you. I know Members are well enlightened on this matter. Even if there will be a voice call and you make a decision that it is a Nay, the Ayes will still have it. Let me restate that one. Whatever the circumstances, the Ayes will have it because we need to raise two thirds if we have to overturn a Presidential Memorandum.

You remember, Hon. Members, one Chair who sat here sometimes ago made such a decision and Kenyans felt that it was the wrong decision. But it was, indeed, right. When you are dealing with a matter that requires two thirds, the only option that a Chair has is to call Ayes so that the membership can stand on their feet - 30 of them - to confirm whether they have the

required numbers. If there will be no numbers, it will fall on its face. We will not need to proceed. I am not saying this for the Members; I know that they are aware. I am trying to remove and disabuse the members of the public from criticising Parliament, when we make decisions from this Chair on that basis. The reason why we do that is because we need to confirm the numbers. Looking at the membership in the House, the Members may not be two thirds, but I am not simply going to make that decision myself. It is for the Members to stand and be counted. That is the position.

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

(Clause 2 deleted)

(Hon. Members stood up in their places)

Hon. Members, you are now 25. In fact, five less than the required number to even ask...

Take your seats, Hon. Members. You do not have numbers and, therefore, the Presidential Memorandum is passed.

(Loud consultations)

Let us have the Mover of the Bill.

Hon. Aden Duale (Garissa Township, JP): Hon. Chairperson... We know that we are not 233. I beg to move that the Committee doth report to the House its consideration of the President's Reservations to the Law of Contract (Amendment) Bill (National Assembly Bill No. 1 of 2019) and its approval thereof without amendments.

(Question proposed)

(Question put and agreed to)

[Hon. Chairman (Hon. Moses Cheboi) left the Chair]

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order Members! We are not done with the Committee of the Whole. We have one more piece of law that we have to deal with, specifically, the Representation of Special Interest Groups Laws (Amendment) Bill (National Assembly Bill No.52 of 2019)

What is your point of order, Hon. (Ms.) Odhiambo-Mabona?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairperson.

Hon. Temporary Deputy Chairperson, I am concerned that we are proceeding as though there are no women Members of Parliament (MPs) in this House. In the matter that has just been concluded, only male MPs have been given an opportunity to speak. In addition, when we are

raising a Bill as the one that we have just dealt with - where you need the numbers and yet we may not necessarily have those numbers - there is nowhere we are rushing to. Every Member's voice needs to be heard. I am here representing the people of Suba North and they need to hear that I opposed a law that is oppressing them. So, even though the Executive may have their way through this super legislation, you cannot then force us not to speak in this House.

(Loud consultations)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Order, Members. Hon. Junet Nuh, you cannot have a point of order over and above the other one.

Hon. Odhiambo-Mabona, there is no doubt that you are here to represent the people of Suba North. You must be given a chance to speak whenever there is an issue. Obviously, sometimes, it is not possible for all Members to speak on one Bill, but your concerns are noted.

THE REPRESENTATION OF SPECIAL INTEREST GROUPS LAWS (AMENDMENT) BILL

Clause 3

‘ **The Temporary Deputy Chairman** (Hon. Patrick Mariru): There is an amendment by Hon. Jeremiah Kioni.

Hon. Jeremiah Kioni (Ndaragwa, JP): Thank you, Hon. Chairperson. I beg to move:

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

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

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Jeremiah Kioni, it is important for the sake of Members to very clearly say the import of your amendment so that we can carry along all the Members.

Hon. Jeremiah Kioni (Ndaragwa, JP): Hon. Temporary Deputy Chairperson, the amendment serves to introduce additional functions to the National Council of Persons with Disabilities (NCPD). These functions serve for the purposes of encouraging the participation of persons with disabilities. The purpose of this amendment is to widen the work that is supposed to be done by the council. That will make it easy for them to take part in the electoral process.

(Question of the amendment proposed)

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

(Clause 3 as amended agreed to)

(Clause 4 agreed to)

Clause 5

Hon. Jeremiah Kioni (Ndaragwa, JP): Hon. Temporary Deputy Chairperson, this is another amendment by the Committee and I beg to move:

THAT, Clause 5 of the Bill be amended—

(a) in paragraph (d) by deleting the words “persons with disabilities” and substituting therefore the words “special interest groups”;

(b) by inserting the following new paragraph immediately after paragraph (d) – “(e) by inserting the following new paragraph immediately after paragraph (m)–(ma) the establishment of criteria for the identification of marginalised communities, ethnic and other minorities for all electoral purposes to provide a basis for segregation of data;”

The purpose of this amendment is to ensure that the Independent Electoral and Boundaries Commission (IEBC) uses modes of communication that can be used by persons with disabilities and has the criteria for the classification of marginalised and ethnic communities. This is just to help in getting one to know the exact number of people and their distribution as well as make sure that they have modes that can help them to communicate and take part in the electoral process.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, let me propose the Question. I will then give one or two Members to contribute so that we can proceed.

(Question of the amendment proposed)

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairperson.

Hon. Temporary Deputy Chairperson, Hon. Jeremiah Kioni needs to explain himself there because I am not convinced. The original provision was targeting persons with disabilities but when you talk about special interest groups in general and you are talking about communication, then we are presuming that the issue of communication affects everybody equally yet, persons with hearing and visual disabilities are the ones that require such kind of special attention. Can he clarify to us why he is moving away from persons with disability?

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Kioni, kindly take note, I will give you a minute.

Hon. Sankok, you may proceed.

Hon. David ole Sankok (Nominated, JP): Thank you very much, Mr. Temporary Deputy Chairman. I really support the amendment by Hon. Kioni. Most of us go through a lot of difficulties in the voting process. Most of the buildings where voting takes place are not accessible to people on wheelchairs. Again, the blind and the deaf find it very difficult during the voting process. For instance, the blind people have it difficult because the voting papers are not in braille. In fact, they have to ask a second party, who sometimes might not belong to their school of thought or political party. If, for example, they asked to be shown the name of Uhuru Kenyatta, one would easily take advantage and tell them, “Tick here...”

Thank you very much. I support.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Leader of Majority Party.

Hon. Aden Duale (Garissa Township, JP): Following Hon. Millie's contribution, and my reading of this Section 5, the Chair, Hon. Kioni, is saying that this law will give the Independent Electoral and Boundaries Commission (IEBC) the powers to develop a criterion, say, through a regulation, on how to identify the marginalised and the minorities. But Hon. Sankok is talking about what happens on the voting day. He is talking of how to help people with disability on the voting day. No! This is about the criteria. Where Hon. Millie and Hon. Mbadi come from, they fall under the minority and the marginalised, but Hon. Kaluma cannot purport to be a minority.

(*Laughter*)

Am I not right? So, there are big tribes and small minorities, like Hon. Millie, Hon. Mbadi and I. He wants IEBC to develop a criterion that says Suba is a minority within the reading of Nyanza ethnic bloc, or that Hon. Duale's clan is a minority within that. I think that is what Hon. Kioni is saying.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Kioni, we shall give you a stab after Hon. Oundo then the House will make progress.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Temporary Deputy Chairman for this opportunity. I find this particular amendment very interesting in the sense that, one, the state of minority or marginalised ought not to be permanent unless it is physical disability. The issue of minority community is simply a question of inability to do things that increase the numbers in the said communities. We should surely look at it afresh.

Hon. Members: On a point of order!

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order! Hon. Oundo, what is it that you said that the entire House rose on points of order? Leader of the Minority Party, what is it that looks extremely out of order from what Hon. Oundo has said?

(*Hon. (Dr.) Wilberforce Oundo stood in his place*)

Hon. Oundo, please take your seat.

Hon. John Mbadi (Suba South, ODM): With all due respect to my friend and a very strong party Member, Hon. (Dr.) Oundo, he is imputing improper motive on minority communities in this country. How can he imply that Subas are few because we cannot do what is expected of us to add to our numbers? Is he implying that Suba men are lesser men?

(*Laughter*)

He should withdraw that remark and apologise to the minorities of this country.

The Temporary Deputy Chairman (Hon. Patrick Mariru): You know that Hon. (Dr.) Oundo is a professor. So, Hon. Oundo, you are being educated on how... Now, Hon. Members, I want the House to make progress on this matter.

What is out of order, Hon. Junet? We must make progress.

Hon. Junet Nuh (Suna East, ODM): Hon. Temporary Deputy Chairman, in the last census that was conducted, it was found that disabled people like Hon. Sankok were 6.5 million. For how long are they going to be minority? They are majority now. They are equal to Kikuyus in Kenya.

(Laughter)

(*Hon. David ole Sankok stood in his place*)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order, Hon. Sankok! You cannot respond to every issue raised on the Floor. Let us have Hon. Millie then we go back to Hon. Kioni, so that we make progress.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I am both a majority and a minority. My mother is Luo so I am a majority. My father is a Suba so I am a minority. So, we might also provide a criterion for ‘mino-majorities’ but that is not what I am actually raising. I had raised an issue for Hon. Kioni but I notice where the confusion is. He is talking about Clause 5 in general when he has two amendments, (d) and (e).

I have no problem with (e), which is providing criterion for including the minorities and marginalised. I have just presented to the Building Bridges Initiative (BBI) the same issues, which I agree with. My concern, which I need him to address, is in relation to 5 (d) where he is removing “persons with disabilities” and replacing it with “special interest groups” and yet it is an issue of communication. Is he not then marginalising persons with disabilities?

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Let us now give Hon. Kioni sufficient time. Hon. Kioni, I am sure that you have noted what the Members are raising. Would you speak to those concerns so that you carry the Members along?

Hon. Jeremiah Kioni (Ndaragwa, JP): Hon. Temporary Deputy Chairman, one of the things that we need to understand about this Bill is that it is meant to make it easy for the special interest groups to access elective position. Looking at Article 100 of the Constitution, you cannot single out one category like persons with disabilities. What we are trying to do is to open this area so that the five criteria are covered. However, even when dealing with the minorities, you need to know that they also need to be facilitated. You may come across a minority that requires special communication mode. For example, they may not know languages and they would not be able to vote easily when they get into a polling station. We need to make sure that IEBC...

(Loud consultations)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order, Members! Just consult in low tones so that you give Hon. Kioni sufficient time and space to explain himself.

Hon. Kioni, please continue.

Hon. Jeremiah Kioni (Ndaragwa, JP): Ideally, this is to ensure that even the other categories are covered by this provision. The provision that was there before was only meant for the persons with disabilities.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order, Members. We must proceed on this one.

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

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

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

(*Clause 5 as amended agreed to)*

Clause 6

Hon. Jeremiah Kioni (Ndaragwa, JP): Hon. Temporary Deputy Chairman, I beg to move:

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

The same reasons that we adduced for Clause 5 apply for Clause 6.

(*Question of the amendment proposed*)

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

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

(*Clause 6 as amended agreed to)*

(*Clause 7 agreed to)*

Clause 8

The Temporary Deputy Chairman (Hon. Patrick Mariru): We have an amendment by Hon. Kioni.

Hon. Jeremiah Kioni (Ndaragwa, JP): Hon. Temporary Deputy Chairman, I beg to move:

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

The purpose of this amendment is to...

(*Hon. Junet Nuh spoke off record*)

Hata hujui ni nini unasema hakuna. Ngoja niseme!

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order, Hon. Kioni. Do not listen to anyone. Just move the amendment. The House will make a decision.

Hon. Jeremiah Kioni (Ndaragwa, JP): He makes a lot of sharp noise. That is the problem.

The provision allows parties that do not have a website to do it elsewhere because some parties may not have the resources to set up a website. We have such small parties like Chama Cha Mapinduzi and Democratic Party. They do not have money to set up a website.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, I do not think that the Chairman wants to help democracy to get its roots very well. He is taking this country back to the days of briefcase parties. We cannot legislate for emergence of briefcase parties. If a party cannot set up a website whose cost is about Ksh50,000, then it should not be called a political party.

I oppose the amendment and ask the House to oppose it too.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Junet.

Hon. Junet Nuh (Suna East, ODM): Hon. Temporary Deputy Chairman, I oppose the amendment. I know the Chair, Hon. Kioni, is an expert in forming political parties, especially towards elections time. I am sure he is laying ground to come up with another one. We are not going to allow this amendment. I remember he had the United Democratic Forum Party. He now wants to set up another party. Let him start by having a website, then he the political party.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Mbui, do you want to speak to this amendment?

Hon. Robert Mbui (Kathiani, WDM-K): Hon. Temporary Deputy Chairman, as much as I believe that democracy requires that we have more parties, on the issue of a website, it is the bare minimum. Honestly, a party that cannot even set up a website should not have any space in today's world.

I oppose the amendment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): What is it, Hon. Kioni?

Hon. Jeremiah Kioni (Ndaragwa, JP): Hon. Temporary Deputy Chairman, there is another person here who thinks I form parties. I form serious parties that contest elections and field candidates. All the political parties I have been to have had presidential candidates. We have done very well and in one of them I was a very serious running mate.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Kioni, get to the subject. Do not be an arbiter; get to the subject, please.

Hon. Jeremiah Kioni (Ndaragwa, JP): In fact, other than the fact they stole our votes, we would have done much better.

I have seen the issue and I hear Members. I withdraw the amendment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, that amendment stands withdrawn.

(Proposed amendment by Hon. Jeremiah Kioni withdrawn)

(Clause 8 agreed to)

Clause 9

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, there are three proposed amendments to this clause. There is an amendment by Hon. Jeremiah Kioni, Hon. Robert Mbui and Hon. Godfrey Osotsi.

We shall give precedence to Hon. Kioni's amendment. If it is carried, in effect the other amendments will fall but, if it falls, we will have to proceed to Hon. Mbui's as well as Hon. Osotsi's. Hon. Kioni, you have the first stab.

Hon. Jeremiah Kioni (Ndaragwa, JP): Hon. Temporary Deputy Chairman, I beg to move:

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

Amendment of section

25 of No. 11 of 2011

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

Distribution

of the Fund. 25. (1) The Fund shall be distributed as follows—

(a) seventy three per cent of the Fund proportionately shared among all the political parties, subject to subsection (2);

(b) twenty per cent of the Fund proportionately to political parties based on the number of candidates of the party from special interest groups elected in the preceding general election;

(c) five per cent for the administration expenses of the Fund; and

(d) two per cent for the administration expenses of the Political Parties Liaison Committee.

(2) A political party shall be entitled to receive funding from the Fund under subsection (1) if—

(a) no more than two-thirds of its registered officebearers are of the same gender;

(b) the party has in its governing body, representation of special interest groups;

(c) the party has in its party nomination list, names of persons who have not benefited from the party nomination in any preceding general election; and

(d) the party has at least— five elected members of Parliament; one elected Governor; or twelve elected members of County Assemblies:

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

(3) For purposes of this section, "office bearers" means national and county officials elected or nominated by a political party in accordance with the party constitution.

(4) For purposes of subsection (1)(a), the proportional share of all the political parties shall be computed by adding the total number of votes obtained in the preceding general election by a political party in the election for President, Members of Parliament, county governors and members of county assemblies.

(5) A political party that receives funds under this section shall ensure that at least twenty five per cent of the funds received are disbursed to its branch offices.

I ask Members to allow themselves to exercise their mind on this issue and understand the Political Parties Fund in the Constitution. There is not much departure from what was provided for before. The only thing we have done is that we have provided for 73 per cent of the money to be shared among the parties. Let me talk to Hon. Junet. Having the 73 per cent

provided for as it is still does not take away what the Orange Democratic Movement (ODM) or Jubilee Party is entitled to.

(An Hon. Member spoke off record)

Why are you saying no? I did not know that you are that difficult when people are moving amendments here.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Kioni, Members are not difficult. They are just very keen on what you are saying.

Hon. Jeremiah Kioni (Ndaragwa, JP): Political parties will still take their percentage because it will be based on the number of votes a party gets. So, it does not take away anything a political party gets from the Fund.

The amendment also allows any other political party that has qualified to have Members in Parliament to get some funding. We have political parties with 18 Members and others with 100 Members of the County Assembly (MCAs) but they do not get any funding from the national kitty because we only said the party can only benefit from the money if it gets 3 per cent of the total vote, which is a good thing. I know the big boys here will be very happy to continue with that arrangement but it does not grow the political and democratic space. If we do not have more parties out there for persons with special interests like the marginalised, minorities, youth and others, we will not be able to bring them on board but if we allow parties to field them including women, that way we will get them. That is only possible if we fund the political parties. We have political parties that immediately after an election die. An individual cannot sustain a political party through his pocket. This constitutional kitty was meant to benefit our democratic space.

Hon. Temporary Deputy Chairman, I ask Members to support the amendment. You may think you are strong today, but wait until you are hit out there and you need support. You need these parties elsewhere. Leader of the Majority Party, you know these positions do not exist for ever. Please, provide for what you may need to use tomorrow. The person who is wise in making law is that who makes law for his enemy.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, there seems to be active passion around what Hon. Kioni has said.

(Question of the amendment proposed)

Let us start with the Leader of the Majority Party. I would like to give a chance to a few other Members, especially those who have not spoken to the amendment.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, I thought Hon. Kioni was in the 10th Parliament when we enacted the Political Parties Act that created the Political Parties Fund. The essence or objective of the Fund was to kill briefcase parties owned by individuals. Today, I confirm that the headquarters of ODM and those of Jubilee Party are similar to the headquarters of the Conservative Party and Labour Party in London. I have been there.

Let me give you a scenario: there is a possibility that a president can have less MPs, less governors and less senators because maybe all his candidates took the second position but he has no Members of Parliament here. It happened in the 10th Parliament. Kibaki was the President. I was in ODM. He had only 48 MPs. The Party of National Unity (PNU) had only 48 MPs while

ODM had 106 MPs. Let me go on record. Coalition is different. Hon. Mbui is bringing an amendment because he is in a coalition but the money belongs to ODM. The money on our side belongs to Jubilee. Whether you have five MPs, six MPs, you are a squatter. You can only get money on our mercy. We must go the way of the United States of America (USA) and other developed democracies. This country will be more stable and parties will have discipline if we have two major parties.

The problem with this amendment is that you are telling us somebody who has come to this House with two or three MPs is going to share resources with Jubilee, which has 170 MPs; and with ODM, which has close to 100 MPs. It is taxpayers' money. The die is cast. You are supposed to work hard. The ODM worked hard and sold their ideology. Jubilee also sold their ideology. If the people of Kenya denied you the 5 per cent margin in the law, I urge this House to reject this amendment.

Secondly, the Chair is trying to amend the Political Parties Act through the backdoor. We should even reject Clause 9 of the Bill. Chair, take us slowly. We want to reject what is in the Clause. For you to be a political party recognised in law, you must have the 5 per cent requirement. Hon. Mbui, Hon. Osotsi and Hon. Kioni, go and campaign. Talk to the people of Kenya. If they decided to give you 10 MPs, like Kenya African National Union (KANU) and they gave ODM close to 100 MPs and Jubilee 170, it is the people of Kenya, it is not us. You cannot amend it. Please, join our parties.

The Temporary Deputy Chairman (Hon. Patrick Mariru): I will give a few Members opportunity to speak. I will expand a bit. Please, Members, I will be a bit restricted because this is not Second Reading. So, you do not want to be extrapolated in terms of debate around this amendment. Speak to the amendment because this is not the Second Reading. After Hon. Mbadi, I will give chance to a few Members, including those who have amendments to this amendment.

Hon. Mbadi.

Hon. John Mbadi (Suba South, ODM): Hon. Temporary Deputy Chairman, when you decide to mix poison with food, it cannot be eaten. The Chairman had some very good amendments touching on issues of engendering our political parties but he decided to mix it with what I would call poison. It is now creating an avenue which we sealed and closed during the 10th Parliament. We do not want briefcase political parties – political parties that consume taxpayers' money and yet they are individually-owned like the one of Kalembe Ndile. I urge the House that these amendments on Clause 9 are irrelevant. We should reject all of them so that we go back to where we are in terms of political party funding. If a Member wants to amend the Political Parties Act, let that Member bring a standalone amendment and we deal with it.

I oppose.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Before I come to my right, let me give a chance to Hon. Osotsi, who has an amendment to this amendment. He is speaking to Hon. Kioni's amendment, not to his.

Hon. Godfrey Osotsi (Nominated, ANC): Hon. Temporary Deputy Chairman, I have an amendment but when we get there, I will be withdrawing it after consultation.

The Temporary Deputy Chairman (Hon. Patrick Mariru): We will get there, Hon. Osotsi.

Hon. Godfrey Osotsi (Nominated, ANC): Allow me to comment, Madam Chair...

The Temporary Deputy Chairman (Hon. Patrick Mariru): It is Mr. Chair, not Madam Chair.

Hon. Godfrey Osotsi (Nominated, ANC): The basis of my amendment was basically to try and correct a technical...

The Temporary Deputy Chairman (Hon. Patrick Mariru): Do not speak to your amendment, speak to Hon. Kioni's. We shall give you a chance to speak to yours when the time comes.

Hon. Godfrey Osotsi (Nominated, ANC): The Bill was talking about 53 per cent share but it seems they have increased that share to 73 per cent. I want to agree that this is a very fundamental change. In fact, in the first place, when I read this Bill, I wondered why we were attempting to amend substantially the section in the Political Parties Act that talks about the Political Parties Fund. Essentially, this Bill is about Article 100. So, if you want to bring in issues of sharing of the Fund in the Political Parties Fund, it is hugely fundamental. I agree that it is important for us to relook at the Political Parties Act but not through this one.

I oppose this amendment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let me go to my right. It looks like this Clause has quite a bit of interest. That is why I am lingering on it a bit.

Hon. Kimunya.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Chairman, I am opposed to this amendment partly because of the ambiguity contained within it. If you look at Section 25(1), which talks about distribution, the provisions of sub-section 2 on the conditions for a party to receive money are even worse. The party has to have two-thirds in terms of office bearers, which is the same two-thirds rule that we have been unable to legislate on in this House. It also says that the party should have a party nomination list. There are a lot of things there. The party has to have at least a governor, five elected Members of Parliament and 12 elected Members of county assemblies. You are creating a hurdle that a party could actually win the presidential seat and miss this, and then they cannot participate in the Political Parties Fund. Perhaps, Hon. Kioni, this may be well meaning but the drafting has changed it all. Perhaps it may need to be withdrawn and then redrafted afresh as an amendment to the Political Parties Act.

I am also very concerned that we are using one Act to amend another Act instead of amending the main Act itself. There have been rulings on that yet we are doing it. It is not a Statute Law (Miscellaneous Amendments) Bill. This is a standalone Bill but we are now using it to amend other Acts of Parliament instead of going to those particular Acts, especially on matters political. We need to be very careful when we touch on the Political Parties Act. Let us come here with proper amendments to the Political Parties Act so that we look at in totality rather than through the issue of special interest groups and then we end up amending the funding mechanism of political parties.

I oppose.

The Temporary Deputy Chairman (Hon. Patrick Mariru): We will have two or three Members then we make progress. Hon. Mbui, I know you have an amendment but I will give you a chance to speak to Hon. Kioni's. Let us have Hon. Junet first.

Hon. Junet Nuh (Suna East, ODM): Hon. Temporary Deputy Chairman, this issue is very serious. I oppose this amendment. It says that 73 per cent of the Fund proportionately shared among all the political parties, subject to subsection (2). They are saying a party must have one governor, 12 MCAs and five MPs. Can you imagine a party calling itself a political party with 12 MCAs out of 1,450 MCAs in the country, and you want to call that a serious political party that needs to be funded by taxpayers' money with five Members of Parliament out of a parliament of 416 Members? You are telling me that a political party that has five Members

should be given taxpayers' money to run its affairs? I beseech the Chair to withdraw. We do not need to vote on this one. We must have serious political parties like ODM in this country. In fact, this afternoon, I came to this House basically to shoot down this amendment because this is an affront to democracy. How can you have a party like United Democratic Forum Party (UDF), to which the Chairman used to belong, which died long time ago? If they were funded by taxpayers' money, by now they would be down.

Secondly, you see his sequence of things. He started by saying it is not a must for a party to have a website. Then, it says it must be funded. Do not joke with our intelligence. Get rid of this thing and withdraw it, Chair.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us hear Hon. Mbui. He has an amendment to this clause. Not on yours Hon. Mbui. It is on Hon. Kioni's amendment.

Hon. Robert Mbui (Kathiani, WDM-K): Thank you Hon. Temporary Deputy Chair for the opportunity.

As I speak, I want to first declare that I am a member of the Wiper Democratic Movement – Kenya (WDM-K) and not a briefcase party. The WDM-K is the third largest party in Kenya. We came to Parliament through a coalition arrangement. There was hope that all parties would get some money and, therefore, get some share out of the money for that.

Anyway, on the issue of this amendment....

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Mbui, I will come to you. The Leader of the Majority Party is on a point of order. What is out of order, Hon. Leader of the Majority Party?

Hon. Aden Duale (Garissa Township, JP): What is out of order is that the WDM-K is not the third largest party. The WDM-K is at the periphery of complying with the 5 per cent. You are misleading the House when you talk about it as being the third largest. You must be closer to the ODM, with about 90 Members, to say you are the third largest. You are just one MP off from being declared not compliant with the 5 per cent. So, do not say that the WDM-K is the third largest party in Kenya. It is wrong. Just say it is at the bottom and you have just survived to comply.

(Loud consultations)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Mbui is from that WDM-K. Hon. Mbui, the Leader of the Majority Party seems to have an issue with "the WDM-K is the third largest party in Kenya".

Hon. Robert Mbui (Kathiani, WDM-K): I will tell you this Hon. Temporary Deputy Chairman. It is a simple English statement: The number one party is Jubilee, the number two party is ODM, and number three party in Kenya is WDM-K. We are also a parliamentary party because we have a Member of the Parliamentary Service Commission (PSC). We have a commissioner. It is because of our threshold. We have achieved the threshold. It is in law.

Let me go to my issue. On the issue of funds and the reason I support Hon. Kioni's amendment, the proposal that was there before was that 53 per cent of the monies be shared amongst the top two parties. Then, 20 per cent would be shared amongst all the other parties. In essence, what that was showing is that the WDM-Kenya would be thrown to the bottom with all the other briefcase parties. That is why I said it is only fair we put all the money together and share it proportionally. That means, if a party has 80 per cent, they get 80 per cent. If a party has

1 per cent, they get that. If the party has 1 per cent, it will get 1 per cent. Why would you be worried if you already have the lion's share?

I support this amendment of the Chair.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well.

Why do we not make progress on this, Hon. Members? Anyway, Hon. Onyango has not spoken.

Hon. Onyango Oyoo (Muhoroni, ODM): Thank you very much, Hon. Temporary Deputy Chair. I want to oppose the proposal by my friend Hon. Kioni. At a time when the BBI is trying to bring in inclusivity, he is trying to dismember parties so that a small briefcase party that is going to have three or four Members can also benefit. People are going to school so that they can live better lives. Why are you degenerating by trying to pull us backwards? In good faith, Mr. Kioni, whether it is personal and you have already sensed defeat in your party but you still would want to benefit, Kenyans are not going to allow you. It is a time when people are crying because of the public Exchequer being overloaded. We cannot allow briefcase parties to go and dismember our Exchequer again.

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): What is out of order, Hon. Otiende? Just be on the microphone.

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): I am saying I have been on a point of order. I pressed the intervention button because I did not want to outshout. I wanted to use the rules. You should look at this gadget because I had a point of order. Although that Motion is now carried, there was a point we needed to have looked at. I will try and bring it out later.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Otiende, that is noted. Surprisingly, it does not show on my screen here that you were on a point of order. I should have given you a chance.

(Hon. (Ms.) Odhiambo-Mabona spoke off record)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order Members. What is it Hon. Millie?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. Maybe you need to guide us so that we are on the same page. My understanding since we started this electronic process is that you use the intervention button when you want to contribute when we are in the Committee of the whole House. So, it will appear that Hon. Otiende wants to contribute and he is not on a point of order if he has pressed the intervention button. So, I think we have gone back. Let us go back to the old system if we do it that way. Unfortunately, you had to outshout others. If you can be clear on that, next time he cannot sit waiting for a chance, like the good lawyer he is. Some of us have learnt a bad practice of shouting here.

The Temporary Deputy Chairman (Hon. Patrick Mariru): For purposes of Hon. Otiende, what I was saying is that, whether he pressed on the point of order to speak or to raise a

point of order, his name does not appear on my screen on that intervention. Probably, my people need to check on that.

Hon. Members, having dispensed with Hon. Kioni's amendment, Hon. Mbui will have a stab at it. He has an amendment to Clause 9. You have the Floor.

Hon. Robert Mbui (Kathiani, WDM-K): I wish to say that mine does not have all those issues that have been raised by Hon. Kioni. Mine is a very simple one.

(Loud consultations)

Considering the mood of the House, I feel that this will be an exercise in futility. So, I feel I stand no chance against the Members. Ideally, mine was just to try and combine the monies that were proposed in the law. Instead of sharing them out to two parties on their own and the rest of the parties together, I said put it all together and let the parties share proportionately. I think that was really the import of my proposal.

I also said the issue of coalitions...

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Mbui, I want to be clear as the Chair. Are you moving or withdrawing? I heard you withdraw at some point. At some point I see like you are prosecuting your case. Where are we?

Hon. Robert Mbui (Kathiani, WDM-K): Hon. Temporary Deputy Chairman, you know there is no need to just withdraw without mentioning the import of why I had proposed this. That is what I was doing. I was just indicating the import of my proposed amendment.

(Loud consultations)

The Temporary Deputy Chairman (Hon. Patrick Mariru): You see, you are putting Hon. Mbui under too much pressure. Then you want to save the time if you are withdrawing.

Hon. Robert Mbui (Kathiani, WDM-K): There is no pressure. Under the pressure that is in this House and the condition I have seen, I think I will just withdraw that amendment and hope that we can make amendments to the actual Act so that we create some fairness in the sharing of the monies.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. The amendment by Hon. Mbui is marked as withdrawn.

(Proposed amendment by Hon. Robert Mbui withdrawn)

We have a third amendment by Hon. Osotsi. It is on the same clause. Hon. Osotsi, you have the Floor.

Hon. Godfrey Osotsi (Nominated, ANC): As I had said earlier, after consulting leaders of my coalition leadership here, I withdraw my amendment.

Just to say a few things, I had put in this amendment to correct the technical issues in the Bill.

(Loud consultations)

The technical issues are in terms of apportionment. They were talking about the National Assembly only yet we have the Senate and also the fact that we depend on the number of votes garnered in the preceding election.

Lastly, I have also noticed that the political parties which were supposed to benefit from this amendment are not even represented here. They are not here. So, I withdraw my amendment.

(Proposed amendment by Hon. Godfrey Osotsi withdrawn)

The Temporary Deputy Chairman (Hon. Patrick Mariru): In that case, the three amendments have fallen. I will put the global Question because all amendments under that clause have fallen.

(Clause 9 agreed to)

Clause 10

The Temporary Deputy Chairman (Hon. Patrick Mariru): We have an amendment by Hon. Godfrey Osotsi. You have an amendment to Clause 10, don't you?

Hon. Godfrey Osotsi (Nominated, ANC): Hon. Temporary Deputy Chairman, I have an amendment to Clause 10. The gist of this amendment is that it proposes that the special interest groups, that is, the youth, women, persons with disabilities and marginalised communities, shall benefit from funding.

(Hon. Aden Duale spoke off record)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Move the amendment then you explain yourself.

Hon. Godfrey Osotsi (Nominated, ANC): Hon. Temporary Deputy Chairman, I beg to move:

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

Amendment of
section 26 of

No. 11 of 2011. 10. Section 26(1) of the Political Parties Act, 2011 is amended by—

(a) deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) promoting the representation in Parliament and in the county assemblies of special interest groups through—

(i) civic education;

(ii) capacity building;

(iii) facilitating party candidates in campaigns;

(iv) publicity; and

(v) such other measures as may be approved by the Registrar.

(b) deleting the proviso and substituting therefor the following new proviso—

“Provided that for purposes of paragraph (a)—

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

The gist of this amendment is that this particular clause proposes that the special interest groups will benefit from civic education, capacity building, facilitation of party candidates in campaigns, publicity and such other measures as may be approved by the Registrar. My amendment is to ensure that persons who have already benefited in the way of representation in Parliament or county assemblies, shall not come later and demand to benefit from all these provisions listed here. For example, if I am a Woman Representative of some county and I have served for five years, I should not come back to say that I want to benefit again from capacity building, civic education and facilitation of party candidates in campaigns. That would be unfair. That applies also to the youth who are in Parliament or county assemblies. Once you have benefited, somehow, you do not benefit the second time. So, that is the gist of my amendment on Clause 10.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well.

(Question of the amendment proposed)

There seems to be no much interest to speak to that. Yes, Hon. (Dr.) Wilberforce Oundo.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Chairman, I am constrained to oppose this amendment for simple reasons: once you have given a political party the funds, it is again too much, cumbersome and onerous to go and dictate to them what to use that money for.

Secondly, assuming that a second-timer has no need for support, again it contradicts the whole essence of the amendment. I do believe that the amendment might have some merit, but the way it is framed is completely wrong. I stand to oppose.

The Temporary Deputy Chairman (Hon. Patrick Mariru): The Leader of Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, you know my history in this House and Hon. (Ms.) Odhiambo-Mabona Millie is the one who really understands. We need to look at every amendment. This amendment is basically saying that if you are a Member of Parliament you cannot be nominated. Forget the other stories.

The amendment seeks to ensure that the measure to be adopted in terms of new paragraph (a) shall only benefit a first-time candidate who is seeking election for the first time in Parliament or county assembly. This will, therefore, ensure that the person benefiting from the fund within the political party shall be entitled... We must refuse this one. The devil is in the details. That is why I want to ask Hon. John Mbadi and the rest that we reject and oppose it.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well.

(Hon. John Mbadi spoke off record)

I can see the Leader of Minority Party also wants to speak to this as well.

Hon. Member for Mathare.

Hon. Anthony Oluoch (Mathare, ODM): Thank you, Hon. Temporary Deputy Chairman. I am constrained to oppose this amendment for a very simple reason. The principle under which Hon. Amos Kimunya proposed that we shoot down the other amendment would apply here. I am a Member of the Committee and I was persuaded that our clause was good until a very important point was made that you cannot amend another substantive Act through an Act that you are introducing. For that reason and however meritorious the point that Hon. Godfrey Osotsi is bringing, it ought to come through the parent Act, which is the Political Parties Act. For that reason, I oppose.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Leader for Minority Party.

Hon. John Mbadi (Suba South, ODM): Hon. Temporary Deputy Chairman, in addition to what Hon. Anthony Oluoch has said regarding these amendments to various statutes which I do not think are necessary, I also want to add... The beginning of the amendment states that to promote representation of the marginalised groups, the parties are supposed to provide funding for civic education, capacity building, facilitating party candidates in campaigns, publicity and such other measures as may be approved by the Registrar. That makes sense and it is good. Even the law now requires that at least 30 per cent of the funding to political parties should be used in these marginalised groups.

However, if you look under paragraph (b) and more particularly part (ii), it says that a person shall benefit from the provisions of this paragraph where the person is seeking to be elected for his or her first term in Parliament. Why do you stop a party if it decides to fund a particular candidate? A party may feel that their candidate, say, in Suba requires support so that he or she can win that seat. But because that candidate is not contesting for the first time, the party will not give the funding. What kind of legislation is that? So, it does not make sense. That is why I am saying that making amendments to an Act of Parliament using other Acts sometimes becomes very untidy.

I oppose.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Let us have two other Members speak.

Hon. Daniel Rono has not spoken on this one.

(Hon. Jeremiah Kioni spoke off record)

Hon. Jeremiah Kioni, what are you saying? You will get a chance

Hon. Jeremiah Kioni (Ndaragwa, JP): Yes, but you are not doing it the right way.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order, Hon. Jeremiah Kioni! If you seek a chance to speak, you will be given a chance.

Hon. Daniel Rono, do you want to speak to this? You have registered interest.

Hon. Daniel Rono (Keiyo South, JP): Hon. Temporary Deputy Chairman, I had proposals on the previous ones and that is why my request kept flipping. Otherwise, I was unhappy with the selfishness that it was shot down. I stand guided.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Before I come to my left so that then we conclude, let us have Hon. Jeremiah Kioni.

Hon. Jeremiah Kioni (Ndaragwa, JP): Hon. Temporary Deputy Chairman, as a Chairman of a Committee, it is only fair that we give chance to Members who have different

views to allow them explain their views even if those views are not correct so that they go on record. However, it looks like you are bullying us from where you are. It is not something that...

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order, Hon. Jeremiah Kioni! You have the Floor. Please, speak to this. You definitely have the Floor.

Hon. Jeremiah Kioni (Ndaragwa, JP): Hon. Temporary Deputy Chairman, I will tell you and I want to speak to the previous one.

This amendment by Hon. Godfrey Osotsi, even if we had another as a Committee, maybe, he was not able to phrase it properly. The intention was to ensure that as many persons as possible with special interests are helped in campaigns so that they can learn how to do things. However, when you start saying that it is only one person who should be helped for two, three or four times, then you are not widening the space for these persons with special interests. Maybe how he captured the wording is what is wrong.

We had the same issue under Clause 9 which has been shot down. But the intention of that amendment was not to stop a person from running for a political sit. Once you have been facilitated by the party and you come to Parliament, you should have learnt the ropes. Go and do it. Let us facilitate another one with special interest so that we can see whether he can also come to Parliament. What are we trying to do eventually? We are trying to increase the population of persons with special interests in Parliament without bringing them through the backdoor. It is important that we know that. It is just a matter of time...

We are in big parties, but how many of these big parties are able to bring persons with disabilities, women or minority groups to Parliament? If we can widen the scope, we would have more of them in Parliament. However, if we do not want them in Parliament, then the essence of these amendments would not make sense. It is important for us to have it on record. I know when we come to campaigning, you will hear people saying that they want persons with this and that. I wanted to mention that but I see a problem with the wording of Hon. Osotsi's amendment.

(*Hon. Aden Duale spoke off record*)

Wewe, you speak 90 per cent of the time in Parliament. *Mtu akisimama hapa* you are still speaking.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Proceed, Hon. Kioni.

Hon. Jeremiah Kioni (Ndaragwa, JP): I just wanted to clarify that and I have no problem. If the Bill will be shot down by Parliament, *si mimi, ni nyinyi!*

The Temporary Deputy Chairman (Hon. Patrick Mariru): Can we make progress on this. The House should rule on this. Last, we will have Hon. Oduol then the House will make a decision.

Hon. (Prof.) Jacqueline Oduol (Nominated, ODM): Thank you, Hon. Temporary Deputy Chairman. I am constrained as well to oppose this amendment. I am concerned by the meaning we are giving special interest groups and the marginalised. We are not only misleading the House but a number of other people as well. I am a nominated Member; there is a sense that one will think that it is a special interest category. When we make laws like what this amendment is seeking to do, we will be micromanaging what political parties do programmatically. When we approach political parties as if they are not, by themselves, constitutional and organised to recognise the different categories of persons who are participating, it becomes a challenge. My major reason for opposing is that it does not seem to make sense. You are telling political parties that there will be marginalisation and need to support only at a particular time. What we need to

understand is that there are structural and situational contexts that political parties need to be aware of. They range from age, disability and minorities to geographical location. I oppose this amendment and encourage us, as we debate, that we need to have more sense and agreement on what we are calling special interest groups and marginalised groups.

Political parties that have small number of members are not marginalised. They just need to work on their ideology. Political parties do not need to be given money to talk about their ideology. They need to define it and sell it. They can sell it to women, men, persons with disabilities and to others. I oppose the amendment.

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

(Clause 10 agreed to)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Osotsi did not vote on this one.

(Clause 11 agreed to)

Clause 12

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Kioni has an amendment.

Hon. Jeremiah Kioni (Ndaragwa, JP): Hon. Temporary Deputy Chairman, I beg to move:

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

It is a typo thing. It is written “sections” instead of “section.” We are removing the “s” because it is one section.

(Question of the amendment proposed)

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

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

(Clause 12 as amended agreed to)

Clause 13

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Kioni, you have an amendment?

Hon. Jeremiah Kioni (Ndaragwa, JP): Yes, Hon. Temporary Deputy Chairman. I beg to move:

THAT, the Bill be amended by deleting clause 13.
We thought that this is close to micromanaging political parties.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Hon. Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): On this one, the Chair has seen the light of the day. You know this fund belongs to political parties. There is no fund for special groups and nominated MPs. The fund is supposed to be a kitty for political parties, then political parties will find a way of doing civic education within their parties to entice special groups and their interests. So, I am happy we are not micromanaging political parties. I support the deletion.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. I wish to oppose this one. If you noticed, when we moved Clause 9 as Hon. Mbadi said, he brought poison with medicine. That made it difficult because it provided for representation of women and ensures that we have more women through political parties. As we are increasingly seeing these amendments go, anything that has to do with special interests – which covers also women – we are quick to dismiss and yet political parties have no clear formula of doing this. I have now been elected twice and there is no formula in my own party of supporting me as a woman with all the challenges that we face. For me, even though I know I will be the minority on this one, I do not support.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, can I put the Question on this?

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

(Clause 13 deleted)

(Clause 14 agreed to)

(Clause 15 and 16 agreed to)

Clause 17

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Kioni, you have an amendment?

Hon. Jeremiah Kioni (Ndaragwa, JP): Yes, Hon. Temporary Deputy Chairman. I beg to move:

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

It is to bring the special interest groups.

(Question of the amendment proposed)

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

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

(*Clause 17 as amended agreed to)*

Clause 18

The Temporary Deputy Chairman (Hon. Patrick Mariru): we have two amendments by Hon. Kioni and Hon. Osotsi. We will start with Hon. Kioni's.

Hon. Jeremiah Kioni (Ndaragwa, JP): Hon. Temporary Deputy Chairman. I beg to move:

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

“(b) inserting the following new subsections immediately after subsection (1)

(2) A political party shall submit the party list under subsection (1) together with a statutory declaration signed by the person authorised to certify that the candidates were nominated by the party and the minutes of the approval of the list by the election board of the political party.

(3) The Commission shall publish the party lists submitted under subsection (1) in formats that are accessible to the special interest groups in line with the established timelines.”

Hon. Temporary Deputy Chairman, the purpose of this amendment is to make sure that we deny—and I want to use this word so that Hon. Mbadi can respond quickly—just two people to make a decision on who benefits from nominations and such, so that you have a board that meets, has minutes and is able to consult widely. We are moving the responsibility from just one person, like Hon. Junet, deciding. So, if you want an individual to decide, you can oppose this amendment. But if you want the whole party to be involved in nominating persons, support the amendment, so that you do not bring your girlfriends here.

(*Question of the amendment proposed*)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have the Leader of the Majority Party and then the Leader of the Minority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Chair, there is nothing wrong if you propose your girlfriend. She is a Kenyan. And there must be a reason. But let me oppose this amendment on one ground.

(*Hon. Junet Nuh spoke off record*)

What Hon. Junet is saying is unparliamentary, so I will not repeat it. I can be thrown out.

What Hon. Kioni is trying to do, I do not know whether he wants to join these special interest groups. He is creating special places for them. The Independent Electoral and Boundaries Commission (IEBC) is already doing what he is proposing. Forty-five days to

elections, IEBC publishes the lists. It is in the Act. And every party has a leadership hierarchy, and whatever nomination lists they propose are based on regional, gender, ethnic and religious considerations. So, this amendment is meant to micromanage political parties. I oppose. These are administrative provisions which are found within political parties' constitutions. We cannot put what is in our parties' constitutions and manifestoes into law. I oppose. And let the House oppose it.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have the Leader of the Minority Party.

(Hon. Aden Duale and Hon. Jeremiah Kioni consulted loudly)

Hon. John Mbadi (Suba South, ODM): Hon. Temporary Deputy Chairman, I wish the Leader of the Majority Party and the Chairman could give me time. First, at times those of us who have experience in managing political parties understand some of these issues better. Let us not over-supervise political parties. Each political party has its constitution on how to do nominations and prepare party lists and submit to the IEBC. If a political party does not follow the provisions of its constitution, then definitely the IEBC will not accept the lists. Let us also understand that a political party is a club. You join it when you want and you leave when you want. If you feel that a political party is not treating you well, you have the liberty and the option to leave.

Finally, the reason I oppose this amendment, let us not be obsessed with this idea of boards and committees. In fact, ODM has a committee we set in place to do nominations and prepare the party list and give it to us. The problems we encountered were not from the one man you are talking about but from some of the membership of the people we gave that responsibility. So, the process is as good as the people you put in charge; it is as good as the leadership of that party. I will tell you: parties mature. As we speak, ODM has reached a point that, even if you were to fault the Members we nominated to this House, you will agree with me that we did justice to the membership of the party. We brought people who can represent the interest of the party and the interest of the special interest groups. We have Hon. Sossion, Hon. (Prof.) Jacqueline Oduol and Hon. Dennitah Ghati. We have people who are actually representing the various special interest groups. So, let us not look at political party officials as criminals. We are not. Political party officials are not criminals. We are responsible Kenyans.

Thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Patrick Mariru): I will give you opportunity Hon. Junet but not before Hon. Tong'i speaks. Hon. Tong'i, please.

Hon. Richard Tong'i (Nyaribari Chache, JP): Thank you, Hon. Temporary Deputy Chairman. I have listened keenly to what my seniors have said about the amendment, but a majority of Members will agree with me that the lists which have been given containing names of people who are supposed to be nominated have not in all cases worked in the interest of the country. I know of cases where we have given proposals on people who should be nominated but we end up with a different list altogether at the time of nominations. So, I would wish, even if we do not amend in the way Hon. Kioni proposes, we get a list which is firmed up in law and sent to the IEBC, so that party members who have already been proposed, in the order of merit, will be given the opportunity and not to be short-changed at the last minute, which has been the case in the past. Otherwise, we kill the parties. That is how we have created opportunities for small parties to come up and fill the gap which has been created by big parties which have always

given priority to big communities to the disadvantage of small communities. So, the lists of proposed nominees should be publicised and the order in which the names are listed should be followed as per the law in Kenya. If the order is not followed, then we should be given an opportunity to go to court and challenge that list.

I support the amendment, with that proposal in mind.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Junet.

Hon. Junet Nuh (Suna East, ODM): Hon. Temporary Deputy Chairman, in the interest of time, the issue is very clear. We do not need to micromanage political parties on how they nominate their people. Every person who has been nominated to this House has a role he or she has played in his or her political party, including a girlfriend. Everybody has a role to play in a political party. So, do not be bothered about that. Let political parties do their nominations. By the way, the Chair, in his amendment, is proposing that we use party election boards. All political parties have election boards. The boards are the bodies which conduct nominations. In the end, the one person that you fear is the same person who decides even after the board has done its work. So, do not waste your time with amendments here. That one person will decide all the time. I can guarantee you that.

Thank you so much.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): Thank you, Hon. Temporary Deputy Chairman. I will oppose this on principle. It is a trend I am seeing here and in other pieces of legislation. We are creating legislative confusion, because when we legislate on one matter, we look at all the other Acts and want to include them in the particular Act we are amending. In the end, what will happen is that when the Registrar of Political Parties will have about four laws to look at. Did they follow their own laws as a political party? What about the special interest laws? What about the Political Parties Act? It will just be confusion. So, I think we should limit the amendments, so that when we are amending one law, we stick to it. If you want to amend other laws, do so separately.

I oppose this.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Cheptumo.

Hon. William Cheptumo (Baringo North, JP): Thank you, Hon. Temporary Deputy Chairman. I stand to oppose this amendment. The mischief that Hon. Kioni is trying to address is the fear that the process of nominations is abused. But if you look at what we recently put in law, before the 2017 elections the names of people to be nominated were actually submitted after elections. But that mischief was addressed, because now political parties are supposed to submit the names before elections. That is part of the way we have been able to deal with the mischief that Hon. Kioni is trying to address.

Secondly, I want to agree with the sentiments by Members. Whether you have an election board or a committee to look at these issues, ultimately the leadership will take the lead in terms of determining who should be nominated. Nominated Members have certain roles they play in their respective parties. They assist the party in terms of campaigns and so on. I do not think the business of girlfriends, boyfriends and so on is a major issue. What is important for us is to ensure that we allow political parties to deal with their issues because they are internal matters. Political parties are now becoming serious in ensuring that those nominated are able to serve the interests of the parties. I think this mischief has already been addressed.

I oppose.

(Loud consultations)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order, Members! Can we make progress? Quite a number of Members have spoken to this amendment. Let us have a minute each so that we make progress. Let me also give Hon. Millie a minute then we make progress.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I actually understand what Hon. Jeremiah Kioni is trying to do. It is the way he phrased it that does not deal with the issue.

The reason I am saying this is because in the last Parliament we formed a panel of Members of Parliament specifically for nominating MCAs. One Member in my county nominated everyone yet we sat and actually came up with a list which is in law, and as was provided for in our party constitution. So, when a person violates the law, what is the option that is available and yet they go ahead and serve their term? This term something similar almost happened. I know one constituency - I think it is Hon. Obara's or Hon. Lilian Gogo's - that came up with absolutely no one. This, again, was because people meddled with the process of coming up with the list. I know that the Member has a very valid reason for bringing this amendment but it is, perhaps, the way he has framed it that is not right. We need to find a way of dealing with situations where individuals want to hog the whole list by bringing their sisters, brothers, aunties and stuff like that.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Baya has not spoken. I will give him a minute so that we make progress.

Hon. Owen Baya (Kilifi North, ODM): I would like to support the amendment. I actually want to ride on what Hon. Millie has said. The problem is not even at the National Assembly. Here, we have quality nominations being done. I think the process is okay. However, there is a problem at the county assemblies. In Kilifi County, the people who were nominated by my party, ODM, which I respect, came from other places.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Your time is up.

Hon. Owen Baya (Kilifi North, ODM): I hear you, Hon Temporary Deputy Chairman. We need to regulate the nomination process. The spirit in which Hon. Jeremiah Kioni brings this amendment is good.

Hon. Aden Duale (Garissa Township, JP): On a point of order!

The Temporary Deputy Chairman (Hon. Patrick Mariru): What is out of order, Leader of the Majority Party?

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, we cannot solve parties' internal disputes on the Floor of this House. We are dealing with legislation. If you were short-changed in Kilifi, that is your problem. Talk to the amendment on the party list. If the people nominated were from outside, then it means you were sleeping. The people nominated by the Jubilee Party in Garissa were a result of consultation within the party leadership.

The Temporary Deputy Chairman (Hon. Patrick Mariru): What Hon. Baya is doing is to prosecute his case through a longer route.

Hon. Owen Baya (Kilifi North, ODM): I want to stand with Hon. Jeremiah Kioni. This is a valid amendment. We should support it so that we kill cartels within parties.

Thank you.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, we must make process.

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

With that decision on Hon. Kioni's amendment, we also have an amendment by Hon. Osotsi, which is still on Clause 18.

Hon. Godfrey Osotsi (Nominated, ANC): Hon Temporary Deputy Chairman, I beg to move:

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

The gist of this amendment is basically to try and sort out the challenge noted in Clause 18. It says that there would be a statutory declaration signed by the person authorised to certify that the candidates were nominated by the party, and production of minutes of approval of the list by the party election board. That particular part and the minutes of approval of the list of the party election board, is what I am seeking to amend. This is because parties have constitutions. So, the process of nomination is clearly specified in a party's constitution.

Secondly, before the nomination process the IEBC, which is mandated by law under the Election Act, usually issues regulations which guide the process. So, my amendment is to bring to light the issue that, that process should be done according to the prescribed regulation and party constitution. This is so that it helps us in dealing with the issues that the Members have raised on amendment by Hon. Kioni.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Anthony, Member for Mathare.

Hon. Anthony Oluoch (Mathare, ODM): Hon Temporary Deputy Chairman, I support this amendment for the same reasons for supporting the amendments made by the Chair, the spirit of which is to cure the mischief of persons changing nomination lists which have already been decided on. What Hon. Osotsi has done is to navigate away from the Members' concern about micromanaging political parties and saying, therefore, that we do this in accordance with a party's constitution. In the constitution, there are regulations. There will be the prescribed form, which is what the Chair was trying to bring out, and the authorised person.

I have practised a lot in the Political Parties Disputes Tribunal. A lot of complaints that get there are about unauthorised persons sending lists to countermand the ones already sent, and another person sending a list to cancel the other person's list. So, if we go by that amendment, we will have accommodated political parties without constraining them or micromanaging them and taking care of the mischief which Hon. Kioni and the Committee, where I sit, is trying to deal with.

I, therefore, support Hon. Osotsi's amendment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon Temporary Deputy Chairman, these amendments seek to ensure that political parties are left to make their own determination on how they should conduct their meetings and reach their decisions in relation to submission of party lists. This is administrative and is found in the parties' constitutions. We cannot legislate on such aspects. This is an administrative matter.

Secondly, this is even found in the Political Parties Act No.11 of 2011. I will raise it in the House Business Committee tonight. Our legal team must always look at the relevant existing Acts before they approve an amendment for a Member. Hon. Osotsi's amendment is about a situation where one is nominated by a party to sit in Parliament and then mid-term, he goes against the interests of the party. He wants us to amend the law so that a party does not remove such Member from the House. We want party discipline. So, I tell Hon. Osotsi that these are matters you will find within ODM and Jubilee Party constitutions. Let us not over-legislate. Please, I beg you to withdraw the amendment because it is not in the interest of political parties. What you are trying to tell us is we must provide minutes which are already there.

(Loud consultations)

Basically, he is doing that. Hon. Millie, listen to me. I have taken a lot of time in scrutinising amendments. It says that Clause 18 of the Bill be amended in Paragraph (b) by deleting the words "and minutes of the approval of the list by the party election board" appearing in the proposed new Subsection (2) and substitute therefore the words "in accordance with the prescribed regulations and the relevant constitution of the party."

Initially, you were talking about minutes of the party and you are referring to the constitution of the party. What are you actually doing? You are legislating on a party matter, things which are found in the Constitution. Therefore, in my reading, this is about a party's internal matters. These are its minutes and constitutions. We should not bring it to a law on special interest.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Hon. Oundo. Hon. Osotsi I will give the final stab being your amendment.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Chairman, thank you. It is a bit confusing again. We have literally dropped all the amendments proposed by the Chair of the Committee. His amendment has been lost in respect of that particular clause. Again, bringing these amendments is to me taking us to uncharted territories. Hon. Osotsi is my very good friend. However, I want him to appreciate that the Registrar of Political Parties and the IEBC would already be seized with the constitution of that party, decision-making process of that party and, therefore, we are literally overburdening the legislative framework or process in respect of this matter.

Personally, I come from a county where we suffered so much. We got wrong people, flower girls and people who did not even support the party but we swallowed it and accepted and moved on. We are hoping that the next time we go for nominations or preparing the party list, we will get the right people who support the party. Purely on a matter of principle, I ask for forgiveness because I have to oppose but I stand to oppose this amendment.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Yes, Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you Hon. Temporary Deputy Chairman. I would want members to listen to me keenly. If you look to what Hon. Osotsi is doing, he is deleting- if you look at the proposed amendments in Clause 18, it says:

- “Section 35 of the Elections Act, 2011 is amended by-
- (a) renumbering the existing provision as subsection (1);
 - (b) inserting the following new subsection immediately after (1)-
- (2) The party list shall be submitted together with a statutory declaration signed by the person authorised to certify that the candidates were nominated by the party and minutes of the approval of the list by the party’s election board.”

Therefore, what he is basically doing is that he is saying that instead of micromanaging the party and telling the party to bring minutes, then scale it up and say “use the party constitution or regulations.” However, if we are to go by what Hon. Duale is saying, then we need to reject Hon. Osotsi’s and reject the main one. However, if we do not reject the main one, then what Hon. Osotsi is doing is actually enriching this one. Based on the psyche and argument that has been espoused in this House, we are basically saying we do not want to micromanage parties. However, if you tell a party to bring minutes of its election board, how much micromanagement is that other than telling them to follow their constitution? I think telling people to follow their constitution is less of a micromanagement than telling them to bring minutes. Therefore, if we are not dropping this main one, I think Osotsi’s amendment is valid.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Hon. Kioni.

Hon. Jeremiah Kioni (Ndaragwa, JP): Thank you, Hon. Temporary Deputy Chairman. I think this amendment is actually improving the quality of what we were doing and I would want to support it and ask that Members also support it. We may be seen to be over-legislating. I want to say that there was an aspect of that when we were making this Bill. This has been one of the very difficult Bills to come up with and we have consulted widely. I hear Members and I can tell you this will come to haunt you later. I think I want to support that amendment because of the many reasons including what *Mheshimiwa* Millie has said that it helps to... Why do you not want to do it as per your constitution?

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Why do we not give Hon. Osotsi the final stab on this?

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Hon. Oundo what is out of order?

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Chairman, reading the amendment that was dropped or was lost, the one proposed by the Committee says that we drop paragraph (b) and substitute it with a new paragraph. Therefore, essentially, what have we done? We have deleted. The amendment calling for the deletion has been lost by having voted to reject the (b) that had been proposed by *Mheshimiwa* Kioni in respect of Clause 18. I suppose that is where we are.

The Temporary Deputy Chairman (Hon. Patrick Mariru): So, what is the issue Hon. (Dr.) Oundo?

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Therefore, what are we doing? If the first amendment is lost, can you proceed to do the next amendment? I just want to...

The Temporary Deputy Chairman (Hon. Patrick Mariru): You know, Hon. (Dr.) Oundo, I appreciate your quagmire but look, Hon. Kioni’s amendment fell. It, therefore, means,

what is in the Bill remains. That is why Hon. Osotsi got back to the *status quo*. What is now in the Bill is what Hon. Osotsi is dealing with and, therefore, it is in concurrence. It is going on well. Therefore, if Hon. Kioni's passed, it would have been a different matter. Therefore, Hon. Osotsi, why do you not have the final stab on this?

Hon. Godfrey Osotsi (Nominated, NC): Actually, Hon. Millie has brought out very precisely about the gist of my amendment. I think my amendment removes that micromanagement of political parties and ensures that parties follow their constitutions because constitutions of parties differ. There are some constitutions that talk about an election board and others rely on the National Executive Committee to make a decision on the issue of nomination. Others can even go further and seek ratification of the national governing council. Therefore, we cannot restrict political parties to the national election board alone knowing very well that it is a very junior body in the structure of political parties.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well.

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

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

(Clause 18 as amended agreed to)

(Clause 19 agreed to)

Clause 20

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Kioni, are you proposing a deletion of that clause?

Hon. Jeremiah Kioni (Ndaragwa, JP): Do I now need to say it now that you have said it? Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting Clause 20.

The Temporary Deputy Chairman (Hon. Patrick Mariru): What is more critical now is for the Members to see what the import of what you are deleting is.

Hon. Jeremiah Kioni (Ndaragwa, JP): I think we have covered it elsewhere and we thought it was a repetition of what we have already provided for. It is again the same issue of micromanaging. We are saying that telling political parties to avail funds for the special interest groups would be a problem. Therefore, I propose we delete.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, I stand to oppose. If you listen to the language that has been consistent when you are talking about special interest groups, we talk about micromanagement.

Hon. Temporary Deputy Chairman, the Constitution states that the Government shall take measures to ensure representation of women and persons with disabilities, including taking steps

on affirmative action. The taking of affirmative action steps, even by parties, does not amount to micromanagement.

Therefore, I urge Hon. Kioni that it cannot be too much to expect parties to put in some funds to promote women, persons with disabilities and minorities within their parties. If that was not the case, look at this House, how many women have come here through single constituencies? How many people have come here as persons with disabilities? That is our reality and we must deal with it. As of now, the representation of special interest groups is still very low and very poor. We need to take measures and these are such measures. This is only about media coverage. Even the parties can decide that our media coverage is on the website that we are talking about.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Oluoch.

Hon. Anthony Oluoch (Mathare, ODM): Hon. Temporary Deputy Chairman, I believe this matter came up during the Second Reading. The category of persons called special interest groups covers youth, women, persons with disabilities and the marginalised. The concern here is that Members will be legislating to give advantage to their competitors, that is, access to the media. Then, to what extent and how much? People will be taken to court by persons in that category that they need to be paid to be on primetime news on *KTN* or *Citizen Television*. The reasons were very valid and the records on the *Hansard* clearly indicate that Members are very conscious that they would be placing an uneven ground during election for their competitors. It is for such reasons that we have proposed its deletion.

I support the amendment by the Chairman.

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): What is out of order in this House?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Chairman, even though I do not want to interrupt my very good young brother, Hon. Antony Oluoch, is he in order to mislead the House that giving an undue advantage where it regards special interest is discriminatory? The Constitution encourages positive discrimination. It is constitutional. So, is he in order to mislead the House when we know that positive discrimination is constitutional? The Constitution allows my party to discriminate against you.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Hon. Oluoch seems to have agreed with you to that extent. What is the intervention, Hon. Kioni? Okay, we will now move faster.

Let us have Hon. Osotsi and Hon. (Dr.) Oundo a minute each and then the House will make a decision.

Hon. Godfrey Osotsi (Nominated, ANC): I support this amendment because this particular clause is repetitive. It seems to be repeating Clause 10, which talks about promoting representation in Parliament and in county assemblies of special interest groups through civic education, capacity building, facilitating party candidates in campaign and publicity. Media coverage is part of publicity. It is repetitive. It has already been covered under Clause 10.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Hon. (Dr.) Oundo.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Chairman, I also support the deletion as Hon. Oluoch has stated. The electioneering process begins when a candidate expresses interest. It should be discriminatory. Here it is repetitive. I urge Hon. Millie Odhiambo to accept that we delete. I wish all the special interest Members in this House had the

same passion like she has, to sit here for long hours. We have so many of them who are nowhere to be seen.

I thank you.

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

(Clause 20 deleted)

Clause 21

Hon. Jeremiah Kioni (Ndaragwa, JP): Hon. Temporary Deputy Chairman, I beg to move:

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

We are deleting the word “free.” We do not want to say that parties should provide free access to parties. Again, it is for the same reasons that we have adduced for the other clause.

(Question of the amendment proposed)

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

(Clause 21as amended agreed to)

(Clauses 22, 23 and 24 agreed to)

New Clause 16A

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Kioni, please move.

Hon. Jeremiah Kioni (Ndaragwa, JP) Hon. Temporary Deputy Chairman, I beg to move:

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

Amendment of
section 2 of No. 24
of 2011.
the

16A. Section 2 of the Elections Act, 2011 is amended by inserting

following new definition in its proper alphabetical sequence –
“special interest groups” means the following groups specified under Article 100 of the Constitution –
(a) women;
(b) persons with disabilities;
(c) youth;
(d) ethnic and other minorities; and,

(e) marginalised communities.

The import of this is to bring the definition of “special interest groups” as provided for under Article 100 of the Constitution, which includes women, persons with disabilities, youth, ethnic and other minorities and marginalised communities. A couple of provisions in the Bill presented difficulties because we had the same kind of debate in our meetings.

Secondly, those who were supposed to benefit from the provisions are the ones who left. The ones who are here are the ones who have continued hogging for everything. They are still doing the same thing. While we still have some gains through this Bill, we would have made much better progress if the marginalised, minorities and persons with disabilities had remained in the House. What Millie was talking about towards the end is the spirit of this Bill. In some of the areas, it appeared like we were overdoing it. However, if we do not do some of these things, the groups that we are trying to cater for will continue being discriminated and kept out of the electoral process. I hope at one time we will allow ourselves not to become too academic. When you want to take away from others, you do much of what I have seen on the Floor.

I agree it is the House that has done those deletions. I thought I should put that on record. If the persons covered under Article 100 were in this House, they would have understood what we were trying to do. If they had also paid attention to what the Bill is all about... There is a lot of trying to legislate simply because the Bill is on the Floor. That is a very dangerous thing to do.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): We will have two Members, and then we can make progress. Hon. Millie.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. I wish to support Hon. Jeremiah Kioni and agree with him. Indeed, if you are serious as a country in ensuring that we have special interest groups represented, then we need to clarify who they are. We need to also put measures in place which would include monetary provision.

It is sad that we have dropped a lot of the provisions that are monetary in nature. I only wish that he had provided a category that we do not think about, which is the intersex category. A lot of people do not understand what that is. Many of them are people who were born with two gender organs and they do not know which gender they belong to. They are mistreated. For purposes of parties, if they were to vie, they do not know where they belong. They ought to have been included.

Finally, I am happy to say that I belong to all these categories. I am a woman. In some countries, I heard they were saying that women with no children are persons with disabilities. Then, I am a youth at heart. I belong to a minority community of the Suba. We are also marginalised in Suba. So, who am I to complain if we are represented in all those categories? I am just not an intersex person.

The Temporary Deputy Chairman (Hon. Patrick Mariru): I do not know which country those without children are considered as people with disabilities. That is interesting. Next is Hon. Oluoch.

Hon. Anthony Oluoch (Mathare, ODM): Hon. Temporary Deputy Chairman, I support this for the simple reason that Article 100 of the Constitution outlines who belongs to special interest groups. It will be neat, for purposes of proper legislation, to align all the laws that we have to these specific ones up to where this one ends, and not the other ones that have been alluded to by Hon. Millie. We had not provided legislation for Article 100 of the Constitution. For the Elections Act and all the other Acts that have been inconsistent in terms of the wordings of those categories, it is proper and in order that we clearly define and delineate who the special interest groups are.

I, therefore, support.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have Hon Oundo, then Hon. Osotsi.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Chairman, I support the amendment in view of the fact that it complies with Article 100 of the Constitution of Kenya, but I am left wondering. One, I am not so sure whether women, being the majority in this country, still constitute a special interest group. They are probably a special interest group in the sense that they are a domineering interest group. In that case, we then allow it to go.

Secondly, on the issue of ethnic and other minorities, I keep stating and I have no apologies to make, that it is a matter of choice because the process of increasing your number is very well known and documented. Finally, I want to reiterate and I want to sympathise with Hon. Kioni...

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): On a point of information, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order, Hon. Millie! Who do you want to inform? You want to inform Hon. Oundo. Hon. Oundo, do you want that piece of information? It looks like it may be helpful.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Chairman, with due respect, I request that my senior colleague in Parliament should not inform me. Let me prosecute my case and complete it. She will have a chance to contribute.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Millie, you can give the information over a cup of tea.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Precisely.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Oundo, just finalise.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): I was just concluding. I sympathise with Hon. Kioni, the Chair of the Committee. He is struggling to legislate for an uninterested group of people. We have 349 Members of Parliament. We have a large number of them who purport to be youth. We have a large number of them who are women and yet if you look around, you can only just see a droplet of those special groups. I hope we are not wasting legislative time, but truly doing something. I hope they will get a bit of interest.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have Hon. Osotsi. Please speak to the amendment specifically.

Hon. Godfrey Osotsi (Nominated, ANC): Hon. Temporary Deputy Chairman, I support that amendment. It is basically bringing clarity to the Elections Act as to the definition of "special interest groups". If I may take you back, if you look at Clause 10, which we have

already handled - and I know we are not going back there because of procedure - we had said that the five categories of people will benefit from civic education, capacity building, facilitation during campaigns, publicity and any other such measures that may be approved by the House. For instance, people who are in this House like Hon. ole Sankok and others, who are in this group, will still go back to their parties for funding to do all these things. That is why my amendment was giving a provision to say that if you have benefited by presenting...

The Temporary Deputy Chairman (Hon. Patrick Mariru): Do not take us back there, Hon. Osotsi.

Hon. Godfrey Osotsi (Nominated, ANC): I am not taking you back, but I am just informing the House that probably at some point, we may need to relook at this provision under Clause 10. It is going to be discriminatory and yet this Bill is supposed to remove that discrimination under Article 100 of the Constitution.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Finally, let us have Hon. Oduol.

Hon. (Prof.) Jacqueline Oduol (Nominated, ODM): Thank you, Hon. Temporary Deputy Chairman. I support this amendment, but with reservations. As I support, I take the opportunity to draw the attention of the House to the critical challenge where, as we list the categories that we are going to put here, we have put women as a category. We give the impression that we do not have women in the youth, people with disabilities and the minorities. As I look at this, I have a heavy heart because I find it extremely challenging that I am seated here as a nominated Member that has come under the quota of women in the ODM Party by which case I represent the entire political party of ODM. When I sit here, and I speak on issues of the Committee of the whole House, I do not really think it is right that we would be looking at numbers. Every Member of Parliament here is representing a constituency that has very many numbers and they, by their single presence, are Members of Parliament.

I had sought to come on a point of order and I would like my colleague, Hon. Oundo, to note that it is really one of the greatest challenges that led us to introduce a requirement in the Constitution that we do not bring cultural lenses that would seem to reduce and demean those in Parliament. I do not think it is right for us, as we deal with legislation in the Committee of the whole House, to burden female Members of Parliament, even if they are not representing the interest of women, and instead of dealing with the amendment, continue making it look like they are not here.

I, therefore, support this amendment, but with reservations. As I had said earlier, the manner that we are using special interest groups is suspect. I hope as we continue, because we have room to continually and to later on do the amendment, we will later address this, so that we can see that women are not a category of their own since we have youth who have girls and we have all the other categories.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Oduol, I agree with you and I would like to affirm what you have just said that in this House, whether the Member is nominated or whichever route they got here, they are Members of the House. There is no Member who is lesser or more than the other. I affirm that.

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

(The new clause was read a Second Time)

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

(*First and Second Schedules agreed to*)

Clause 2

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Jeremiah Kioni, you have an amendment to Clause 2.

Hon. Jeremiah Kioni (Ndaragwa, JP): Hon. Temporary Deputy Chairman, I beg to move:

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

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

In Clause 2(c), we had included the mandate of the National Gender and Equality Commission (NGEC) and that mandate was going to interfere with the mandate of the IEBC.

(*Question proposed*)

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

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

(*Clause 2 as amended agreed to*)

(*Title agreed to*)

(*Clause 1 agreed to*)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Mover of the Bill.

Hon. Jeremiah Kioni (Ndaragwa, JP): Hon. Temporary Deputy Chairman, before I move, let me remind the good professor that the number of people she was nominated to represent do not matter. She has only one vote.

I beg to move that the Committee do report to the House its consideration of the Representation of Special Interest Groups Laws (Amendment) Bill (National Assembly Bill No.52 of 2019) and its approval thereof with amendments.

(*Question put and agreed to*)

(*The House resumed*)

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

REPORTS

THE PRESIDENT'S RESERVATIONS ON THE LAW OF CONTRACT (AMENDMENT) BILL

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Members, can we have the Chairperson to move reporting?

Hon. Patrick Mariru (Laikipia West, JP): Hon. Deputy Speaker, I beg to report that a Committee of the whole House has considered the President's Reservations to the Law of Contract (Amendment) Bill (National Assembly Bill No.1 of 2019) and approved the same without amendments.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Can we have the Mover to move the agreement with the Report?

Hon. Benjamin Washiali (Mumias East, JP): Hon. Deputy Speaker, I beg to move that the House do agree with the Committee in the said Report. I also request Hon. William Cheptumo to second the Motion for agreement with the Report of the Committee of the whole House.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. William Cheptumo, use the next microphone.

Hon. William Cheptumo (Baringo North, JP): Hon. Deputy Speaker, I second.

(An Hon. Member stood in her place)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Order, Hon. Member.

(Question proposed)

Hon. Members, I am not in a position to put the Question pursuant to the provisions of our Standing Orders. Therefore, I will defer putting the Question on the President's Reservations to the Law of Contract (Amendment) Bill (National Assembly Bill No.1 of 2019).

(Putting of the Question deferred)

Let us go to the next one.

THE REPRESENTATION OF SPECIAL INTEREST GROUPS LAWS (AMENDMENT) BILL

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): We are on the Representation of Special Interest Groups Laws (Amendment) Bill (National Assembly Bill No.52 of 2019), Chairperson.

Hon. Patrick Mariru (Laikipia West, JP): Hon. Deputy Speaker, I beg to report that the Committee of the whole House has considered the Representation of Special Interest Groups

Laws (Amendment) Bill (National Assembly Bill No.52 of 2019) and approved the same with amendments.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well, Hon. Patrick Mariru. Can we have the Mover of the Bill to move agreement of the Report? Hon. Jeremiah Kioni.

Hon. Jeremiah Kioni (Ndaragwa, JP): Thank you, Hon. Temporary Deputy Speaker. I beg to move that the House do agree with the Committee on the said Report. I ask Hon. Anthony Oluoch to second the Motion for agreement with the Report of the Committee of the whole House.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Anthony Oluoch, Member for Mathare, please, second.

Hon. Anthony Oluoch (Mathare, ODM): Hon. Deputy Speaker, I second.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Members, again, cognisant of our Standing Orders, I am not in a position to move to the next step. Therefore, I order the next step of the Bill be done at the next opportune time when it appears on the Order Paper.

(Putting of the Question deferred)

Next Order.

MOTION

ADOPTION OF ANNUAL REPORTS ON STATE OF JUDICIARY

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Chairperson of the Departmental Committee on Justice and Legal Affairs, to move the Motion.

Hon. William Cheptumo (Baringo North, JP): Hon. Deputy Speaker, I beg to move the following Motion:

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

Hon. Temporary Deputy Speaker, the Annual State of the Judiciary and Administration of Justice Report is prepared pursuant to Section 5(2)(b) of the Judicial Service Act of 2011, which requires the Chief Justice to submit to Parliament a report on the state of the Judiciary and administration of justice for consideration and adoption by this House. The Departmental Committee on Justice and Legal Affairs considered the Report and it is now before the House for consideration and finally, adoption.

The two reports for 2016/ 2017 and 2017/2018 were considered by the Committee concurrently, in order to save time, resources and avoid duplication of efforts. As I move this

Motion, I will capture what is contained in the two reports in summary, so that Members can contribute more. We have tabled the reports before the House which are already in the Table Office. I believe Members had the time to secure copies and understand the entire reports because they are very exhaustive with a number of chapters.

In summary, the two reports indicate the progress made by the Judiciary in its transformation agenda as part of the ongoing implementation of our new Constitution of Kenya, 2010. It also records the achievements and the challenges experienced by the Judiciary in the Financial Years 2016/2017 and 2017/2018. In the Financial Year 2016/2017, the Judiciary witnessed leadership transition. We had a new Chief Justice and a new Deputy Chief Justice in 2016/2017.

The same year witnessed the launch of the strategic blueprint of the Judiciary entitled: *Sustaining Judiciary Transformation: A Service Delivery Agenda 2017-2021*. Again, that is a very important point to note because this is also the time when the Judiciary launched a strategic blueprint that would guide its operations in terms of the transformation agenda that was to begin the implementation of our new Constitution.

The new blueprint strategy shifted focus away from the institutional capacity building approach to service delivery. Over the years, the focus in the Judiciary has been in doing a lot of institutional capacity building, but the new approach was on service delivery. Again, it is important for Members to note that point. The new strategy is anchored on five thematic areas. These are:

1. Access to justice;
2. Reduction of case backlog;
3. Leadership and good governance;
4. Restructuring and strengthening the Office of the Ombudsperson; and
5. Enhancing the Information Communication Technology (ICT) infrastructure of the Judiciary operations.

Therefore, when this is done, it will deal with shifting the focus from institutional infrastructure to service delivery.

The Financial Year 2016/2017 Report has seven chapters while the Financial year 2017/2018 Report has 10 chapters. Since Members will have a chance to refer to the reports, the chapters contained in both reports are the following:

1. Leadership and Management.
2. Access to Justice in the Courts.
3. Access to Justice in the Tribunals.
4. Jurisprudence.
5. Human Resource Management and Development.
6. Finance.
7. Infrastructure.
8. State of the Agencies and Corporations in the Judicial Sector.

All these are covered in the two reports. However, there are two areas that are not captured in the Financial Year 2016/2017 Report, which are contained in the Financial Year 2017/2018 Report, namely, the Digital Strategy of the Judiciary and the Judiciary Training Institute. That is the only distinction between the two reports.

In the interest of time, allow me to focus on two or three areas of the Report. As I said, there are seven chapters in the Financial Year 2016/2017 Annual Report and 10 chapters in the 2017/2018 Report of the Judiciary. I will focus on the area of access to justice. The 2010

Constitution ensures and guarantees that every Kenyan should have access to justice. Justice delayed is justice denied. Therefore, in fulfillment of this constitutional mandate to dispense justice, the Judiciary has put in place an elaborate policy, legal and administrative framework to facilitate access to justice.

I want to inform the House about something that will shock us all. In the Financial Year 2016/2017, 344,180 cases were filed, out of which, 304,182 cases were concluded. This translates to an overall efficiency of 88 per cent. Just do a comparison of the two years, in 2017/2018, 402,243 cases were filed, out of which 370,488 cases were concluded. The cases filed rose from 344,180 in 2016/2017 to 402,347 in 2017/2018, which is an increase by 15 per cent. In my view, one can argue that it confirms the confidence Kenyans are beginning to have in our courts, given the reforms that have taken place.

The total number of pending cases rose by 4 per cent, from 533,350 cases by the end Financial Year 2016/2017, to 553,187 cases, by the end of Financial Year 2017/2018. Again, justice delayed, is justice denied. As we go by, the number of pending cases keep on increasing from time to time. This is something that should worry this House and as leaders, we should be worried that every other year, we have increased number of pending cases. We have a backlog.

From the two reports, it is observed that the majority of the pending cases are in the magistrates' courts at 74 per cent and at the High Court at 18 per cent. It is important to note that most of the pending cases are in the lower courts.

About 205,762 pending cases, which represent 55 per cent, are aged one to three years. We are talking about the period of time the cases have been in place, which is one to three years. This is 55 per cent, which is 205,762. About 84,671 cases representing 23 per cent are between three to five years and 82,495 cases representing 22 per cent are over five years. The Judiciary has categorised these cases as follows: One to three years, three to five years and from five years and above. The statistics are very scaring. Because of this, therefore, effective administration of justice requires strategies beyond the court rooms. From the reports, the Committee made some observations. We had a retreat of three days with senior Judiciary staff and we made the following observations in this particular area.

There is lack of statutory and policy documents providing for timelines within which cases should be heard by the courts. The inadequate number of judges and magistrates was the major factor contributing to the case backlog in the Judiciary. We do not have a law or a policy that makes it mandatory for the judges and magistrates to conclude a case within a specified period of time. So, a case takes as long as a judge or magistrate would want it to. We have made an observation that there is lack of statutory and policy timelines. We will be making recommendations in that regard.

Delayed conclusion of court cases was frustrating to litigants and hampering economic growth as it leads to project stalling, funds being held without use and discouragement to potential local and foreign investors. Another danger, which is coming again, is that when cases remain pending for long, litigants, Kenyans, businessmen and investors locally and abroad cannot enjoy the fruits of their investment. Cases take over five years to be determined in courts. The numbers are really scaring. In this region, Kenya is one of the countries that is doing well in business, but these are the areas that are frustrating that particular achievement. That is why investors leave our country to go to other regions where conclusion of cases is speeded up.

Another observation is that while several cases were determined on merit through various measures derived and employed by the Judiciary, several other cases were dismissed for want of prosecution as part of the strategy deployed by the Judiciary. There are also instances where

litigants file cases, but do not pursue them. What the Judiciary has done is to dismiss some of the cases to reduce the backlog and proceed with cases where parties in the suits are ready and willing to proceed.

Another observation is that whereas mobile courts were necessary in reduction of the backlog of cases, inadequate funding of other Government agencies like the Office of the Directorate of Public Prosecutions (DPP) hampered their operations thereby making achievements of desired results difficult. The Judiciary has embraced alternative dispute resolution mechanisms and relies on out of court settlement. That has helped in reducing the backlog of cases. Many observations were made. Let me now look at the recommendations that we made in this area.

The Judiciary should propose legislation for enactment by the House providing for statutory timelines within which cases should be heard and determined by the courts. As a Committee, we have already engaged the Judiciary and we should come up with this law, so that we have specific timelines. That will help in reducing the backlog of cases.

The National Assembly and the National Treasury should allocate adequate resources to the Judiciary to employ more judges and magistrates for expeditious determination of cases before courts. If we have this number of cases and we do not have enough judges or magistrates, definitely, even the policy we will put in place will still be frustrated. Therefore, it is important for this House, under our constitutional responsibility, to allocate sufficient resources to the Judiciary.

The Judiciary should increase the jurisdiction of magistrates to deal with matters that are currently a preserve of the High Court, which will significantly reduce the backlog of cases in the High Court.

Finally, the Judiciary should, as a matter of urgency, submit to the National Assembly rules for approval to operationalise the Small Claims Court Act of 2016. Those are the recommendations that we have made with regard to access to justice being a very important area of this Report.

The resources we have been allocating to the Judiciary have not been enough. Allow me to demonstrate to the House why we need to move with speed. The other area I would like to look at is funding for the Judiciary. It continues to suffer serious underfunding. In five successive financial years, the Judiciary has been underfunded. Let me mention a few of them.

In the Financial Year 2015/2016, the Judiciary requested for Kshs26 billion, but was allocated Kshs14 billion, a shortfall of Kshs12 billion. The following 2016/2017 Financial Year, they requested for Kshs23 billion, but were given Kshs17 billion, a shortfall of Kshs7 billion. In the 2017/2018 Financial Year, they requested for Kshs32 billion, but were given Kshs14 billion, a shortfall of Kshs18 billion. In the 2018/2019 Financial Year, they requested for Kshs23 billion, but were given Kshs15 billion, with a balance of Kshs13 billion. Finally, in the 2019/2020 Financial Year, this particular year, they requested for Kshs38 billion, but were given Kshs19 billion, a shortfall of Kshs19 billion. It is very clear that for the last five successive financial years, the Judiciary has been underfunded yet we still expect the same Judiciary to provide access to justice to the Kenyan people. It is not possible and not tenable and we must do something about it.

I am happy the Members of this House are here. Because of the reduction of allocation, we have had serious delays in construction and completion of courts. We need Kshs2.1 billion to finish 23 law courts across the country. In Homa Bay, where Hon. Millie Odhiambo comes from, there is an incomplete court.

(Hon. (Ms.) Odhiambo-Mabona spoke off record)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Order, Hon. Millie Odhiambo. Even when you are mentioned, you do not need to shout from where you are seated. You should appreciate that he has mentioned you and allow the other Members to appreciate.

Hon. William Cheptumo (Baringo North, JP): We have Kabarnet, Marsabit, Amagoro, Githongo, Kandara, Machakos, Kiambu, Mbita, Embu, Murang'a, Eldoret, Garsen and Othaya. The list is long. The law courts are at some stage of completion. We are unable to move because there is no money. These are some of the challenges that I wanted to bring out clearly for the House to understand.

In compliance with Article 173, we are trying to look for solutions. How do we resolve the issue of underfunding the Judiciary because every year, we have this problem? This is a very important issue that we need to raise. We propose that if we implement the provisions of Article 173 of the Constitution on the Judiciary Fund, then Judiciary can be independent and can have funds that will make it function.

Allow me to refer to Article 173 of the Constitution on the Judiciary Fund because it is very important. It says:

"173(1) There is established a fund to be known as Judiciary Fund which shall be administered by the Chief Registrar of the Judiciary.

(2) The Fund shall be used for administrative expenses of the Judiciary and such other purpose as may be necessary for discharge of the functions of the Judiciary".

But let me go to the relevant sub-section (4).

"(4) On approval of the estimates by the National Assembly, the expenditure of the Judiciary shall be a charge on the Consolidated Fund and the funds shall be paid directly into the Judiciary Fund".

This is not an optional position, it is constitutional. It is for us. I want to report to the House that the Judiciary Fund Act was passed in 2015 by this House. The regulations that are supposed to actualise that law are in the process of being approved by this House. I am happy my colleague, Hon. Murugara, is a Member of the Delegated Legislation, and he will be seconding this Motion. I believe he will mention to us the far they have been able to go. If we succeed in this, and we must succeed in it, I think the Judiciary, once given their money, should be able to actualise the money and spent it without being subjected to supplementary budgets. Like now, I am told we are preparing for another Supplementary Budget, which is likely to affect the very allocation that has been given to the Judiciary. We propose in our Report the need to actualise Article 173 of the Constitution. Meanwhile, the National Treasury should ensure timely disbursements of Exchequer to the Judiciary and other agencies to ensure timely undertaking of projects to avoid possible litigation and escalation of costs as a result of delay.

We have the Integrated Financial Management Information System (IFMIS) business. The other day, before the Supplementary Estimates were done, you saw and heard the Chief Justice coming out very strongly and complaining that the Exchequer is there, but the releases are delayed because of the IFMIS process. This is an area that we need to deal with and the solution is Article 173, so that the IFMIS thing, where Judiciary is controlled and managed, becomes something of the past. This will enable them to have their money to do their work timely, pay the suppliers and the contractors. Like now, we are spending a lot of money in terms of delayed payments of bills.

I know I have taken a bit of time, but it is because of the fact that this is a very important area. As I conclude, let me say that as the Chair of the Departmental Committee on Justice and Legal Affairs, and I will say this in the presence of the Budget and Appropriations Committee, when you talk of allocating money to build houses, you can feel, you can see what the money can do in terms of the number of houses; the allocation and the value. When you allocate money for roads, you can see the roads. When you allocate money to build hospitals, it is clear, but when it comes access to justice, you cannot touch, feel nor see. Unless and until you face a situation where you need to access justice, you will not realise that we need to have enough courts, enough judges and enough magistrates.

I just want to say that as much as we want to allocate money to deal with security, which is a critical component in our society, we need to allocate money for housing, industries and health. We equally need to allocate money for the Judiciary, so that we can access justice. After all, even when we have a robust economy, the institution that is able to deal with disputes that make the economy to prosper and move is the court. So, we may want to grow as an economy, but we realise that we are also being suppressed so badly by the fact that our court systems are not working.

I have just captured only two areas. The areas of access to justice, funding and jurisprudence have been done very well. Our courts, for the last several years, have set standards and come up with certain positions in law, and we have captured that. In fact, the issue of jurisprudence is captured in a whole chapter of this Report. In the two reports, we have a whole chapter on reports on jurisprudence - what our courts have done over the years. We have been quoted in other jurisdictions. Recently, when Malawi had elections, some people went to court to challenge the presidential results. I was told by a friend who lives there that the Kenyan case; the recent election petition by the National Super Alliance (NASA), was quoted extensively in Malawi. Finally, the results were nullified. What does that mean? This country is a force in the region. All we need to do is to put our house in order. Let us ensure that we do not underfund certain areas which are critical in enabling our economy to flourish.

With those remarks, I beg to move. I request the House to adopt these 2016/2017 and 2017/2018 annual Judiciary reports. They are going to help this country if the recommendations of the House are implemented. Their implementation is going to improve our judicial system and we are going to have a better environment for our businessmen and investors. Our unemployed young people will benefit because there will be space for more jobs for them.

I beg to move and request Hon. Murugara, a Member of the Committee, to second.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Thank you, Chairperson, Departmental Committee on Justice and Legal Affairs. We shall have “Hon. Mugambi” to second.

Hon. George Gitonga (Tharaka, DP): It is “Murugara”. Thank you, Hon. Temporary Deputy Speaker. Before I second, I have just spoken for the first time this afternoon. I just wish to take one minute to condole with the people of Msambweni for the loss of their Member of Parliament, the late Hon. Suleiman Dori. On my own behalf and on behalf of the people of Tharaka Constituency, Tharaka Nithi County, I relay my sincere condolences to the family and to the people of Msambweni, Kwale County.

Allow me to second that this House notes the two Reports of the State of the Judiciary and the Administration of Justice and also adopts the two Reports of the Departmental Committee on Justice and Legal Affairs. These two Reports are a first of a kind because the Judiciary has not been tabling these Reports to Parliament. However, this has now been done

pursuant to the provisions of the Constitution and Section 5(2)(b) of the Judicial Service Act. It does rhyme very well with what the Executive does every year in a ceremony presided over by His Excellency the President when he comes to Parliament to address Parliament on the State of the Nation in his annual address to the nation.

I would draw a parallel that Parliament too should copy these two institutions because this is a process of checks and balances. This is how one Arm of Government checks the other; by ensuring that it reports to the other what it is doing and justifying its existence, especially when it comes to budgeting. So, I do not know. It is a matter of debate as to how Parliament will report to the rest of the country as we once did a while ago. Unfortunately, we cannot debate ourselves. The debate on what we are doing, once given to the country, will have to be done elsewhere.

Be that as it may, mine will be to urge the Judiciary to use one of the best institutions it has – the Judicial Training Institute which rivals only the Government training institute at Kabete in terms of its ability to train officers. We are likely to get better quality judges, magistrates and staff if the Judiciary makes maximum use of this. The Departmental Committee on Justice and Legal Affairs deliberated on these Reports and it has made several recommendations, which Members will have to read from the Reports. Also, it is important to note that these Reports are elaborate. The first one, 2016-2017, has seven chapters. The 2017-2018 one has 10 chapters. Both are dealing with matters of interest to this country when it comes to legal affairs.

We have made several recommendations. They are all in favour of enabling the Judiciary to function well. It goes without saying that a country governed by the rule of law must have a robust Judiciary. There is no way the rule of law can be enforced in a country unless it has a Judiciary that is not only independent but which is also corruption-free. What ails our Judiciary most of the time is, or are, allegations of corruption. They are told “you are not doing what you are supposed to unless there are external influences”. That renders the decisions that the Judiciary makes ineffective.

It is important that we enforce our Constitution, which sets up the Judiciary Fund. We have enacted the Judiciary Fund Act. We have passed the Regulations there under but that Fund is not working under the Public Finance Management (PFM) Act up to now. The reasons we are given is that the Consolidated Fund is not able to remit the money immediately because most of the time we budget on monies we do not have. We budget on monies that will be collected by the taxman or, we hope to borrow, or we hope to get grants. Therefore, there is no money to transfer upon passing of the Budget. However, I think it is high time we started living within our means and budgeting on the money that we have so that we are able to carry out the obligations we have under the law. So, we need to operationalise the Judiciary Fund with immediate effect so that we do not have the Chief Justice (CJ), the Chief Registrar of the Courts or any other person crying out to the media, seeking sympathy from the public that they are not able to function because they do not have money. Especially in Kenya, where we have a monster known as the Integrated Financial Management Information System (IFMIS), which is anchored in the National Treasury and Planning. It releases money to you as and when they feel like. That is not acceptable, especially when it comes to an independent Arm of Government that needs direct funding from the Consolidated Fund to its own treasury.

Therefore, I urge that the Exchequer is timeous, money is released in time. Also, the courts must ensure that they do their work properly. If need be, we can make it law that revenue generated through court fines, court fees and forfeitures is used at source. Once we do this, we expect the Judiciary to move with speed and complete its projects. In Tharaka, we have a

wooden court house at the headquarters in Marimanti. It has never been completed, and it has never been used. Whenever I meet the Judiciary or whenever I meet the CJ, I muse that he made a provision for fodder for termites and ants because that is what is happening. It is lots of money that possibly is going to waste. The cited reason is that there is no money to complete.

We would also want to deal with mobile courts. I also have a mobile court that serves from Marimanti to a place called Kathangachini, 45 kilometres away. There is no way justice can be dispensed when that court is mobile only once a week. Sincerely, nothing much can be done. Again, we need to look at this.

The other problem was title documents for the courts. It is encouraged that courts have titles. The Judiciary must be the custodian of its property and land. We have had instances where court land is grabbed and the Judiciary goes to fight, possibly fighting even in its own courts. Again, this cannot be encouraged. We must also say that there must be expeditious disposal of cases once we give the Judiciary the resources. The Chairman has elaborated very well that what we consume from the Judiciary is not visible. It is only inherent. It is only felt. The consumer of justice is the only person who knows the value of that justice. Therefore, we need to see cases moving fast so that we do not go to an Environment and Land Court today to take a hearing date and we are giving a date in September next year. Sincerely, I do not think any proper court dispensing justice can give a date today sometime next year. This is not expeditious, and it should not be encouraged.

Two, there must be means and ways of ensuring that there is no corruption in our courts. We must fight corruption to ensure that judges are cleaner than Caesar's wife. The justice they dispense is what everybody believes in. Justice that is obtained through fraud, through corruption or any other means that is extrajudicial is not justice. It cannot be trusted by anybody. Therefore, that erodes the confidence in our courts.

With those remarks, I support that this House notes the two Reports. I also support that we adopt the Reports.

I second.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): You do second, a very worthy Member for Tharaka.

(Question proposed)

Hon. Members, the Floor goes to the first Member on my request list, who is the Member for Suba North, Hon. (Ms.) Odhiambo-Mabona.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Allow me to note that you are a lawyer and now that we are discussing issues of the Judiciary, we should be ready for your contribution.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Yes. Thank you, Hon. Temporary Deputy Speaker. I just want to thank the Departmental Committee on Justice and Legal Affairs for their Report. I support that the House notes the two reports of the State of the Judiciary and Administration of Justice of the financial years 2016/17 and 2017/2018. I want to thank the Mover and the Member for Tharaka, especially on emphasising the need for separation of powers that ensures that the three arms of Government not only support each other, but also oversee each other.

Because of time, I will try to be very brief and just note that based on what the Committee has said, it has focused a lot on the issue of corruption. I know there was a time there was a purge in the Judiciary which restored a lot of confidence. However, increased cases of corruption are still being reported in the Judiciary. We need to sort these issues for the public to have confidence in the Judiciary especially during the trying times both in the Executive and Parliament. When public confidence in both institutions is not very high, you would, at least, need one of the arms of the Government where the public has a lot of confidence. I remember when we had Justice Mumbi in charge of the Human Rights Court people had a lot of confidence in that court. I am not saying that the judge who is there now is not doing any good job, but we had judges who were very brave. That is something I can talk about and not just the issue of independence, but jurisprudence that I have alluded to. For us to get solid jurisprudence in Kenya that people are emulating including Malawi, it speaks to the independence of the Judiciary.

That is why, as Parliament, we must make sure that we do everything possible to shield the Judiciary especially through budgetary allocation. I sit in the Budget and Appropriations Committee and this is something we have had to discuss as a Committee and we bravely made certain provisions. However, we have challenges sometimes when you come to the Floor of the House and the amendments are made that take back the kind of brave steps that we had taken as a Committee.

I would want to encourage the House that we need to be brave enough to give the Judiciary the confidence it needs because part of that independence is that it has its own allocation. That is part of the reason even Parliament agitated for its own funds. This is because if you do not have independent funds, it becomes very difficult to be independent especially when you rely on another arm of Government and you are being given a provision like Panadol. We do not want a situation where the Chief Justice and the other judicial officers that we should be having confidence in, are complaining before the public that they are not being treated well.

I want to confirm that one of the 23 courts that the Mover mentioned that have not been completed is the Mbita Law Courts. Currently, the courts that are serving Mbita are mobile and are using the probation office which is right next to my parents' home. The actual court should be in Mbita Town. There is wear and tear, which means a lot of the money that has been put into it is going to waste.

I would want to urge that, as a House, we need to be brave enough and complete the 23 courts, so that we can enhance access to justice. You can see the immediacy in terms of access to justice because cases of insecurity are on the rise in my constituency which has been a haven of peace. Sometimes when my colleagues visit my constituency, they cannot believe that you can find cattle just lying on the roads yet nobody is bothered to steal them. However, cases of insecurity are now on the rise and our courts do not have the capacity to deal with them. The cases of sexual and gender-based violence are also on the rise. We need the courts to host judges and magistrates that are of higher jurisdiction.

I also want to speak about the issue of backlog. Unless we, as a Parliament, give the resources, then we will not deal with the backlog. Justice delayed is justice denied. One of the things that I have noticed in the Report is that it focused on the issue of institutional capacity in the first financial year. In the next phase, it has focused on service delivery, which is a good thing. However, I want to encourage us not to lose sight of the institutional capacity which entails building the capacity of judicial officers. There are growing concerns about the decisions that are emanating from the courts, especially in relation to child custody that seems not to

follow known legal standards. I do not know what is going on, but that is something that needs to be looked at. If the Judiciary senior officers do not have the capacity to monitor the jurisprudence that is coming from the various courts, then you will have a case like the one that was cited today where a mother has been given nine days in a year to access the child. Which mother can have nine days to see her child? If we are not able to balance the way we are dealing with these things, then we will be seeing many calamities because people will be taking the law into their own hands. Again, as Parliament, we need to look at that.

On access to justice, we are not able to facilitate the Judiciary. In my constituency, even if you do not talk about the court that I am talking about, the Mbita Law Courts, we have several islands that need mobile courts. That is a resource in itself. Before we talk about the completed court, how do the courts reach other areas that need boats? Because of this, a lot of cases of sexual violence are not dealt with. People would rather deal with them at their levels. I want to encourage the Committee. It has talked about the need for policy on timelines for completion of cases to deal with issues of backlog. However, I want to caution that we should not sacrifice justice at the altar of expediency. As my good colleagues know, sometimes it is not just the judges, but the advocates and the litigants themselves who will get excuses to delay cases and their matters to proceed, especially when they think the decision may not be favourable to them. When we provide a policy - I know this is a challenge that the Judiciary is grappling with - and say that these cases have to be dealt with by this time, then the persons that are likely to suffer, especially in criminal cases, are the victims. For example, if I am a perpetrator, I would just delay knowing that at the end of the day, when the time comes, I will be acquitted because of no show. I am surprised that the Small Claims Courts have not been operationalised. I have learnt about that now. I want to urge the Justice and Legal Affairs Committee to take up this matter seriously. That will help to ease the congestion in the courts by freeing the courts of the smaller cases that are there.

I want to laud the Judiciary on some of its decisions. For instance, Justice Martha Koome recently made a good decision on equality. People always think that when you talk about gender equality, it is only about women. In this case, she made a decision that favoured men because inequality is not just about women. In a situation where you find the woman is working and the man is not working, the man needs support as much as the woman does. For us, as women, we need to understand that equality has to do with taking care of both men and women. It is not just about women.

With those few remarks, I support. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Thank you, Hon. Millie Odhiambo, being a senior Member of the House and a lawyer. The House is well informed.

Hon. Members, I appreciate that several Members had requested to speak to this Motion. Allow me to announce that in the next sitting, as the Motion will appear in the Order Paper, we will have several Members contributing to it. They are Hon. Members from Emurua Dikirr, Kilifi North, Kitui Central, Kirinyaga Central among others. From the Speaker's desk, we still have more time to debate the Motion.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Members, the time being 7.01 p.m., this House stands adjourned until Wednesday, 11th March 2020, at 9.30 a.m.

The House rose at 7.01 p.m.