

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 11th May, 2021

*The House met at the Senate Chamber,
Parliament Buildings, at 10.00 a.m.*

[The Speaker (Hon. Lusaka) in the Chair]

PRAYER

COMMUNICATION FROM THE CHAIR

COMMENCEMENT OF PART III OF THE FIFTH SESSION

The Speaker (Hon. Lusaka): Hon. Senators, it is my pleasure and privilege to welcome you from a very busy recess period. We commence Part III of the Fifth Session of the Senate which, looking at the Order Paper; will be equally busy. In accordance with the Standing Orders of the Senate, this Part begins today and will run until 15th June, 2021.

On Wednesday, 5th May, 2021, the Parliament of Kenya had the honor to host Her Excellency Hon. Samia Suluhu Hassan, President of the United Republic of Tanzania. In her speech, Her Excellency emphasized the fundamental principle of strengthening relations between Kenya and Tanzania based on cooperation, development and unity of purpose. Pursuant to Standing Order No. 26 (3) read together with Standing Order No. 24(6), the Senate Majority Leader will shortly lay on the Table of the Senate Her Excellency's address to the two Houses of Parliament and give a Notice of Motion for the Senate to debate the address and express its thanks.

Today, we resume debate on the Constitution of Kenya (Amendment) Bill, 2020 which is currently at the Second Reading stage. Contributions in the debate will continue to be guided by Standing Order No.106(4), where each Senator shall have a maximum of 20 minutes when speaking and Part XVII of the Standing Orders with respect to Rules of Debate shall apply.

After conclusion of debate at the Second Reading stage and a division has been taken, I will issue a ruling from the Chair before proceeding to the next stage, which is the Committee of the Whole stage, to guide the Senate on the question of amendments to the Bill.

We have outstanding business across the spectra of legislative business (Bills, Motions, Petitions and Statements) before the Senate. There are 12 Bills scheduled for First Reading, 12 Bills at the Second Reading stage and one Bill due for the Committee of the Whole Stage. There are a further 21 Bills which are undergoing the resolution process pursuant to Article 110 (3) of the Constitution.

In this respect, I urge the relevant Standing Committees to table reports on the Bills to facilitate speedy processing, especially considering that quite a number of the Bills have been republished in line with the Judgment of the High Court in Constitutional Petition No.284 of 2019.

There are 51 Petitions which are yet to be reported on by respective Standing Committees that require immediate action while Statements referred to respective Committees also require to be addressed pursuant to the Standing Orders.

Hon. Senators, finally, I urge you to remain committed and focused, and to undertake the tasks ahead of us with utmost integrity in service to our great country.

I thank you and wish you all a fruitful Session.

PETITION

HISTORICAL INJUSTICES SUFFERED BY THE TOROBEEK COMMUNITY

The Speaker (Hon. Lusaka): I will defer Petitions to our next sitting.

(Petition deferred)

Next Order.

PAPERS LAID

Sen. Dullo: Thank you Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Tuesday, 11th May, 2021-

HOTUBA YA MHESHIMIWA SAMIA SULUHU HASSAN, RAIS WA JAMHURI YA MUUNGANO WA TANZANIA

Hotuba ya Mheshimiwa Samia Suluhu Hassan, Rais wa Jamhuri ya Muungano wa Tanzania akihutubia Kikao cha pamoja cha Bunge la Seneti na Bunge la Taifa la Jamhuri ya Kenya, Nairobi, Tarehe Tano Mei, 2021.

REPORTS OF THE COMMITTEES OF THE EAST AFRICAN LEGISLATIVE ASSEMBLY

Report of the Committee on Agriculture, Tourism and Natural Resources of the East African Legislative Assembly on budgetary enhancement in the agricultural sector.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

Report of the Committee on Regional Affairs and Conflict Resolution of the East African Legislative Assembly on the progress made by the East African Community on the Development of its Common Foreign and Security Policies.

BUDGET OF THE EAC FOR THE FY 2020/2021

Budget of the East African Community for the Financial Year 2020/2021.
EAC SUPPLEMENTARY APPROPRIATION (NO.2) BILL, 2020

The East African Community Supplementary Appropriation (No. 2) Bill, 2020.

EAC APPROPRIATION BILL, 2020

The East African Community Appropriation Bill, 2020.

REPORT ON LOANS CONTRACTED BY THE GOVERNMENT OF KENYA

Report of the Cabinet Secretary for the National Treasury and Planning to Parliament on New Loans Contracted by the Government of Kenya from 1st September, 2020, to 31st March, 2021.

REPORT ON THE COUNTY GOVERNMENTS BUDGET
IMPLEMENTATION REVIEW

Report on the County Governments Budget Implementation Review for the Financial Year 2019/2020.

I thank you.

(Sen. Dullo laid the documents on the Table)

The Speaker (Hon. Lusaka): Hon. Senators, Section 31(1) of the Public Finance Management Act states that:

“The Cabinet Secretary for the National Treasury shall submit to Parliament, every four months, a report of all loans made to the national government, national government entities and county governments, in accordance with Article 211(2) of the Constitution”.

Further, Section 31(3) of the Public Finance Management Act provides that:

“At the end of every four months, the Cabinet Secretary shall submit a report to Parliament stating the loan balances brought forward, carried down, drawings and amortizations on new loans obtained from outside Kenya or denominated in foreign currency, and such other information as may be prescribed by regulations, specifying-

(a) the names of the parties to the loan;

- (b) the amount of the loan and the currency in which it is expressed and in which it is repayable;
- (c) the terms and conditions of the loan, including interest and other charges payable and the terms of repayment;
- (d) the amount of the loan advanced at the time the report is submitted;
- (e) the purpose for which the loan was used and the perceived benefits of the loan; and such other information as the Cabinet Secretary may consider appropriate”.

Hon. Senators, the Senate Majority Leader has tabled the “Report of the Cabinet Secretary for the National Treasury and Planning to Parliament on New Loans Contracted by the Government of Kenya from 1st September, 2020 to 31st March, 2021”.

The Report stands committed to the Standing Committee on Finance and Budget for consideration. I urge the Committee to examine the report and advise the Senate appropriately.

I thank you.

There is another paper to be laid. I welcome Sen. Cheruiyot.

REPORT ON THE SALARIES AND REMUNERATION COMMISSION
(AMENDMENT) BILL (SENATE BILLS NO. 31 OF 2020)

Sen. Cheruiyot: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Tuesday, 11th May, 2021-

Report of the Standing Committee on Finance and Budget on the Salaries and Remuneration Commission (Amendment) Bill (Senate Bills No. 31 of 2020).

(Sen. Cheruiyot laid the document on the Table)

Sen. Cherargei: On a point of order, Mr. Speaker, Sir,

The Speaker (Hon. Lusaka): What is your point of order, Sen. Cherargei?

Sen. Cherargei: Mr. Speaker, Sir, there was a Petition you were supposed to read I had a specific interest on it. Have we rescheduled it?

The Speaker (Hon. Lusaka): I deferred the Petition.

NOTICES OF MOTIONS

THANKS FOR THE ADDRESS TO PARLIAMENT BY THE
PRESIDENT OF THE UNITED REPUBLIC OF TANZANIA

Sen. Dullo: Mr. Speaker, Sir, I beg to give Notice of the following Motion- THAT, pursuant to Standing Order 24 (6), the thanks of the Senate be recorded for the Address to Parliament, by Her Excellency Samia Suluhu Hassan, President of the United Republic of Tanzania, delivered on Wednesday, 5th May, 2021.

The Speaker (Hon. Lusaka): Sen. (Dr.) Musuruve, proceed to give notice of your Motion.

PROVISION OF COLOSTOMY BAGS TO COLON
CANCER PATIENTS AND SURVIVORS

Sen. (Dr.) Musuruve: Thank you, Mr. Speaker, Sir, I beg to give Notice of the following Motion-

THAT, AWARE THAT the colon is part of the digestive system with a major role in the absorption of water, minerals and elimination of waste;

FURTHER AWARE THAT colon cancer can cause serious blockage of the colon that may necessitate removal of parts of the colon, the entire colon or the entire colon and the rectum;

COGNIZANT THAT persons who have gone through ileostomy, colostomy and urostomy need to use a bag to empty their wastes for the rest of their lives post-surgery;

CONCERNED THAT urine bags, adult diapers, artificial breasts, colostomy or ileostomy bags are not listed as goods exempt from tax or zero rated in the First and Second Schedules of the VAT Act 2013, and therefore attract 16 per cent value added tax and customs duty;

ACKNOWLEDGING THAT Article 43(1a) of Constitution of Kenya states that everyone has a right to the highest attainable standards of health, and health is a devolved function and therefore under the mandate of the county governments;

NOW THEREFORE, the Senate calls upon the Ministry of Health and) in partnership with the Council of Governors to:

(1) Create and maintain a register of all the colon cancer patients and survivors in county hospitals, including the biodata of the histology of the patients;

(2) Provision of colostomy bags for those who are permanent users;

(3) Include the purchase of palliative care products in the health budgets of all county governments;

(4) Ensure all county hospitals stock these palliative care products to enable increased access and lower commercial prices; and

(5) Engage the Treasury and Kenya Revenue Authority (KRA) to waive taxes on long-term health consumables such as colostomy bags, prosthesis and others in the upcoming budgetary cycle to ease the burden on Kenyans.

The Speaker (Hon. Lusaka): Next order.

STATEMENTS

The Speaker (Hon. (Lusaka): I defer all the Statements to next Tuesday, 18th May, 2021.

INCREASE OF FUEL PRICES IN THE COUNTRY

REVIEW OF REGULATORY FRAMEWORK FOR DRONES IN KENYA

THE THIRD WAVE OF THE COVID-19 GLOBAL PANDEMIC AND VACCINE CONCERNS

INCREASING RATE OF UNEMPLOYMENT CAUSED BY THE COVID-19 PANDEMIC

MARITIME BORDER DISPUTE IN THE INDIAN OCEAN BETWEEN KENYA AND
SOMALIA

CHALLENGES FACED BY TEENAGE MOTHERS AND THEIR CHILDREN

PREPAREDNESS OF THE NAIROBI CITY COUNTY FIRE BRIGADE

CUSHIONING KENYANS FROM NEGATIVE IMPACT OF PARTIAL LOCKDOWN DUE TO
COVID-19

RISE OF ILLEGAL HUNTING IN TSAVO NATIONAL PARK

ACTIVITIES OF THE COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES

ACTIVITIES OF THE COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL
RELATIONS

ACTIVITIES OF THE COMMITTEE ON EDUCATION

ACTIVITIES OF THE COMMITTEE ON NATIONAL COHESION, EQUAL OPPORTUNITY
AND INTEGRATION

PERSONAL STATEMENT FROM THE SENATOR FOR NANDI COUNTY

(Statements deferred)

BILLS

First Reading

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

THE COFFEE BILL (SENATE BILLS NO.22 OF 2020)

(Order for the First Reading read - read the First Time and ordered to be referred to the relevant Committee)

First Reading

THE NATURAL RESOURCES (BENEFIT SHARING) BILL
(SENATE BILLS NO.25 OF 2020)

(Order for the First Reading read-read the First Time and ordered to be referred to the relevant Committee)

First Reading

THE HEALTH (AMENDMENT) BILL
(SENATE BILLS NO.26 OF 2020)

(Order for the First Reading read-read the First Time and ordered to be referred to the relevant Committee)

First Reading

THE BASIC EDUCATION (AMENDMENT) BILL
(SENATE BILLS NO.4 OF 2021)

(Order for the First Reading read -read the first time and ordered to be referred to the relevant Committee)

First Reading

THE KENYAN SIGN LANGUAGE BILL
(SENATE BILLS NO.5 OF 2021)

(Order for the First Reading read -read the first time and ordered to be referred to the relevant Committee)

First Reading

THE COUNTY VOCATIONAL EDUCATION AND
TRAINING BILL (SENATE BILLS NO.6 OF 2021)

(Order for the First Reading read - read the First Time and ordered to be referred to the relevant Committee)

The Speaker (Hon. Lusaka): Next Order.

Second Reading

THE CONSTITUTION OF KENYA
(AMENDMENT) BILL, 2020

(Sen. Poghiso on 28.4.2021)

*(Resumption of debate interrupted on
Thursday, 6. 5.2021- Afternoon Sitting)*

The Speaker (Hon. Lusaka): Sen. Dullo, proceed.

Sen. Dullo: Thank you, Mr. Speaker, Sir. I wish to take this opportunity---

The Speaker (Hon. Lusaka): What is your Point of Order, Sen. Cherargei?

Sen. Cherargei: Mr. Speaker, Sir, maybe before Sen. Dullo proceeds with her contribution, there was a small matter. My colleagues and I had submitted some amendments.

The Speaker (Hon. Lusaka): Order, Sen. Cherargei! I already made a Communication on that. I will be giving the ruling.

Sen. Cherargei: Mr. Speaker, Sir, okay. I just sought a clarification and I do not think it is an offense. Why are people becoming Speaker and you are the only Speaker?

The Speaker (Hon. Lusaka): No. They are reacting because I mentioned it and I thought everybody heard including yourself.

Sen. Dullo, proceed.

Sen. Dullo: Thank you, Mr. Speaker, Sir. I wish to contribute to this amendment Bill. From the onset, personally as a representative of Isiolo County, I am supporting the Bill. My reason for supporting the Bill is that this is a historic moment in our country. For me, it is normally very important to be on the positive side of history making than to be on the negative side.

I have participated a lot before various stakeholders as far as this Bill is concerned. When the Report of Building Bridges Initiative (BBI) was released, as a Pastoralist Parliamentary Group (PPG), we had several sessions with the Secretariat of BBI. We managed to present our issues as the counties that were affected by the outcome of this Bill.

Mr. Speaker, Sir, we have raised several concerns as far as the Bill is concerned. We managed to achieve some of it. I wish to state that one of the issues that we raised as the counties that are going to be affected especially on the revenue allocation was the issue of increasing the number of years for the Equalization Fund from ten to 20 years, which we managed to achieve.

There was a proposal to scrap some of the constituencies within our counties. We managed to save some of the counties. Although I know that looking at the record of the census, some people say Isiolo South Constituency is one of the constituencies that were saved. However, as far as the 2019 Census is concerned, Isiolo County has a population of 98,000 people. This clearly means that we have not been saved.

Mr. Speaker, Sir, however, there are several counties even from the ones that benefited from the constituencies that have been saved as a result of our engagement. I think that is something worth noting.

Again, I sat in the joint committee of both Houses. We looked at this Bill and there were a lot of issues especially on the errors that we found out concerning the Bill. However, we engaged consultants, and I am sure the previous speakers have mentioned about this. We looked at these errors and most of them were not substantive that affect the Bill itself.

Mr. Speaker, Sir, we agreed as a Committee that instead of introducing an amendment because this is not our Bill, it is a popular initiative Bill, we should not carry out an amendment. That is what we agreed as a Committee. Instead, we agreed that we should have a report that points out all the issues that were raised in that Bill that affect various implementation stages and stakeholders. We managed to capture every concern that affects various stakeholders.

It is really hard in a Constitution making or any Bill to satisfy everybody. Equally, Constitution of Kenya 2010 has its own challenges because we did not capture all the issues. That is why we are having this amendment. It is important that we managed to capture most important concerns and the things that are affecting certain stakeholders. We should make recommendations and make sure that they have been implemented if not now, maybe in future.

Mr. Speaker, Sir, one of the errors in the Bill is the change of Cabinet Secretary (CS) to Cabinet Minister which was appearing in the whole Constitution Amendment Bill. It was hard to amend that word. If it means we amend the Bill, the bigger part of the Constitution will still have CS. We thought it is not good for us to amend but we should make recommendations.

One of the good things that I feel that we achieved as a House is the revenue increment to 35 per cent. I know this is a matter that this Senate had been fighting for, for a very long time although, severally from the last to the current Senate, we had been shortchanged by the governors. This is important though I know there is a challenge of implementation because of the current situation we have in the world and also in the country.

Mr. Speaker, Sir, increasing revenue from 15 per cent to 35 per cent is an improvement. It is also something that the Senate was fighting for, for a very long time. It is an achievement for us. I know some of our counties might not majorly benefit from that but I remember when we had a revenue allocation formula in this House, we fought so hard.

I thank the Members who supported us especially Nairobi City County, Kakamega County and the rest. When some of us were losing, those counties supported

us. I am really proud that a county like Isiolo managed to receive an increase of Kshs560 million which is an achievement. I know that the increase of the revenue to 35 per cent for us might not be that high but currently we are not losing any revenue.

Mr. Speaker, Sir, I have an issue with Article 203, which we presented as PPG and the rest of the counties that are affected. That is especially the seven counties. This is a formula that was introduced in support of the ideologies that were raised here of one man one shilling. I think implementation of the same might be impractical. However, if this formula is implemented, it is going to affect certain counties.

The Joint Committee made a recommendation. When we passed the formula on revenue allocation, there was a principle that this House developed that no county should lose revenue allocation. I believe this is a principle that this House should hold once this Bill is passed.

The Committee also made a recommendation that if any county will be affected as a result of that provision, the Government should cushion it. If that happens and some counties end up losing revenue allocation, devolution in most of our counties will be affected.

Mr. Speaker, Sir, in the last formula, I remember that the issue of land mass was not looked at properly. You cannot focus on population only and leave out land. Some of us have vast land where you travel over 300 kilometers to get service delivery. It also affects budgetary allocation, and that should have been considered. Unfortunately, in the last revenue allocation, it was not considered, and it is something that we need to look at in future.

During the population census, some counties like Isiolo had a lot of issues, especially on matters concerning boundary disputes. Over the years, we have been fighting with our neighbours just because of interference with the boundaries. This affected the census in 2019, because some individuals were counted in the neighbouring counties or in areas that had contestations. We lost a lot. We have presented this matter to the Government to try and solve issues of boundary disputes that are affecting the population. I remember that Sen. Mutula Kilonzo Jnr. came up with a Bill to look at boundary issues, but unfortunately, some interested parties made sure that the Bill did not go through. I still appeal that development and many other factors will be affected if boundary issues in this country are not resolved. We will continue fighting to make sure that sanity is brought to our counties.

Mr. Speaker, Sir, another issue I want to contribute on is the matter of constituencies. We have discussed this matter at length, severally. We have even made presentations. There are some counties that are left out in as far as allocation of those constituencies is concerned. For example, if I may refer to Isiolo North. Looking at the figures that we have, we should have had an extra constituency in Isiolo North, but that was left out.

We have to look at the issue of constituencies critically. The Independent Electoral and Boundaries Commission (IEBC) raised a lot of concern. We had a very lengthy discussion on the same. The issue of constituencies will affect service delivery in

most of our counties that are left out. I appeal to the relevant authorities that something needs to be done as far as constituencies are concerned.

Mr. Speaker, Sir, with that, I wish to support the Bill. There is a very big document of the recommendations of the Committee. The Committee made very many important recommendations. I hope that the recommendations will be implemented when this Bill is passed by this House and during the referendum.

I thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Sen. Faki.

Sen. Faki: Asante Bw. Spika kwa fursa hii ya kuchangia Mswada wa Marekebisho ya Katiba ulioletwa katika Seneti. Kwanza, ningependa kuwapongeza waasisi wa Mswada huu kwa kutupa fursa ya kurekebisha Katiba yetu wakati tuna amani na hakuna msukosuko wowote katika Jamhuri ya Kenya.

Katika Kifungu cha kwanza cha Katiba yetu kinasema kwamba uwezo umepewa wananchi, na uwezo huo unafaa kutekelezwa kulingana na Katiba. Nguvu zote zimerejeshwa kwa wananchi, na nguvu zile zinafaa kutekelezwa kulingana na vile Katiba inavyoamrisha.

Kifungu cha pili kinasema kuwa hakuna mtu wala taasisi yoyote ya Serikali inaweza kutekeleza jukumu lolote kama haijaruhusiwa na Katiba. Kwa hivyo, Katiba ndiyo mwanzo wa kila kitu katika sheria zetu. Kifungu cha 94 kinasema kuwa uwezo wa kutunga sheria umekabidhiwa Bunge. Hakuna taasisi isipokuwa Bunge inayo uwezo wa kutunga sheria ya kitaifa. Katika kutazama marekebisho haya, ni jukumu la Bunge kuangalia kwa undani kabisa, kwa sababu hatuwezi kupuuza kutelekeza jukumu letu.

Bw. Spika, vifungu ambavyo vinaangazia marekebisho ya Kabtiba vinaanzia 255 hadi 257. Kifungu cha 257 kinazungumzia kurekebisha Katiba kupitia *popular initiative*. Kifungu cha 257 kinasema kwamba ikiwa moja kati ya Nyumba mbili za Bunge itakataa kupitisha Katiba hii--- Marekebisho yanayoambatana na Kifungu 251(1) ni lazima yafanyiwe kura ya maoni, yaani *referendum*.

Iwapo tutapitisha ama tutakataa, ni lazima marekebisho haya yaende kwa wananchi kupitia kura ya maoni, kwa sababu ni mambo ambayo tunataka kurekebisha, na yanaingia katika msingi wa Bunge. Sisi kama Bunge tuna jukumu muhimu katika swala hili.

Katika kufanya haya marekebisho, ni lazima kuwa Bunge, ambalo ndilo taasisi inayotunga sheria katika Jamhuri ya Kenya, ichunguze yale marekebisho kuhakikisha kuwa yanaambatana na sheria. Iwapo haiambatani na Katiba, tuyarekebishe ili tuwe na Katiba inayoambatana na Katiba ilioko sasa. Hatuwezi kusema kwamba Bunge iwe mshangiliaji katika marekebisho haya.

Bw. Spika, nikizingatia yale marekebisho yanayotakinana, lengo na madhumuni ni malengo mazuri. Kwa mfano, lengo la---

Sen. Cherargei: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): What is your point of order, Sen. Cherargei?

Sen. Cherargei: Bw. Spika, je, ni haki kwa Seneta wa Mombasa, Sen. Faki, kusema kwamba Bunge ina uwezo wa kufanya marekebisho lakini kama itaupitisha au kuuangusha Mswada huu, lazima uende kwa kura ya maoni? Nahisi kuwa hapo

anatuchanganya kiasi. Ningependa aeleze kinaga ubaga swala la kuwa Bunge liko na uwezo na linaweza kurekebisha na pia anasema kuwa hata kama Bunge halitapitisha Mswada huu, ni lazima uamuliwe kwa kura ya maoni.

Sen. Sakaja: Hoja ya Nidhamu, Bw. Spika.

The Speaker (Hon. Lusaka): Kuna Hoja ya nidhamu kutoka kwa Sen. Sakaja.

Sen. Sakaja: Bw. Spika, Bunge la Seneti liko na Kanuni na kuchanganywa sio hoja. Kanuni zetu zinasema wazi kwamba kama yule ambaye anazungumza amekiuka Kanuni za Seneti, yule ambaye anajaribu kumkosoa lazima aseme ni kipengee kipi ambacho amekiuka. Isiwe sababu haukubaliani na msimamo wa Seneta fulani, unaleta hoja la mjadala.

Wiki iliyopita wakati nilikuwa ninatoa hoja zangu, karibu dakika 20 zilichukuliwa na watu ambao hawakubaliani na msimamo wangu. Sio eti nilikuwa nimekiuka Kanuni, lakini ni kwa sababu hawakua wanakubaliani na mjadala au maoni yangu.

Bw. Spika, naomba kwamba ili Sen. Faki au yule mwingine atakaye kuwa anachangia aendelee na Mswada huu, badala ya kusimama kutoa hoja ya nidhamu kwa sababu hakubaliani naye. Wacha amalize, kisha utapata nafasi utoe maoni yako. Lakini hatua ya kusimama kila wakati kwa Hoja ya nidhamu kwa sababu hukubaliani na maoni ya mwenzako ni kinyume na sheria zetu kama Seneti.

The Speaker (Hon. Lusaka): Sen. Faki, endelea.

Sen. Faki: Bw. Spika, nampongeza sana Sen. Sakaja kwa kusahihisha swala hilo.

Nimetaja vifungu viwili vya Sheria ya Katiba ambavyo vinagongana. Ni ukweli, Bunge ndio taasisi inayojadili na kupitisha sheria katika Jamuhuri ya Kenya. Mswada wowote ambao unaletwa hapa Bunge ni lazima upitie hatua zote tatu kabla ya kupitishwa na kuwa sharia. Ni lazima usomwe mara ya kwanza, pili na tatu ambapo unaweza kupitishwa au ukataliwe.

Ni nini majukumu ya Bunge katika vifungu hivi vitatu? Je, jukumu la Bunge ni kuangalia au kushangilia bila kutoa maoni yake? Je, Bunge ina jukumu ya kuweza kuchunguza Mswada wa sheria na kuona kwamba unaambatana na Katiba na sheria za kimataifa ambazo zinatumiwa katika nchi yetu? Kwa hivyo, hakuna kuchanganyika kokote hapo kama vile Seneta wa Nandi amesema.

Nikizungumzia vipengee kadha wa kadha katika Mswada huu, kuna malengo mazuri. Je, tutayatekeleza malengo ambayo yanapedekezwa hapa? Kwa mfano, tunataka kujumuisha kila mtu katika nchi yetu? Lakini tukiangalia sheria zetu, hatujakuwa na ujumuishaji wa kila kabila katika Serikali ya nchi yetu. Vyeo vikubwa Serikalini vinalenga jamii moja.

Tulikua Pwani juzi na Kamati ya Uwiyano ikiongozwa na Sen. Shiyonga ambapo tulikuwa tunaangazia swala la kuajiriwa kwa Mkurugenzi Mkuu wa Kenya Maritime Authority (KMA). Tuliona pale kuwa ijapokua mkurugenzi yule hakuwa amehitimu kupata kazi ile, alipewa kazi hiyo kwa sababu wakubwa wake wote katika Wizara ya Usafiri wanatoka katika jamii moja na eneo moja.

Bw. Spika, je, hili swala la *inclusivity* au kujumuisha kila mtu katika Kenya litaweza kutekelezwa kisawasawa? Kama sisi watu wa Pwani tutaweza kupewa nafasi moja ya *Prime Minister* au nafasi moja ya *Deputy President*? Hivi sasa inaonekana

tunabaguliwa wazi. Hata zile nafasi za kuteuliwa, kwa mfano katika Bunge, sisi kama watu wa Pwani hatuzipati.

Jambo la pili ni kuwa hili swala la *inclusivity* lisiwe kwamba tunapakwa mafuta kwa mgongo wa chupa; yaani, tupitishie halafu baadaye tunawachwa mataani kama tulivyo achwa muda uliopita.

Jambo la tatu ni ofisi ya *Ombudsman* katika taasisi ya mahakama. Taasisi ya mahakama inatajikana iwe huru bila kuingiliwa na taasisi yote ama upande wowote katika maswala haya. Kuwepo kwa *Ombudsman* kwa hakika italeti mtafaruku katika taasisi ya mahakama, kwa sababu wakati Jaji atakapokuwa anaandika hukumu yake atakuwa anaangalia kwenye bega lake na kujiuliza, “Je, anaangaliwa na nani katika swala hili?” Mahakama itakosa uhuru na haki za kibinadamu zitaweza kudhulumiwa katika nchi yetu. Hatutakuwa na amani kwa sababu kila mtu atakuwa na shida ya haki hizi.

Bw. Spika, hapo awali nafikiri ilikua 1982, kulikuwa na Mswada Bungeni wa kubadilisha Katiba. Kama sikukosea ilikua inataka kuondoa *security of tenure* ya majaji wa mahakama zote za Kenya. Wengi walioko katika Chama cha Mawakili wa Kenya walipinga swala hilo kwa sababu lilikuwa inapunguza uhuru wa majaji kusimamia swala hili. Mahakama ni taasisi ambayo inafaa iongozewe nguvu badala ya kupelekewa makachero au majasusi wakuweza kuchunguza majaji wanafanya nini.

Bw. Spika, tatizo kubwa la mahakama hivi sasa ni kuwa wamefunguziwa ruzuku. Katiba ilikuwa imeweza kufikiria kuwa ili mahakama iwe huru na iamue haki kisawasawa, ni lazima iwe na fedha zake na uwezo wake wa kufanya kila jambo. Lakini kwa sasa, mahakama zetu zimefungwa na upande wa *Executive*. Hivi sasa ni kuwa mahakama hazina uhuru wa kutosha kuhakikisha kwamba wanatekeleza majukumu yao kisawasawa.

Kwa sababu hiyo, swala kama hili la kuleta kachero ama *Ombudsman* kufanya uchunguzi katika mahakama, litaletu mtafaruku na kusababisha uhuru wa mahakama kupungua.

Kuna mambo mazuri ambayo yamekuja katika marekebisho haya, kwa mfano, marekebisho ya kuweka *Youth Fund*. Hilo ni swala nzuri sana la kuhakikisha kuwa vijana wetu wanapata makazi na njia za kujikimu kimaisha bila ya kutegemea watu.

Bw. Spika, swala ambalo litaletu utata ni uchaguzi wa Seneta mwanamke na Seneta mwanamume katika Bunge hili. Sisemi kuwa dada zetu Maseneta au Wabunge wanawake hawana majukumu ya kutekeleza. Wale Wabunge wanawake ambao wanahudumu katika Bunge la Kitaifa hivi sasa wanafanya kazi kubwa kule, ikilinganishwa na kuja hapa kupitisha tu maswala ya fedha na maswala mengine ambayo hayana uzito wa moja kwa moja kwa yule mwanamke na vijana walioko katika nchi yetu.

Zile fedha ambazo wanapata viongozi wa kina mama katika Bunge la Kitaifa, zinasaidia pakubwa kutatua matatizo ya kielimu, kiuchumi na matatizo mengine ya huduma ambazo wananchi wanapata kwa sasa. Kwa hivyo, tukiwaondoa kule na tuwalete katika Bunge la Seneti, ndio tutajaribu kutekeleza usawa wa jinsia katika nchi yetu na Bunge letu, kwa hakika itakuwa hasara kubwa kwa vuguvugu la kuwapa nguvu akina mama.

Bw. Spika, swala la maeneo Bunge limeleta utata kwa sababu halijatolewa kwa usawa. Tunaona kuwa maeneo mengi ambayo yanahitaji maeneo zaidi yamenyimwa. Ijapokua Mombasa inaongezewa viti vitatu vya Bunge, hiyo haitoshi kabisa. Mombasa imekuwa maradufu kwa muda wa miaka kumi na tunahitaji viti zaidi ya vitatu ambavyo tunaweza kupata hivi sasa.

Pia tutakuwa tunakiuka Katiba kwa sababu swala la mipaka ya maeneo ya bunge hushughulikiwa na tume ya IEBC. Tume hii husimamia maswala ya ugavi wa maeneo bunge kwa kuzingatia wingi wa watu, mambo ya kiuchumi na usawa wa kuwakilishwa. Hii ni kwa sababu kuna maeneo mengi makubwa ambayo ni vigumu kuwakilishwa kikamilifu na mbunge mmoja.

Kwa hivyo, nitaunga mkono marekebisha haya lakini hili swala la kuwa Mswada wa Kurekebisha Katiba ukishatoka kwa wananchi, usiweze kujadiliwa katika Bunge kwa sababu hili ni swala ambalo lazima tuliingilie kwa ndani hata kama itawezekana katika Mswada huu kulibatilisha lakini hii ifanywe na Bunge sababu Bunge hujadili Mswada mingi kabla hayajapitishwa na kuwa sheia. Hatuwezi kuwa sisi tumefungwa mikono wakati tunarekebisha sheria muhimu kama hii ya Katiba ya nchi.

Asante, Bw. Spika, kwa kunipa fursa hii.

Sen. (Eng.) Maina: Thank you, Mr. Speaker, Sir, for giving me this opportunity to contribute to this important historic Bill in our country.

The constitution-making process is the most important thing in any country. We made the 2010 Constitution, but there are issues that I felt were never covered. One of them is constituencies. Therefore, this Bill intends to mitigate some of the things that were not right. Even now there are things that will not be right after this Bill is passed and we expect them to be handled later.

Mr. Speaker, Sir, as I rise to support this Bill, I must also point out some of the things that will still need Kenyans and us to bear in mind as we move forward. The basis of democracy is one man, one vote. Any country that wishes to have justice to its populace must achieve that. In the 2010 Constitution, I went to court over the same matter, but it has never been resolved to this day. I went to court because I felt Nyeri County was not treated fairly and it deserved a constituency. The area that made me go to court was Kieni. Even now it is not getting an additional constituency in this amendment Bill. Nevertheless, it has been explained, but I sincerely hope as we move forward, IEBC will look into this matter of constituencies so that Kieni and Mathira constituencies benefits. I ended up in court. The first time the Judge ruled that we were right that the constituencies had not been done correctly, that is the 2010 constituencies. To this day this remains on record.

Mr. Speaker, Sir, devolution is a good idea. Devolution is not a new idea in this country. It was there in the earlier days. Those of us who may have been there in the 1960s and early 1970s, we recall in their primary schooldays, there was a lorry written "District Education Board." It used to distribute textbooks, exercise books and other writing materials; that was devolution by then. This is the idea that we have been trying to see whether we can reintroduce it.

At the same time, the then District Commissioner who was in charge of the present day counties had various departments: agriculture, health, security and roads. All those departments were coordinated from the district headquarters. In Nyeri County, the District Works Officer used to deal with matters of local roads. This is the same idea we have tried to introduce.

In this House and even the country, we have been talking of corruption. According to the records and all the reporting that has been done, you will note that 80 per cent of the resources that go to the counties does not end up being used efficiently and for the intended purpose. We must and we should have come up with a framework that will ensure that the resources vote here, that we fight for here are used efficiently to benefit the ordinary man.

If you go anywhere in this country, you will see a lot of construction works going on. There is construction of houses, mortuaries, classrooms, feeder roads and so on. There is construction of all manner of things from fences to putting up flowerbeds all over to beautify various offices in the counties.

All this is happening, but when you go to dispensaries, there are no medicine. All this is happening while some children are not in school because of lack of school fees. Therefore we need a framework.

Personally, I have felt very uneasy voting for a huge amount of money to go to counties and yet we have no control over it. This House has felt quite comfortable to just leave things as they are even during constitutional-making when we had various disciples to talk on our behalf. This House should be empowered to do its work.

It is not the amount of money that will eradicate poverty and the suffering of the common people in our country, but it is the management and the conscious commitment to the welfare of man. Even after passing this Bill there is need to ensure that Senate is really here for devolution. You are not here just to vote for money to go to be wasted and stolen. For example, they spend it on trips abroad. This House should have a system linked to the Attorney-General where we can be making sure that any cent voted here goes to the right use.

The other day I was listening to debate in this House and I had to interject. Members were complaining here that they have been discriminated and they have been suffering because a lot of money has been going to Mt. Kenya region. When we stand here, we must speak the truth. We must be wary of what we state.

Mr. Speaker, Sir, let me say this for the record. Mt. Kenya region has suffered since the colonial days. There is no favouritism that people are talking about. We have been suffering since the struggle for Independence of this country. Today, some of the people of Mt. Kenya region are living in serious economic difficulties because their coffee, tea, milk and all other products are earning them nothing. Coffee now generates only 15 per cent of what it used to.

I want to appeal to this House that when we speak, we should speak for our people. We should not entertain this kind of thoughts and words that tend to bring the same kind of feelings which boiled up in 2007 and led to what we witnessed. I would like to go on record that Mt. Kenya region has not actually enjoyed any favouritism at all. If

anything, it has been contributing to the development of this country and providing services that others enjoy and we are proud of that. We do not expect leaders to stand here and try to create that misconception.

Going back to the issue of devolution, I want to say that I am not convinced. I want to go on record by saying that devolution can only succeed based on how we approach it. Success is not going to a county and seeing a tall building written “Governor’s Office” or “The County Government Offices”. It is not about having a four storey building with flowers all over and lights at night. That is not devolution that “Wanjiku” envisaged. We can only realise the dream of devolution by making sure that resources reach the people.

The counties have been given about Kshs3.6 trillion since the inception of devolution. That kind of money should have ensured we have good services to the people. To me, we should have dealt with issues to do with health, education, survival of the people like smallholder traders and improvement of agriculture.

I am dismayed when I see people dying of hunger in some counties yet they get quite substantial amount of money. Why can somebody not spend even Kshs500 million to feed the people? It beats any reasoning.

Once again I would like to caution this country. Unless we seal the loopholes of corruption in Kenya, we will never realize full benefits of democracy. When we have a couple of Cabinet Secretaries, governors, Senators and Members of Parliament and other big names behind bars in Kamiti Maximum Security Prison, serving sentences for squandering public resources, that is when Kenya will start taking the route to meaningful democracy.

This Bill is a step to the right direction. It will not be the end of the journey. Therefore, I support it and hope that all the sentiments that have been expressed will be taken into account as we move forward.

The Speaker (Hon. Lusaka): We will have Sen. Mwaruma virtually.

Sen. Mwaruma: Asante, Bw. Spika, kwa kunipa fursa hii ili kuchangia huu Mswada wa mageuzi ya Katiba. Kwanza ningependa kujibu swali ambalo limeulizwa kwamba kama huu ndio wakati mufti wa kubadilisha Katiba. Ningependa kusema kuwa wakati tulipitisha Katiba ya 2010, tulijua kwamba kuna asilimia 20 ambayo haikuwa nzuri. Tulipitisha hivyo hivyo ili wakati ukifika tutengeneze ile asilimia 20 ambayo haikuwa nzuri.

Katika kuchangia Mswada huu, ningependa kuanza na mambo chanya ama *positive aspects* kabla ya kuzungumzia yale hasi. Nitaanza na mambo hasi yaliyo katika Mswada huu halafu nizungumzie yale chanya kwa sababu naweza kuishiwa na muda bila kuongea mambo ambayo sio mazuri katika Mswada huu.

Mwananchi wangu wa Taita-Taveta alitoa mawazo mengi sana kuchangia kwa Mswada huu lakini mengi hayajazingatiwa ama kuangaziwa. Jambo la kwanza ni kwamba asilimia 62 ya Gatuzi la Taita-Taveta iko chini ya mbuga za wanyama. Katika mapendekezo ya Mtaita na Mtaveta, tulisema kwamba ile mbuga ya wanyama iwe *game reserve* badala ya kuwa *national park* ili mwananchi wa Taita-Taveta afaidike moja kwa

moja kutokana na rasilimali ya mbuga za wanyama. Hilo halijawekwa katika Mswada huu. Kwa hivyo, mwananchi wa Taita-Taveta ninayemwakilisha hana furaha.

Mbuga ya Wanyama ya Masaai Mara iliyoko katika Eneo Mbunge la Narok inafaidi wananchi kutokana na pesa nyingi tunayoita *own source revenue*. Kinyume ni kwamba kwetu hatupati faida hata kidogo bali maafa. Ninapooonga sasa hivi, kuna mtu atakayezikwa leo katika maeneo ya Bughuta katika Eneo Bunge la Voi. Mtu huyo aliuawa juzi na ndovu aliyemfuata mpaka shambani kwake.

Mimea inaliwa na wanyama pori lakini kupata fidia imekuwa ngumu. Wakulima wale pia hawana pesa za kuweka uzio za umeme pia ni ngumu. Sehemu hizo zingetambulika kama sehemu maalum ya hifadhi ya wanyama pori au *game reserves*, tungeweza kujitengenezea uzio za umeme ili kuzia wanyama wa porini kuuwa binadamu, kuharibu mimea yetu au kuuwa wanyama wetu.

Swala la pili ni faida kutokana na madini. Taita-Taveta ina madini mengi sana. Lakini hali ilivyo sasa, watu wanaofaidika na madini hayo ni watu wa nje. Wenyeji wa Taita-Taveta hawapati mrabaha kutoka kwa madini hayo. Wenyeji wa Kaunti ya Taita-Taveta hawapati miharaba zilizoangaziwa katika vipengee vya *Mining Act, 2016*. Serikali ya Kitaifa haipatii watu wa Kaunti ya Taita-Taveta pesa zao ninazotokana na madini. Maswala haya ni lazima yaangaziwe katika BBI. Nilitarajia ripoti ya BBI ingeangazia swala la kwa nini wananchi wa Kenya, sana wenyeji wa Taita-Taveta. Wenyeji hawa hawana furaha kwa sababu wana rasilimali nyingi lakini hao ndio maskini zaidi katika nchi hii.

Ningependa kusema kwamba kuna maswala fulani ambayo yaliangaziwa katika Mswada wa BBI ambayo yatatuhimiza kuunga mkono Mswada huu. Katika kutengeneza au kubadilisha katiba hauwezi kuwafurahisha wananchi wote. Kuna mengi yatakayo furahisha wananchi na mengi yatakayowakera baadhi ya wananchi. Yanayo tufurahisha katika Mswada huu wa BBI, ni kuongezwa kwa idadi ya maeneo bunge. Kaunti ya Taita-Taveta ina wapiga kura zaidi ya 200,000 ilhali ina maeneo bunge manne. Mswada huu wa BBI usipopita, maeneo bunge katika Kaunti ya Taita-Taveta yatapungua ili tubaki na maeneo bunge mawili au matatu. Kwa mfano, eneo bunge moja likipotea, Kaunti ya Taita-Taveta itapata hasara ya Kshs140 milioni. Tukipoteza maeneo bunge mawili, tutakuwa tunapoteza zaidi ya Kshs280 milioni.

Kaunti ya Taita-Taveta inafurahia Mswada huu wa BBI kwani unapendekeza kubakisha maeneo bunge manne yalioko sasa. Pili, Mswada huu wa BBI unaimarisha ugatuzi kwa kupendekeza rasilimali zaidi kuendea serikali za ugatuzi. Katiba ya 2010 lilipendekeza asilimia 15 ya upato wa nchi kuendea serikali za ugatuzi. Mswada wa BBI unapendekeza asili mia 35 ya upato. Wale wanaopiga Mswada huu wa BBI wanasema kwamba ikiwa kufikia sasa Serikali ya Kitaifa haijaweza kupeleka asilimia 15 ya upato wa nchi katika serikali za ugatuzi, je wataweza aje kupeleka asilimia 35?

Mwaka jana tulipokuwa na mjadala mkali kuhusu ugavi wa rasilimali, tulikuwa tunapigani pesa ziongezwe kutoka Kshs316.5 bilioni mpaka Kshs370 bilioni. Ninafuraha kwamba tulifaulu kuhimiza Serikali ya Kitaifa kupeleka rasimali zaidi katika serikali zetu za ugatuzi. Hivi sasa, kuna pesa nyingi sana ambazo zinabaki katika Serikali ya Kitaifa ambayo ingefaidi sana serikali za ugatuzi. Kwa mfano, pesa zinasoendea mashirika kama

Kenya Urban Roads Authority (KURA) na Kenya Rural Roads Authority (KeRRA) yanaweza kuendea serikali za ugatuzi kwani barabara zinazoshughulikiwa na mashirika hayo zote ziko katika serikali za ugatuzi. Pesa zinazoendea mashirika hayo na mengine mengi yanafaa kuendea serikali za ugatuzi ili mchango wa pesa iongezeke mpaka asili mia 35.

Bw. Spika, pesa zinazoendea Wizara za Kilimo, Afya na Michezo pia zinafaa kuendea serikali za ugatuzi kwani hayo ni mambo yanayoshughulikiwa na serikali hizo. Kwa mfano, Wizara ya Michezo ina pesa nyingi mpaka wanalazimika kupatia serikali za ugatuzi misaada ya kujenga viwanja vya michezo. Kwa nini pesa hizo zisipewe serikali za ugatuzi ili zifanyiwe bajeti na serikali hizo? Kwa nini pesa zinazobaki katika Wizara ya Kilimo zisiendee serikali za ugatuzi ilhali maswala ya ukulima zinashughulikiwa na serikali za ugatuzi?

Swala la ugatuzi ni swala nzito sana kwangu kama Seneta wa Kaunti ya Taita-Taveta. Wananchi wetu wanfaidika sana na maendeleo kutokana na ugatuzi. Kaunti ya Taita-Taveta ni moja wapo ya kaunti ndogo nchini na wengi wanaopinga ugatuzi uuliza inakura ngapi? Kwa kweli, kura zetu ni chache sana. Sisi mfumo huu wa ugatuzi ni baraka kubwa sana kwetu. Tangu kuanzishwa kwa mfumo wa ugatuzi, Kaunti ya Taita-Taveta imepokea zaidi ya Kshs4.5 bilioni za maendeleo kila mwaka. Kabla ya mfumo wa ugatuzi, haikuwa inapata kiwango hicho cha pesa. Tunapata pesa nyingi sana za maendeleo katika mfumo huu wa ugatuzi.

Kuanzia mwaka 2013, mfumo wa ugatuzi ulipoanza, hakuna mradi umefanywa katika Kaunti ya Taita-Taveta kutokana na pesa za Serikali ya Kitaifa unaozidi Kshs200 milioni. Pesa zaidi tulipata kwa mradi mmoja haukuzidi Kshs50 milioni. Hata hivyo, mwaka huu, Kaunti ya Taita-Taveta ilipata msaada kutoka kwa Benki ya Dunia wa Kshs900 milioni ya mradi wa maji. Mwaka wa 2018, niliuliza swali hapa Bungeni nikitaka Wizara ya Maji itueleze miradi yote nchini katika wizara hiyo. Ripoti hiyo ilipoletwa hapa Bungeni, nilishangaa kuona Kaunti ya Embu ilipata kiasi cha Kshs2.5 bilioni za miradi ya maji kuanzia 2013 hadi 2018. Kaunti ya Murang'a ilipata kiasi cha Kshs6 bilioni, Kaunti ya Elgeyo-Marakwet ilipata kiasi cha Kshs25 bilioni kupitia miradi ya mabwawa za Arror and Kimwarer. Kaunti ya Kwale ilipata Kshs10 bilioni kupitia mradi wa bwawa la Mwate. Kaunti ya Makueni ilipata kiasi cha Kshs35 bilioni kupitia mradi wa bwawa la Thwake. Ingawa kuanzi mwaka wa 2013 hadi 2018, Kaunti la Taita-Taveta haikupata miradi yoyote ya maji. Kwa hiyo, tunapigania ugatuzi kwa sababu maendeleo yetu mengi yanatokana na ugatuzi.

Bw. Spika, jambo lingine linalonihimiza niunge mkono Mswada huu wa BBI ni kwamba linapendekeza pesa za CDF katika katiba. Nilitangulia kusema kwamba Kaunti ya Taita-Taveta ina maeneo mbunge manne na kila eneo bunge linapata zaidi ya Kshs130 milioni kila mwaka. Pesa za CDF sikitambulika kikatiba, tunahuakika kwamba hautawahi kupoteza pesa hizo za CDF zinazosaidia wananchi wengi kugharamia karo za shule, kujenga mashule na kutimiza mandeleo mengine mengi yanayo husika na elimu vile usalama.

Kutambulika kwa CDF kikatiba kunamaanisha kwamba Kaunti ya Taita-Taveta haitawahi kukosa pesa hizo. Kuna watu walipeleka kesi kortini wakitaka pesa za CDF

zitupiliwe mbali bila wao kutambua kwamba mfumo wa ugatuzi na pesa za CDF zimeleta maendeleo mengi katika serikali za ugatuzi. Sisi tunashangilia pesa CDF kutambulika kikatiba.

Bw. Spika, mfuko wa kuendeleza kata au *Ward Development Fund* pia unahakikisha kwamba pesa za maendeleo zitafikia kila kata. Pesa hizo zinawakilisha kwamba kila kata inapata pesa za maendeleo hata kama mwakilishi wa kata hiyo hamuungi mkono gavana wa kaunti hiyo. Ninamshukuru Sen. Kang'ata aliyeleta Mswada wa *County Wards Development Equalisation Fund Bill, 2018* katika Bunge hili. Isipokuwa Mswada huo haukupita, ninafuraha kwamba Mswada huu wa BBI unapendekeza kutambua pesa hizo kikatiba. Namsihi Sen. Kang'ata wa Murang'a aunge Mswada huu mkono kwani unazingatia maswala ambayo amekuwa akipigania hapa Bungeni.

Jambo lingine nzuri katika Mswada huu wa BBI ni kwamba kunahakikisho kwamba kutakuwa na usawa wa kijinsia. Mimi ni mwanaharakati wa usawa wa kijinsia. Nina furaha kwamba Mswada huu wa BBI ukipita, Bunge zetu zote zitakuwa na usawa wa jinsia. Mwaka uliopita, mahakama ilisema ya kwamba Bunge livunjiliwe mbali kwa sababu lilikuwa limeshindwa kupitisha sheria ambayo ingehakikisha usawa wa jinsia katika Bunge.

Ilikuwa hata tungelivunja Bunge, watu wanaochagua ni walewale wananchi wetu. Hawachagui wakizingatia usawa. Building Brides Iniative inasema hatuwezi kuwa tunaendelea huku tumeacha wananchi wengi ama nusu yao nyuma ambao ni wanawake, walemavu na vijana.

Pia, ninaunga Mswada huu mkono kwa sababu Mawaziri watakuwa hapa Bungeni. Mara kwa mara tumeuliza mwaswali yanayohusiana na wananchi wetu yajibiwe lakini tumepata shida kupata Mawaziri. Wengine hawataki kuja Bungeni kujibu maswali. Tukiwa na Waziri Mkuu ama Mawaziri Bungeni, itakuwa rahisi kupata majibu kwa maswali tunayouliza Bungeni.

Yale masuala ambayo labda hayako vizuri katika serikali yetu wakati huu ni kwamba ugatuzi ni jambo nzuri lakini kutoa pesa kuzipeleka kwa kaunti ili zifanye maendeleo kumekuwa kizungumkuti. Nina imani kwamba tukiwa na uongozi mzuri unaoangalia mambo ya fedha na kumaliza ufasidi, tutakusanya fedha za kutosha na kwa wakati unaofaa ili ziende katika kaunti kufanya maendeleo.

Mambo ya ufasidi yanaua maendeleo katika nchi yetu tukufu ya Kenya. Leo tunaambiwa kuwa billioni mbili fedha za Kenya zinapotea kila siku. Tukifunga huo mfereji wa ufasidi, basi zile pesa za kwenda kufanya maendeleo mashinani zitapatikana na tutazidi kudumisha ugatuzi.

Mambo wakati huu yamekuwa magumu zaidi kwa sababu ya janga la Korona. Shirika la Ukusanyaji Ushuru (KRA) halikusanyi ushuru inavyopaswa lakini janga hili litaenda kuwa nasi. Hatutakaa nalo milele.

Kuna watu wanaouliza kama wakati huu wa janga la korona ni wakati mzuri wa kubadilisha katiba. Mchakato huu wa kubadilisha katiba ulianza kabla ya janga hili kuja. Je, tukisema hatutabadilisha Katiba wakati huu na mazuri yote yaliyomo kwenye Mswada wa Marekebisho ya Katiba, 2020, kuna mkataba gani na janga hili? Litaisha

lini? Hatujui. Hatujui kama litakuwa kama mafua au kohozi ambalo tunaendelea nalo milele na milele. Mambo ya kusema tusibadilishe Katiba kwa sababu kuna Korona hayana umuhimu wowote kwa sababu hatujui kama hili litaenda mpaka lini.

Mambo ya kukopa sana ili kufanya maendeleo yanatufisha moyo sana hapa Kenya. Kabla ya mwaka wa 2012 tuliweza kumudu asilimia 95 ya bajeti yetu. Mwaka wa 2012 asilimia 95 ya bajeti ya Kenya ilichangiwa na fedha zilizotoka Kenya kwenyewe. La kuvunja moyo sasa ni kwamba bajeti yetu ni Kshs3 trillions katika nchi inayokusanya chini ya Kshs2 trillions. Jambo hili linaonyesha kuwa katika mwaka wa Kifedha wa 2021/2022 bado tutaingia katika bonde la kukopa zaidi ya Kshs1.6 trillions. Kwa nini tusiishi kadiri ya mapato yetu? Kwa nini tunaishi na madeni? Tuna madeni na tunaendelea kuingia kwa mengine na tutaendelea kuingia kwa mengine zaidi.

Tunaongea mambo ya ugatuzi – ambao ni mzuri- lakini kama tutakuwa tukitumia fedha zote kulipia madeni ambayo hatafanya maendeleo kwa maeneo fulani pekee. Maeneo kama Taita Taveta hayapati miradi hiyo lakini ikifikia wakati wa kulipa tunalipa sote.

Jambo hill la *good financial management* na *debt management strategy* lazima tuliangazie, tuache kukopa na tuishi *within our means*.

La mwisho ni kwamba watu wanauliza kama kuubadilisha Mswada huu. Hatuwezi kwa sababu unatoka kwa wananchi na umepitia kwa county assemblies na hawakuubadilisha. Kama *county assemblies* zote zingeamua kubadilisha, tungekuwa na Mswada mingapi inayokuja kwa Seneti na Bunge la Kitaifa. Tayari *National Assembly* wamepitisha Mswada huu bila kuubadilisha. Je, sisi kama Seneti tukiamua kuubadilisha, ni upi utakaoenda katika *referendum*?

Naomba tuheshimu wananchi wetu. Tuupitisha vile ulivyo kama ulivyotoka kwa wananchi, ukaenda county assemblies na *National Assembly* kwa sababu itazuia mkanganyiko kuhusu Mswada utakaoenda katika kura ya maoni.

Mswada huu hata tukiungusha leo, lazima uende kwa kura ya maoni. Kuna mambo mawili yanayofanya Mswada uende kwa kura ya maoni. La kwanza ni kama mwananchi ameamua kubadilisha Katiba na yale masuala anayoangazia ni yale ambayo hayajaangaziwa katika Ibara ya 255 ambayo ni *Structure of Governance* na vile Bunge linavofanya kazi. Hayo ni masuala ambayo hayahitaji kwenda katika kura ya maoni lakini yanaweza kutengenezwa na Bunge.

Ukienda Bungeni na Bunge iamue kuupitisha, basi ule Mswada utaenda kwa Rais na kuidhinishwa. Bunge likiletewa Mswada kuhusu mambo ambayo hayajaangaziwa katika Ibara 255 halafu iamue kuuangusha Mswada ule, ni lazima uende kwa kura ya maoni na wananchi waamue wenyewe.

Mswada mwingine ambao ni lazima uende kwa kura ya maoni ni ule ulioangazia masuala mengine yaliyo katika Ibara 255 ambayo ni *Structure of Governance, working of Parliament* na *How to Change the Constitution*. Mswada huo ukija Bungeni ni lazima uende kwa kura ya maoni hata tukiungusha ama kuupitisha.

Huu wa leo tukiupitisha au kuuangusha ni lazima uende kwa kura ya maoni.

Mh. Spika, ninashukuru kwa nafasi uliyonipa ili kuangazia masuala ya Mswada huu wa BBI. Ninajua BBI itaenda kubadilisha maisha ya mwananchi wa Kenya.

The Speaker (Hon. Lusaka): We want to take a vote by midday, so, those I am going to give an opportunity should try to keep their speeches brief. Proceed, Sen. (Dr.) Ochillo- Ayacko by virtual platform.

Sen. (Dr.) Ochillo-Ayacko: Thank you, Mr. Speaker, Sir for the opportunity to address Parliament from where I am. I am fully in support of the Constitutional of Kenya (Amendment) Bill, 2020. The Committee of Parliament has done a good job and has captured what is good and what needs to be amended in future.

I hope all the corrections being flagged out that require attention will happen in the lifetime of Mr. Speaker, the current President and Rt. Hon. Raila Odinga because these amendments that require attention must be attended to.

As we urge all Kenyans to be in support of this Constitutional (Amendment) Bill, 2020, let us guide them hope that what has been raised will be attended to.

Of concern to Migori County which I represent, is that we want more constituencies. It is a populous county. For a populous county, we want more resources allocated to that particular the county. We hoped to be one of the beneficiaries of additional constituencies. We want more constituencies to be allocated to Kuria West Sub-county. Unfortunately, that has not happened.

That is why as soon as we pass the Constitutional (Amendment Bill), those who have benefited with constituencies should not adopt the selfish approach and ignore the rest of the Kenyans and leave them behind by not benefiting with additional counties.

I want to give hope to Kisii, Homa Bay, Siaya and all the counties that have not benefited from this allocation. Where I come from, one of the advice that has been offered to us by the elderly is that----

(Technical hitch)

The Speaker (Hon. Lusaka): We cannot follow. We shall hold your time until your network is stable. Let us get somebody else. We can hardly follow what you are saying.

Sen. Ndwiga: Mr. Speaker, Sir, can you hear me?

The Speaker (Hon. Lusaka): Yes we can. However, we need to see you.

Sen. Ndwiga: Thank you, Mr. Speaker, Sir, for giving me this opportunity to contribute to this Bill.

There has been a lot of debate on whether it is the right time to change the Constitution. For some of us, there is no right time to change the Constitution. There is no better time than now.

I would like to go down the history lane, in the days when some of us were in the opposition. For 10 years, my county of Embu only received Kshs15 million for development. Those are some of the things that we cannot forget.

In 2003, we got respite when the Constituencies Development Fund (CDF) was introduced and we saw some development through it. Therefore, the people of Embu overwhelmingly voted for the current Constitution because they remembered how they

suffered in the earlier days. Without devolution, there is no way funding and development will reach the grassroots. It is impossible.

This Bill proposes to devolve funds all the way to the wards. This is a great step for this country. This is because ordinary Kenyans at the ward level will decide on their development priorities with the amount of money that they will get.

Mr. Speaker, Sir, a house cannot be built from the top. We have to develop from the grassroots. In many counties, there are some wards which have not seen any development despite the fact that we are devolving funds every year. This is because the governor may not like the ward representatives and Kenyans end up suffering.

In some cases, the governor may be unhappy with people of a certain region and refuse to send funds to the region. However, if this Bill passes, we will have equitable distribution of funds for development in all our wards. Therefore, Kenyans will benefit in that respect.

Mr. Speaker, Sir, on the issue of the new constituencies, in Embu, we will get one additional constituency. This means that we will get an additional Kshs100 million every year for development. This is on top of what we are currently devolving to the counties. The most important thing is that for a long time, in our Parliament, there was no equitable representation.

This Bill proposes equality amongst the constituencies. That is what the Constitution requires so that Kenyans are treated equally. A vote from any Member of Parliament (MP) is equal. However, today, it is unequitable. A vote from a Senator from a populous county is equal to a Senator who represents 100,000 people. What this Bill proposes is what Kenyans want and fought for. It is what the struggle for independence was all about.

Mr. Speaker, Sir, there is a lot of debate about where the funding will come from. There are people who have talked about the 35 per cent which will go to the constituencies. However, there is no county that is owed money by the Government. By end of June, all counties will have received all the funding that the Senate allocated to them.

There is a lot of money that remains in Nairobi. For example, as you are aware, I am the Chairperson of the Committee on Agriculture, Livestock and Fisheries. Agriculture is a devolved function. However, there are many functions which the Ministry pretends to perform at its level yet they ought to be done by the counties.

Mr. Speaker, Sir, the Maputo Declaration decreed that agriculture should be funded by 10 per cent of the budget.

My Committee had a meeting with governors on agricultural issues. They told us that they have no problem with allocating 10 per cent of their resources to agriculture but the funds were not enough.

With the 35 per cent increment, will these funds be available?

Mr. Speaker, Sir, I know a lot of money remains with the Ministry of Agriculture, Livestock and Fisheries. I congratulate the Cabinet Secretary, (CS) Hon. Munya, for trying his best to distribute some of that money to rehabilitate and modernize coffee

factories in coffee growing areas. However, that is the work of counties. That funding ought to be with counties and not at the headquarters.

Crop development is also at the Ministry. That is improper because agriculture is a devolved function. Therefore, such finances ought to be with counties for them to improve extension services. This country is lagging behind in agriculture we lost extension services. Extension services are no longer in existence anywhere in this Republic. Without them, we cannot pretend to be an agricultural country.

We may have the Kenya Agricultural and Livestock Research Organization (KALRO) who develop new crops varieties, but who will teach farmers how to propagate the same? We want counties to get additional funding for them to establish proper extension services.

Mr. Speaker, Sir, while growing up in Embu County where I come from, we used to see agricultural extension officers every week. They would come to inspect what we were doing to make sure we applied the correct fertilizer and the best pesticides. If you look at the graph, it is at that time when this country was at the peak of production. We did not even have a lot of land under coffee cultivation, but we would produce in excess of 140,000 metric tonnes of every year.

Today, we are producing only 32,000 metric tonnes with all the expansion of coffee cultivation. Why? It is because many farmers have abandoned coffee farming. In very many places today, you will find coffee bush trees on farms that produce nothing. We are advocating for the 35 per cent increment to counties so that counties can engage in extension services.

Mr. Speaker, Sir, our time is limited and other people would like to contribute to this Bill, which I support. I also urge Members to support it. Members of Parliament (MPs) sometimes forget and think what happened yesterday cannot happen tomorrow. In the days when we were in the opposition – I said this at the beginning – my county received less than Kshs15 million for development in 10 years. That is why I am solidly voting for this Bill.

May I remind hon. Members that those years, we used to have a system where Ministers responded to questions in Parliament. Can you imagine you want something done by the Government and the CS tells you, they will do it when funds are available? At whose mercies are you left? Right now, we know funds that will come to counties and we will follow up to ensure proper utilization.

The Speaker (Hon. Lusaka): Sen. Zawadi, proceed.

Sen. Zawadi: Asante, Bw. Spika, kwa kunipa nafasi hii na mimi nichangie katika Mswada huu wa marekebisho ya Katiba.

Mambo mapya hukumbusha ya kale. Wakati wa kupitishwa kwa hii Katiba ya sasa, nilikuwa upande wa kupinga na nilikuwa na sababu zangu. Hata hivyo, Mungu si athumani, Katiba ilipita. Baada ya kupita, nimeona kumbe ninakosa mengi mazuri.

Nilikuwa mstari wa kwanza kupinga hii Katiba na pia nilikuwa mstari wa kwanza kuwa katika waliobahatika kuwa wabunge katika Mabunge wa Kaunti. Nikiwa mbunge huko, nilikuwa Mwenyekiti wa Kamati ya Afya na nikabahatika kutembelea hospitali

zote za Kaunti ya Kilifi. Katika matembezi hayo, niliona jinsi hospitali zetu zilikuwa vibaya.

Baada ya pesa kuteremshwa mashinani, nimenona hizo hospitali zimetengenezwa, isipokuwa tunakosa madawa na wauguzi kwa sababu pesa ni chache. Ndio maana ninakubali kwamba endapo marekebisho haya ya Katiba yatapitshwa, ninaamini wauguzi wataajiriwa na madawa kupatikana hospitalini. Hilo ndio tatizo kubwa mashinani.

Bw. Spika, pia nilikuwa katika Kamati ya Elimu na nikagundua watoto wengi hawaendi shule wakiwa wadogo. Wengi wao walichelewa kuanza shule hadi wafike labda umri wa miaka 10 au zaidi. Ni katika umri huo ndio wangeweza kumudu kutembea hadi shule kwa sababu shule zenyewe zilikuwa mbali sana na pia chache. Watoto wa chekechea walilazimika hadi waweze kutembea aidha kilo mita 10 au zaidi ili kufika shuleni.

Baada ya kupitisha Katiba, shule za chekechea zimejengwa nyingi mashinani. Lakini hizo shule zinakosa walimu kwa sababu ya uhaba wa pesa. Kwa hiyo, ninaunga mkono mapendekezo ya marekebisho ya Katiba. Endapo itapita, basi pesa zikifika mashinani, ninaamini walimu wengi wa chekechea wataajiriwa.

Ninakubalina na wenzangu wengi walioulizwa kwa nini marekebisho yaja saa hii na sio mwanzoni. Niliwasikiliza na sasa ninakosoa. Wengi walisema kuna mambo kama vile korona ambayo yangeletwa Bungeni. Sikumbuki kukiletwa Mswada hapa kuhusu korona na ukakosa kujadiliwa kwa sababu ya kuja kwa Mswada wa mapendekezo ya marekebisho ya Katiba. Hakuna aliyeleta Mswada wake na ukakosa kujadiliwa.

Bw. Spika, ninaunga mkono kwamba wanawake wanawajibika kiasi fulani. Kwa mafano, haya mapendekezo ya Katiba yamesema kutakuwa na Seneta mwanamke. Tutakuwa na wanawake 47 tukiongezea na labda wanaume 47 watakaokuwepo iwapo haya mapendekezo yatapitishwa.

Bw. Spika, ninakubaliana na wenzangu kwamba ni kweli mwanamke ndiye anawajibika. Fanya hesabu haraka tu uangalie hapa ndani kumesalia wanawake wangapi na wananume ni wangapi. Kisha fanya hesabu uone wanaume na wanawake huwa wangapi katika Bunge hili la Seneti. Utakuta mwanamke anawajibika na ndio maana wengi wako hapa ndani wanasikiza jinsi Mswada huu unavyoendelea. Hivyo basi, ninakubali mwanamke mmoja awe katika Bunge la Seneti.

Vile vile, ningetamani mwanamke mwengine abakie kwenye Bunge la Taifa. Hii ni kwa sababu, kuna changizo kubwa mwanamke angefanya akiwa kule. Kwa hivyo, nakubaliana kwamba kungekuwa na mwanamke katika Bunge la Taifa na Seneti.

Mhe. Spika, nashukuru kwa Katiba ambayo tuko nayo. Nikiwa Seneti, sina uwezo wa kutembea kaunti nzima, lakini nikiwa kwenye bunge la kaunti, nilitembea. Waheshimiwa wengi walikuwa na miradi yao. Hatukuwa tunajuwa majosho ya ng'ombe. Josho la ng'ombe ni 'cattle dip.' Sasa hivi kuna majosho mengi yamejengwa. Wale ambao hawana uwezo wa kuosha ng'ombe wao ama kuwapa dawa, wanaenda katika majosho yale kuwaosha ng'ombe wao.

Naamini kwamba iwapo pesa itaongezeka katika magatuzi, kuna maendeleo mengi ambayo yatapatikana ambayo hayakuwa yanapatikana kwa sababu ya uhaba wa pesa. Nakubaliana kwamba iwapo mjumbe wa Bunge la Kaunti atakuwa anapata zile

pesa za maendeleo---. Sasa hivi, ni gavana ambaye anawapea. Gavana asipopenda, hakuna pesa wanazopata. Iwapo hii Katiba itapita, Mbunge wa Kaunti atakuwa na pesa yake. Atafanya miradi kulingana na ile kata yake anayotoka. Atazingatia upungufu katika kata yake akifanya maendeleo na hakuna mtu amwingilia.

Vile vile, nashukuru na niseme kwamba angalau watu wa Kilifi tumeweza kuwa na barabara mbili au tatu. Sisi pia tunajiita Wakenya. Pale nyuma, tulikuwa tukisema pwani si Kenya. Hii ni kwa sababu hatukuwa tunayapata mengi. Angalau kuna kidogo tunaweza hesabu. Kwa mfano, barabara. Sio nyingi, lakini zipo. Sio kama vile ilivyokuwa mwanzoni, wakati tulikuwa hatuna kabisa.

Nakubaliana kwamba, iwapi pesa zitakuwa mashinani, hatutakuwa tunatengemea Bunge la Taifa au Serikali kuu itutengenezee barabara. Tutakuwa na uwezo huo kama kaunti wa kutengeneza barabara na vitu vingine vingi ambavyo vinakosekana. Kama barabara ni ya *murram*, sio lazima *Executive* ikubali ndiposa ifanyike. Itakuwa inafanyika.

Mhe. Spika, ningependa kuzungumzia mapendekezo ya *Building Bridges Initiative (BBI)*. Iwapo itapita, wale wabunge ambao watabahatika kuchaguliwa, tutapata waziri wetu kutoka kwa wale wabunge. Mimi naunga mkono. Hii ni kwa sababu, ni mara ngapi tuliita Waziri wa Kilimo hasa wakati ule wa nzi? Tulisumbuka sana kuita Waziri wa Kilimo na ilikuwa vigumu sana kupatikana. Vile vile, tumemwita Waziri wa Barabara mara nyingi lakini inakuwa shida kupatikana. Kwa nini? Ndio maana naunga mkono Katiba hii au mapendekezo haya.

Iwapo itapita, basi waziri watatoka hapa, haina haja tukawafuate mbali. Tukimtaka, tutampata hapa hapa, kwa maana ni mmoja wetu, tuko naye, and twala naye. Ni haraka sana kuonana naye na kutatua mambo ambayo tutakuwa tuko nayo. Sasa hivi, tukiwataka, kuwapata ni kama mbingu na nchi. Hawapatikani. Tunawatafuta hadi kuchoka. Lazima wawe *summoned* ndio aweze kupatikana.

Naunga mkono hii Katiba. Ikipita, basi kuna mengi mazuri yatakuja. Sijui *blue economy* inasemaje? Sikuisoma vizuri au sijapata nafasi ya kuisoma vizuri. Najua ipo lakini sijui imesemwa vipi. Hapo siwezi kujua.

Nataka tu ijulikane kwamba bahari ndio uti wa mgongo wetu, sisi watu wa pwani. Tunaitengemea kwa kila kitu; ndio shamba yetu kubwa ya kahawa. Labda ndio shamba yetu kubwa ya majani chai na sukari. Kwa hivyo, naamini na ninataka niamini kwamba imeangaliwa vizuri. Mwananchi wa pwani hatajiona ameachwa upande wa kiuchumi bali amekumbukwa.

Mhe. Spika, kwa ule muda mchache ambao niko nao, wakati tunapoanza safari kama tunaenda mahali, na tuko karibu kupanda gari, huwa Tunasema: 'Ewe Mwenyezi Mungu, tujalie tufike salama.' Hii ni kwa sababu, vyombo tunavyosafiria vimetengenezwa na mwanadamu.

Nasema hivyo kwa sababu hii Katiba imetengenezwa na mwanadamu, haikunitengenezwa na Mungu wala kuanguka kutoka binguni. Kwa hivyo, haitakosa dosari hapa na pale kwa sababu ni mwanadamu aliyetengeneza na mwanadamu si kamili. Kwa sababu mwanadamu si mkamilifu na ametunga hii sheria ambayo tumeona

mapendekezo yake, haiatakosa kasoro. Hakuna kitu kilicho tengenezwa na mwanadamu ambacho hakina kasoro.

Basi tuangalie makubwa na madogo; je, kasoro ni nyingi ama faida ni nyingi? Kwangu, faida ni nyingi na itafaidisha wananchi wa Kaunti ya Kilifi. Nikiangalia kwa kina hakuna tunacho poteza bali ni kufaidika tunafaidika. Naungana na wenzangu kuunga mapendekezo iliyoletwa mkono.

The Speaker (Hon. Lusaka): Sen. (Dr.) Ochillo-Ayacko, proceed.

Sen. (Dr.) Ochillo-Ayacko: Mr. Speaker, Sir, I apologise to those who were following my debate and could not do so because of the poor connection. For avoidance of doubt, I am in support of the Constitution of Kenya (Amendment) Bill. I support it with all my heart and my belief. I indicated that there are a few things that were not included that the people who sent me to this House would have preferred. My people are the people of Migori County. Nevertheless, my platform is a national Senate in Kenya and what benefits all Kenyans also benefits me as an individual and other Kenyans that I represent.

My people of Migori in Nyatike Sub-County would have preferred another constituency. They have the population and the desire and were not included. It is my prayer that in my lifetime they will get an opportunity to have an additional constituency. My people in Kuria West also wanted an additional constituency so that they are represented by one man one vote, as has been the mantra of the populated areas. I heard Sen. Ndwiga say so, I believe and agree with him.

What I want to plead with my colleagues whose counties are benefiting by way of getting additional constituencies is that they should not forget those who are supporting the amendment to the Constitution now that they are benefitting. There is a tendency of those who benefit to forget those who may not have benefited at the time of such benefits. I urge fellow Senators whose counties are benefiting to remember those who may not have benefited, but merit the benefit.

Mr. Speaker, Sir, where I come from, the wise and the old have always told us that if you are a man or a woman and you want children, you marry. If you are a woman, you get married to a man and if you are a man, you get married to a woman. As you look for children and in the past days people used to literally look for children, those who had difficulties in getting them would go to spiritual leaders to do so and some would go to certain lengths that there is no enough time to describe. However, we were advised that when you see a pregnant woman and your wife is not pregnant; do not do anything harmful to the pregnant woman because if you do so, when the turn of your wife to get pregnant and deliver comes, people of evil intention will do likewise to you.

I support the counties that are benefiting, hoping that when the turn of Migori County and that of other counties arrives, they will not kick the stomachs, tummy or wombs of our wives, so that at the time our expectation is aborted. We are people of goodwill, love and patriotism. I suppose and hope that the same patriotism and goodwill will be extended to us and not in the future when we will not be alive, but in the near future when we come to look at the totality of equality of representation.

Mr. Speaker, Sir, certain functions are devolved; health, agriculture and other activities. Sen. Ndwiga, Sen. Khaniri, Sen. Orengo, other Senators, including myself, had the privilege of representing our constituencies when there was no allocation of any kind to those constituencies.

We came to Parliament when the allocation to Parliament was zero, and there was no development at that time in our constituencies. We were told that *siasa mbaya ni maisha mbaya*. If people voted for you in Opposition, you would not get development. We had to carry out development, which was public. We had to build secondary and primary schools and dispensaries using our personal resources, when our salaries were at that time only Kshs23,000.

Mr. Speaker, Sir, we came together and amended the Constitution. We introduced the Parliamentary Service Commission (PSC). We came together and amended the law and introduced, against the will of the Executive, the Constituencies Development Fund (CDF). That was the first step towards devolution.

We have since then had tremendous meteoric development in various parts of this country. Many of us may not have been in Parliament, but if you go to the countryside, you will find that we have various schools that are standard and good-looking for our people to go to. Now that there is money being allocated to *mashinani* to constituencies, wards and counties, we who participated in the first step towards devolving resources, are a happy lot.

Mr. Speaker, Sir, it makes me very happy that more money will be allocated to counties and wards. That will make democracy meaningful to people. What the people who are represented in wards, counties and constituencies vote for is '*tafadhali enda kwa Bunge upigiwe kura na ulete maendeleo.*' '*Maendeleo*' is all about resources. This amendment gives meaning and life to the wishes of the public of voting for people to bring development. Development is resources and this Constitution is progressive. It has very many benefits that our people would love.

There are devolved functions like agriculture. I was in my village of birth, where we are dependent on sugarcane growing and milling. My people who visited me in my home were asking me to look for money and have it given to Sony Sugar Company for expansion of the factory and payment of farmers, who have laboured to deliver their cane to the factory. Other people came to me and talked about the need to fund fisheries. All these cannot happen if more resources are not devolved to counties, yet there are resources stuck with the national Government.

Mr. Speaker, Sir, I heard my brother, Sen. Ndwiga, praise the Cabinet Secretary (CS) for Agriculture, Livestock, Fisheries and Cooperatives, Hon. Munya, for doing something good with regard to coffee, tea and other crops. We, in other parts of the nation, do not want to be at the mercy or discretion of a CS. We want to get our devolved money for agriculture by right and determine which agricultural or fishing activity we deploy it to.

We have tobacco in Migori County, in Uriri, Nyatike, Kuria East and Kuria West in abundance, but we are at the mercy or discretion of the CS. When money is increased to 35 per cent, if it is taken or got out of what is left out of the national stage, then we will

use it at our discretion. We do not want to be at the discretion of somebody who is not living in our village. I am sure that the people of Meru, Tharaka-Nithi, and all of Central Kenya would love that money to be allocated to them, so that they can use it at their discretion and in line with their preferences.

Mr. Speaker, Sir, those are some of the reasons for which I am wholly in support of the Constitution of Kenya (Amendment) Bill. What I have noticed is that the debate---

Sen. Iman: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): What is your point of order, Sen. Iman?

Sen. (Dr.) Ochillo-Ayacko: And exposed our underbelly as a nation. We are very---

The Speaker (Hon. Lusaka): There is a point of order.

Sen. Iman: Mr. Speaker, Sir, when I contributed last week and I was in my car, you ruled that no one should be on their bicycle or in their car yet I can see that Sen. (Dr.) Ochillo-Ayacko is contributing from his car. I do not get it.

The Speaker (Hon. Lusaka): Sen. (Dr.) Ochillo-Ayacko, if you are in a car, I rule you out of order, because that is the direction that I gave last week. You are out of order. Hello?

Proceed, Sen. Pregnei.

Sen. Prengai: Thank you, Mr. Speaker, Sir. Pursuant to Standing Order No. 104, I beg to move that the Mover be now called to reply.

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

The Senate Majority Leader (Sen. (Poghisio): Mr. Speaker, Sir, I beg to reply.

In replying, I need to recognize all the Members, and I mean all, because I know that this is one Bill where the contributions have been very emotive and exhaustive in terms of the time given to people. Each one spoke for 20 minutes or more, and the whole House has spoken. I, therefore, wish to thank every Senator who has made a contribution to this very important historic Bill.

As we have said, only once in a long while do we have a chance where we are responsible for amending the Constitution of our own country in our time as leaders and Members of Parliament. That is why I wish to thank the people who initiated this process. From the very beginning, they made it a very important function. It had to be a popular initiative and belong to the people of Kenya.

Mr. Speaker, Sir, I also thank you for your ruling on this matter. It belongs to the people of Kenya, and it is not possible to bring amendments to this popular initiative. I thank you for that.

The Speaker (Hon. Lusaka): I have not ruled yet.

The Senate Majority Leader (Sen. (Poghisio): It was the other Speaker who ruled.

The Speaker (Hon. Lusaka): Yes, I will be ruling.

The Senate Majority Leader (Sen. (Poghisio): I heard one Speaker ruling this way. My issue is that we have a very important function this afternoon to appeal to Members to support this Bill. We have spoken on it, we have said what we wanted to say, our people have heard us and they know our feelings about this.

I appeal to Members that this is the time to rise above those feelings and support this process, so that the people of Kenya can do the rest by referendum or by any other means.

Mr. Speaker, Sir, I want to thank Members. This will not be the end, but a comma in the process. The process proceeds. It will now go to the President, the Independent Electoral and Boundaries Commission (IEBC) and then back to the people, and this includes all of us again, because we represent them.

It is my wish that everybody will support it. Let us have a good voting. Let us support this process so that it moves forward. I want to thank all of you who made contributions from both sides of the House. I believe this is a worthy cause for us to be on the record that we were here when this amendment was done.

It is called the BBI. Let us live within that call that it is building bridges. Let us use this time to build bridges in Kenya. Let us make sure that our people have a shared prosperity and a future. Let us make sure that we support. I plead with all Members to support.

Mr. Speaker, Sir, with those few remarks, I beg to reply.

The Speaker (Hon. Lusaka): Hon. Senators, I now put the question.

(Question put)

Remember that voting on this Bill is by every Senator pursuant to Article 257(8) of the Constitution. I now order that the Division Bell be rung for five minutes after which we shall have a Roll Call vote.

(The Division Bell was rung)

The Speaker (Hon. Lusaka): I want the tellers for the two sides. Those who are coming in, we want to start the voting. The teller for the Noes is Sen. Cherargei while the teller for the Ayes is Sen. Shiyonga.

(Loud consultations)

Hon. Senators, take your seats.

(Hon. Senators sat in their places)

Let us now proceed.

(Hon. Senators proceeded to vote as their names)

were called out by the Clerk-at-the-Table)

- The Clerk-at-the-Table:** Sen. Adan Dullo Fatuma, Isiolo County.
- Sen. Dullo:** Mr. Speaker, Sir, I vote yes.
- The Clerk-at-the-Table:** Sen. Ali Abdullahi Ibrahim.
- Sen. (Dr.) Ali:** Mr. Speaker, Sir, I vote yes.
- The Clerk-at-the-Table:** Sen. Boy Issa Juma.
- Sen. Boy:** Mr. Speaker, Sir, Kwale County votes yes.
- The Clerk-at-the-Table:** Sen. Chebeni Mercy.
- Sen. Chebeni:** Mr. Speaker, Sir, I vote yes.
- The Clerk-at-the-Table:** Sen. Cherargei Samson Kiprotich.
- Sen. Cherargei:** Mr. Speaker, Sir, on behalf of the great people of Nandi, and their message is loud and clear, I vote no.
- The Clerk-at-the-Table:** Sen. Cheruiyot Aaron Kipkirui.
- Sen. Cheruiyot:** Mr. Speaker, Sir, the people of Kericho have given me firm instructions. They say no to this deception.
- The Clerk-at-the-Table:** Sen. Gona Christine Zawadi.
- Sen. Zawadi:** Mr. Speaker, Sir, I vote yes.
- The Clerk-at-the-Table:** Sen. Haji Abdikadir Mohamed.
- The Speaker** (Hon. Lusaka): Sen. A. Haji, vote yes or no.
- Sen. A. Haji:** Mr. Speaker, Sir, I vote yes.
- The Clerk-at-the-Table:** Sen. Haji Farhiya Ali.
- Sen. Farhiya:** Mr. Speaker, Sir, I vote yes.
- The Clerk-at-the-Table:** Sen. Halake Abshiro Soka.
- Sen. Abshiro:** Mr. Speaker, Sir, I vote yes.
- The Clerk –at-the-Table:** Sen. Hargura Godana.
- Sen. (Eng.) Hargura:** Mr. Speaker, Sir, I vote yes.
- The Clerk-at-the-Table:** Sen. Iman Falhada Dekow
- Sen. Iman:** Mr. Speaker, Sir, on behalf of my county, I vote a big fat no.
- The Clerk-at-the-Table:** Sen. Imana Malachy Charles Ekal.
- Sen. (Prof.) Ekal:** Mr. Speaker, Sir, *(Inaudible)*.
- The Speaker** (Hon. Lusaka): Vote, Sen. (Prof.) Ekal.
- Sen. (Prof.) Ekal:** Mr. Speaker, Sir, I vote no.
- The Clerk-at-the-Table:** Sen. Inimah Getrude Musuruve.
- Sen. (Dr.) Musuruve:** Mr. Speaker, Sir, on behalf of Persons with Disabilities (PwDs) I vote yes.
- The Clerk-at-the-Table:** Sen. Kajwang’ Moses Otieno.
- Sen. M. Kajwang’:** Mine is so obvious. On behalf of Homa Bay County, I vote yes.
- The Clerk-at-the-Table:** Sen. Kamar Margaret Jepkoech.
- Sen. (Prof.) Kamar:** Mr. Speaker, Sir, I vote yes.
- The Clerk-at-the-Table:** Sen. Kan’gata Irungu.

Sen. Kang'ata: Mr. Speaker, Sir, on behalf of the people of Murang'a who got one constituency, the people of Nyeri, Nyandarua and Tharaka-Nithi who got zero constituency, fearful of the taxes that will rise to support an enlarged Parliament and cause losses to Murang'a businesses---

The Speaker (Hon. Lusaka): Order, Senator! You have not voted. Vote!

Sen. Kang'ata: Fearful of---

The Speaker (Hon. Lusaka): Order, Senator!

(Loud consultations)

Order, Senators! The whole world is watching us. All of you had an opportunity to speak. It is now time to vote.

Sen. Kang'ata: Mr. Speaker, Sir, you cannot gag me! I have a right to say the reasons for voting the way I am voting. Murang'a County is proposed to get one constituency yet Kwale County is set to get four constituencies. Tharaka-Nithi is not getting any constituency; Meru County is proposed to get only two more constituencies yet Kwale County is meant to get four more constituencies. Why is Nyandarua County not getting any constituency?

I vote no.

(Applause)

The Speaker (Hon. Lusaka): Order, Senators!

Let us proceed.

The Clerk-at-the-Table: Sen. Kasanga Sylvia Mueni.

Sen. Kasanga: Mr. Speaker, Sir, I vote yes.

The Clerk-at-the-Table: Sen. Khaniri George.

The Speaker (Hon. Lusaka): Sen. Khaniri is voting online.

Sen. Khaniri: Mr. Speaker, Sir, I vote yes.

Sen. Malalah: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Sen. Malalah, you are out of order.

(Loud Consultations)

Let us proceed with the voting.

The Clerk-at-the-Table: Sen. Kibiru Charles Reubenson.

Sen. Kibiru: Mr. Speaker, Sir, I vote yes.

The Clerk-at-the-Table: Sen. Kihika Susan wa Karura

Sen. Kihika: Mr. Speaker, Sir, on behalf of the people of Nakuru County, cognizant of how badly the economy of Kenya is doing at the moment; knowing that the people of Kenya have been sold a lie and knowing that the people of Nakuru County elected me to stand for the truth and tell them the truth, a country that is paying debts in excess of Kshs1 trillion---

The Speaker (Hon. Lusaka): Order, Sen. Kihika!

I afforded all Senators an opportunity to express themselves. All of you made contributions and all you said them on record. This is a time to vote. Let us respect that and vote.

Kindly proceed.

Sen. Kihika: Mr. Speaker, Sir, I am about to vote. However, I need to make a few remarks. Despite the fact that my people have been sold a lie, I owe them the truth. I do not want the over 2.1 million people of Nakuru County to be misled. As such, with a bulging debt, our economy on its knees, everything being taxed, including bread and baby formula, I vote no to these excessive and unfordable BBI deception.

The Speaker (Hon. Lusaka): Senators, I know you are trying to make me to take a certain direction, but I will not go there. Let us observe Standing Order No.83(5) which states that-

‘When called out, each Senator shall, thereupon rise in his or her place and declare assent or dissent to the question in the following manner: “I vote Yes” or “I vote No” or “I abstain” or use appropriate Kenyan sign language.’

Let us proceed.

The Clerk-at-the-Table: Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, Makueni County votes; yes.

The Clerk-at-the-Table: Sen. Kimani Wamatangi Paul.

Sen. Wamatangi: Mr. Speaker, Sir, on behalf of the people of Kiambu County, I vote yes.

The Clerk-at-the-Table: Sen. (Prof.) Kindiki Kithure. Sen. Kindiki Kithure?
Sen. Kirinyaga Ephraim Mwangi Maina.

Sen. (Eng.) Maina: On behalf of my people of Nyeri County, I vote yes.

The Clerk-at-the-Table: Sen. Langat Christopher Andrew.

(Sen. Mutula Kilonzo Jnr. spoke off record)

Sen. (Eng.) Maina: What is it, Sen. Mutula Kilonzo Jnr.?

The Speaker (Hon. Lusaka): Order, Sen. (Eng.) Maina. You have been heard. Please take your seat.

(Sen.(Eng.)Maina sat in his place)

Proceed, Sen. Langat.

Sen. Langat: Mr. Speaker, Sir, on behalf of the great people of Bomet County, I vote no to this particular massive instrument of impunity.

The Clerk-at-the-Table: Sen. Lelegwe Ltumbesi.

Sen. (Dr.) Lelegwe: Mr. Speaker, Sir, on behalf of the great people of Samburu County who will lose Kshs1.3 billion when this is passed, I vote no.

The Clerk-at-the-Table: Sen. Linturi Franklin Mithika.

Sen. Linturi: Mr. Speaker, Sir, on behalf of the people of Meru County, and on my own behalf, and recognizing the impunity that is likely to be extended by passage of

this Bill, including the threat of being arraigned in court tomorrow for the position I have taken on this - I am being told to appear before a magistrate tomorrow - and to maintain my integrity and position on behalf of the people of Meru, I vote no.

The Clerk-at-the-Table: Sen. Loiptip Anuar.

Sen. Loiptip: Mr. Speaker, Sir, on behalf of the great people of Lamu, we are not getting any additional constituency and our allocation is being deducted. For the future and posterity of this country, I vote no.

The Clerk-at-the-Table: Sen. Lokorio Petronila Were.

Sen. Were: Mr. Speaker, Sir, on behalf of the women of Kenya, the people of Busia and Baringo counties, I vote yes.

The Clerk-at-the-Table: Sen. Madzayo Stewart Mwachiru.

Sen. Madzayo: Mr. Speaker, Sir, the people of Kilifi vote yes.

The Clerk-at-the-Table: Sen. Mahamud Mohamed.

Sen. (Eng.) Mahamud: Mr. Speaker, Sir, I disagree with a lot of provisions in the Bill, but because my County of Mandera is getting one extra constituency, I vote yes.

The Clerk-at-the-Table: Sen. Makori Beatrice Kwawmboka.

Sen. Kwamboka: Mr. Speaker, Sir, for the sake of Nairobians and the women, I vote yes.

The Clerk-at-the-Table: Sen. Malalah Cleophas Wakhungu.

Sen. Malalah: Mr. Speaker, Sir, on behalf of the people of Kakamega County and the Amani National Congress (ANC) Party, and with the belief that this document will enhance equal opportunities for all communities in Kenyans, I vote yes.

The Clerk-at-the-Table: Sen. Masitsa Naomi Shiyonga.

Sen. Shiyonga: Mr. Speaker, Sir, on behalf of the women of Kenya, and that the leadership this document has shown, I vote a big yes.

The Clerk-at-the-Table: Sen. Mbito Michael Malanga.

Sen. (Dr.) Mbito: Mr. Speaker, Sir, Trans Nzoia County votes yes.

The Clerk-at-the-Table: Sen. Mbogo George Ochillo-Ayacko.

The Speaker (Hon. Lusaka): Sen. (Dr.) Ochillo-Ayacko, vote.

Sen. (Dr.) Ochillo-Ayacko: Mr. Speaker, Sir, can you hear me?

I vote 'yes'.

The Speaker (Hon. Lusaka): Next. He has voted. Let us move on.

The Clerk-at-the-Table: Sen. Milgo Alice Chepkorir.

Sen. (Dr.) Milgo: Mr. Speaker, Sir, in order to give voice to every Kenyan woman who comes to this House, in support of Bomet MCAs "bombshell", and on behalf of the great people of Bomet County who will gain two new constituencies, I vote 'yes' for BBI.

The Clerk-at-the-Table: Sen. Mogeni Erick Okong'o.

Sen. Omogeni: Mr. Speaker, Sir, on behalf of the great people of Nyamira, having gotten instructions to defend the one constituency coming to Nyamira, I vote 'yes'.

The Clerk-at-the-Table: Sen. Moi Gideon Kipsielei.

Sen. Moi: Mr. Speaker, Sir, on behalf of the people of Baringo and the people of Kenya, *na kwa heshima ya Rais wetu*, Uhuru Muigai Kenyatta and Raila Amollo Odinga, Kalonzo Musyoka *mtu wetu*, Wetangula and Musalia Mudavadi, I vote 'yes'.

The Clerk-at-the-Table: Sen. Mpaayei Philip Salau.

Sen. Mpaayei: Thank you, Mr. Speaker, Sir. On behalf of the people of Kajiado, who will get three constituencies, I vote 'yes'.

The Clerk-at-the-Table: Sen. Mugo Beth Wambui.

Sen. Mugo: Thank you, Mr. Speaker, Sir. On behalf of patriotic women of Kenya and caring mothers, I vote 'yes'.

The Clerk-at-the-Table: Sen. Murkomen Onesimus Kipchumba.

Sen. Murkomen: Mr. Speaker, Sir, on behalf of the people of Elgeyo-Marakwet County and Baringo County, which was not represented on the Floor, and all Kenyans who believe in independence of the Judiciary and in defence of the Constitution of Kenya, 2010, I vote no.

The Clerk-at-the-Table: Sen. Muthama Agnes Kavindu.

Sen. Kavindu Muthama: Mr. Speaker, Sir, on behalf of the people of Machakos and the people of Kenya, I vote yes to this Bill.

The Clerk-at-the-Table: Sen. Mwangi Paul Githiomi.

Sen. Mwangi: Mr. Speaker, Sir, I have firm instructions from the people of Nyandarua, that when I come to this House, I should express their wish, which is that I should vote yes.

The Clerk-at-the-Table: Sen. Mwaruma Johnes Mwashushe.

Sen. Mwaruma: Thank you, Mr. Speaker, Sir. On behalf of the great people of Taita-Taveta, who are not losing constituencies, I vote 'yes'.

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Senators! We are live on the television. So, let us be more orderly.

The Clerk-at-the-Table: Sen. Mwaura Isaack.

Sen. Mwaura: Mr. Speaker, Sir, to ensure that the people of Ruiru have enough representation and enough resources to the County of Kiambu, I vote 'yes'.

The Clerk-at-the-Table: Sen. Mwinyi Haji Mohamed Faki.

Sen. Faki: Mr. Speaker, Sir, on behalf of the people of Mombasa and Kenyans in general, I vote 'yes'.

The Clerk-at-the-Table: Sen. Nderitu John Kinyua.

Sen. Kinyua: Mr. Speaker, Sir, on behalf of the people of Laikipia County, I vote 'Yes.'

The Clerk-at-the-Table: Sen. Ndwiga Peter Njeru.

Sen. Ndwiga: Mr. Speaker, Sir, I vote 'Yes.'

The Clerk-at-the-Table: Sen. Nyamunga Rose Ogendo.

Sen. Nyamunga: Mr. Speaker, Sir, I vote 'Yes.'

The Clerk-at-the-Table: Sen. Olekina Ledama.

Sen. Olekina: Mr. Speaker, Sir, I would have suggested that our vote (*inaudible*) and conscience as a House should have preceded this vote. However, look, this being a Bill on popular initiative, the vote of consequence lies not with the House, but with the registered voters who shall have their say in the referendum.

The Speaker (Hon. Lusaka): Vote.

Sen. Olekina: I exercise my duty on behalf of Narok County by passing this Bill to the voters. I vote ‘Yes.’

(Laughter)

The Clerk-at-the-Table: Sen. Omanga Millicent.

Sen. Omanga: Mr. Speaker, Sir, on behalf of the sufferers, the hustlers, the marginalised people of North Eastern Kenya who will lose when we use the per capita, and the taxpayers of Kenya – *mama mboga, bodaboda*, and wheelbarrow pushers – on behalf of all these hustlers, I vote ‘No.’

(Applause)

The Clerk-at-the-Table: Sen. Onger Samson Kegengo.

Sen. (Prof.) Onger: Mr. Speaker, Sir, on behalf of Kisii County, and in the firm belief that the request I have made for Bobasi Constituency to be given an additional constituency, I vote ‘Yes.’

The Clerk-at-the-Table: Sen. Orengo James.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, this country was in the wilderness. It took the---

(Loud consultations)

Hon. Senators: No speech!

(Sen. Kang’ata walked to the Dispatch Box)

The Speaker (Hon. Lusaka): Order, Sen. Kang’ata!

Sen. Kang’ata: Mr. Speaker, Sir, you said that I will not speak, be fair!

The Speaker (Hon. Lusaka): Order, Sen. Kang’ata! You are pushing me. Take your seat.

Sen. Kang’ata: Mr. Speaker, Sir, be fair to me!

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Senators! Sen. Kang’ata, I know you are trying to get me to throw you out; I will not do that. Just relax and let us finish the vote in a dignified manner.

Sen. Orengo, proceed.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, probably the next time we come to vote, we may need an alcoblow at the entrance.

An hon. Senator: Yes!

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, on behalf of the people of Siaya County and knowing that the philosophy of this Bill comes from the “handshake,” and it took two great statesmen, Uhuru Kenyatta and Raila Amolo Odinga, I vote ‘Yes.’

The Clerk-at-the-Table: Sen. Outa Frederick Otieno.

Sen. Outa: Mr. Speaker, Sir, on behalf of the people of Kisumu City County and in the belief that I know the two heroes – His Excellency the President Uhuru Muigai Kenyatta and the former Prime Minister, Raila Amolo Odinga and the people of Kenya, I vote ‘Yes.’

The Clerk-at-the-Table: Sen. Pareno Judith Ramaita.

The Speaker (Hon. Lusaka): Please, take your vote, Sen. Pareno.

(Sen. Pareno walked into the Chamber)

Sen. Pareno: Sorry, Mr. Speaker, Sir. I was on *Zoom* and my phone was misbehaving.

Mr. Speaker, Sir, for the sake of Kajiado County; the unity and prosperity of this country and the women at large, I vote ‘Yes.’

The Speaker (Hon. Lusaka): Mute your phone. This technology is bringing a problem.

The Clerk-at-the-Table: Sen. Poghisio Samuel Losuron.

The Senate Majority Leader (Sen. Poghisio): Mr. Speaker, Sir, on behalf of the people of West Pokot, and so that the ‘handshake’ is not in vain, I vote ‘Yes.’

The Clerk-at-the-Table: Sen. Prengei Victor.

Sen. Prengei: Mr. Speaker, Sir, I vote ‘Yes.’

The Clerk-at-the-Table: Sen. Sakaja Johnson Arthur.

Sen. Sakaja: Mr. Speaker, Sir, on behalf of the people of Nairobi City County, home to 43 communities, the biggest victims of violence and the biggest beneficiaries of peace, after receiving 29 constituencies and extra Kshs15 billion, I vote ‘Yes.’

The Clerk-at-the-Table: Sen. Seneta Mary Yane.

Sen. Seneta: Mr. Speaker, Sir, I choose to abstain.

The Clerk-at-the-Table: Sen. Wako Sitswila Amos.

Sen. Wako: Mr. Speaker, Sir, on behalf of the good and patriotic people of Busia County and Kenya generally, taking into account the wise decision of our own Joint Committee, which having considered the Constitution of Kenya (Amendment) Bill, 2020 and submissions received thereon, recommended that we should pass the Bill, I vote ‘Yes.’

The Clerk-at-the-Table: Sen. Wambua Enoch Kiio.

Sen. Wambua: Mr. Speaker, Sir, after lengthy and candid conversations with the Wiper Party Leader, His Excellency Stephen Kalonzo Musyoka and the top leadership of

the Wiper Party that has sponsored me to the Senate; in solidarity with the ‘Sacred Alliance’ led by hon. Stephen Kalonzo Musyoka, hon. Wycliffe Musalia Mudavadi, Sen. Gideon Moi and Sen. Moses Masika Wetangula; to lead my people of Kitui, to show solidarity and stand with the great people of Makueni and Machakos, I vote ‘Yes.’

(Laughter)

The Clerk-at-the-Table: Sen. (Rev.) Waqo Naomi Jillo.

Sen. (Rev.) Waqo: I vote ‘Yes.’

The Clerk-at-the-Table: Sen. Wetangula Moses Masika.

Sen. Wetangula: Mr. Speaker, Sir, on behalf of the great people of Bungoma; having been a signatory to this process at each stage; on behalf of the people of Kenya and ‘One Kenya Alliance,’ I vote ‘Yes.’

The Clerk-at-the-Table: Sen. (Dr.) Zani Agnes Philomena.

Sen. (Dr.) Zani: I vote ‘Yes.’

(Loud consultations)

The Speaker (Hon. Lusaka): Order! Order, Senators! Take your seats!

DIVISION

ROLL CALL VOTING

*(Question, that the Constitution of Kenya (Amendment) Bill, 2020
be now read a Second Time put and the Senate proceeded to vote)*

AYES: Sen. (Dr.) Ali; Sen. Boy; Sen. Chebeni; Sen. Dullo; Sen. Faki; Sen. Farhiya;; Sen. A. Haji; Sen. Halake; Sen. (Eng.) Hargura; Sen. M. Kajwang; Sen. (Prof.) Kamar; Sen. Kasanga; Sen. Kavindu Muthama; Sen. Khaniri; Sen. Kibiru; Sen. Kinyua; Sen. Kwamboka; Sen. (Eng.) Mahamud; Sen. Madzayo; Sen. (Eng.) Maina; Sen. Malalah; Sen. (Dr.) Mbiti; Sen. (Dr.) Milgo; Sen. Mugo; Sen. Moi; Sen. Mpaayei; Sen. (Dr.) Musuruve; Sen. Mutula Kilonzo Jnr.; Sen. Mwangi; Sen. (Dr.) Mwaura; Sen. Mwaruma; Sen. Ndwiga; Sen. Nyamunga; Sen. (Dr.) Ochillo-Ayacko; Sen. Olekina; Sen. Omogeni; Sen. (Prof.) Ongeru; Sen. Orengo; Sen. Outa; Sen. Pareno; Sen. Poghisi; Sen. Prengei; Sen. Sakaja; Sen. Shiyonga; Sen. Wako; Sen. (Rev.) Waqo; Sen. Wamatangi; Sen. Wambua; Sen. Were; Sen. Wetangula, Sen. (Dr.) Zani and Sen. Zawadi.

Teller of the Ayes: Sen. Shiyonga.

NOES: Sen. Cherargei; Sen. Cheruiyot; Sen. (Prof.) Ekal; Sen. Iman; Sen. Kang’ata; Sen. Kihika; Sen. (Dr.) Langat; Sen. (Dr.) Lelegwe; Sen. Linturi; Sen. Loitiptip; Sen. Murkomen; and, Sen. Omanga.

Teller of the Noes: Sen. Cherargei.

ABSTENTION: Sen. Seneta.

The Speaker (Hon. Lusaka): These are the results:

AYES: 52

NOES: 12

ABSTENTIONS: 1

The “Ayes” have it.

(Question carried by 52 votes to 12)

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

COMMUNICATION FROM THE CHAIR

CONSIDERATION OF THE CONSTITUTION OF KENYA (AMENDMENT) BILL (2020) IN THE COMMITTEE OF THE WHOLE

The Speaker (Hon. Lusaka): Hon. Senators, this is the Communication that I want to give now before the Committee of the Whole, which will sit at 2.30 p.m.

Hon. Senators, as you are aware, in the course of the debate on the Constitution of Kenya (Amendment) Bill, 2020, I have been variously urged by a number of Senators to make a ruling on a number of matters, which they consider to be pertinent for purposes of guiding the Senate in its disposal of the Bill. These requests have come from among others Senators Samson Cherargei, Sakaja Johnson, Mutula Kilonzo Jnr. and Moses Wetangula.

Sen. Mutula Kilonzo Jnr. M.P., in particular, during the Morning Sitting of Thursday, 6th May, 2021, went so far as to give some advice to the Speaker on the matters that should be contained in such ruling and the authorities that should be cited. It is an invitation that as the Speaker of the Senate, I promptly declined. At the time, I guided the Senate that the questions on which I was being requested to rule were premature and anticipatory, as they had not ripened for determination.

Hon. Senators, as you are aware, the Constitution of Kenya (Amendment) Bill, 2020, was introduced in Parliament and read a First Time in the National Assembly and the Senate on 4th March, 2021, pursuant to Article 257(7) of the Constitution. Pursuant to Standing Orders 140 (1) and 140 (5) of the Senate Standing Orders, the Bill was referred to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration. The Standing Committee was mandated to consider the Bill jointly with the Departmental Committee on Justice and Legal Affairs of the National Assembly. The Committees tabled a joint report on Wednesday, 28th April, 2021, in both Houses of Parliament.

Hon. Senators, as I have indicated, in the course of debate at the Second Reading, questions arose as to whether a Bill to amend the Constitution introduced by a popular initiative, such as the one before us, can be amended and resultantly, whether therefore,

amendments can be proposed and admitted by the Speaker for consideration by the Senate at the Committee of the Whole.

The second issue on which I was requested to rule was whether errors of form in the Bill could be corrected, and if so, the stage at which this could be done.

Hon. Senators, I am of the view, having considered all circumstances, that these two questions, while they are novel in so far as the consideration of a Constitution of Kenya (Amendment) Bill by popular initiative is unprecedented in the Senate, they are not so complex as to require the kind of detailed or lengthy ruling that I was invited to pronounce.

Hon. Senators, as you are further aware, the Constitution of Kenya (Amendment) Bill, 2020, was prepared and processed pursuant to Article 257 of the Constitution as a Bill to amend the Constitution by way of popular initiative. With regard to the consideration of the Bill by Parliament, Article 257 (7), (8), (9) and (10) of the Constitution provides as follows –

- “(7) If a draft Bill has been approved by a majority of the county assemblies, it shall be introduced in Parliament without delay.
- (8) A Bill under this Article is passed by Parliament if supported by a majority of the Members of each House.
- (9) If Parliament passes the Bill, it shall be submitted to the President for assent in accordance with Article 256(4) and (5).
- (10) If either House of Parliament fails to pass the Bill, or the Bill relates to a matter specified in Article 255(1), the proposed amendment shall be submitted to the people in a referendum.”

From the foregoing, the questions raised by the hon. Senators emanate from the fact that Article 257 of the Constitution, which is the only Article of the Constitution governing the amendment of the Constitution by a popular initiative, does not expressly pronounce itself on whether Parliament, in considering the Bill, may or may not amend it. This position is markedly different from the position articulated by the former Constitution of Kenya, which was in force immediately preceding the promulgation of the Constitution of Kenya, 2010.

The former Constitution provided at Article 47(4) as follows-

“When a Bill for an Act of Parliament to alter this Constitution has been introduced in the National Assembly, no alterations shall be made in it before it is presented to the President for his assent, except alterations which are certified by the Speaker to be necessary because of the time that has elapsed, since the Bill was first introduced into the Assembly.”

No corresponding provision was imported into the Constitution of Kenya (2010) in respect of constitutional amendments by popular initiative, and for that matter, even in respect of amendments by parliamentary initiative.

Hon. Senators, it is noteworthy that when considering this question, the joint sittings of the National Assembly Departmental Committee on Justice and Legal Affairs, and the Senate Standing Committee on Justice, Legal Affairs and Human Rights found

that Article 94 of the Constitution vests the legislative authority of the Republic in Parliament and that Parliament has the mandate to take any legislative action-

“In appropriate circumstances, required to ensure that a constitutional amendment initiated under Article 257 of the Constitution achieves its objectives, so as to protect the sovereignty of the people as guaranteed under Article 1 of the Constitution.”

This finding is profound. It is a recognition that while Parliament, pursuant to Article 94 (3) of the Constitution, “represents the will of the people and exercises their sovereignty,” the extent of Parliament’s powers is not unlimited. Parliament, like all other state organs, is bound by the national values and principles of governance under Article 10 of the Constitution when applying or interpreting the Constitution, or enacting, applying, or interpreting any law.

The Constitution itself has also provided for the manner of its interpretation at Article 259, Clause 1, whereof provides that the Constitution shall be interpreted in a manner that-

- (a) promotes its purposes, values and principles;
- (b) advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights;
- (c) permits the development of the law; and,
- (d) contributes to good governance.

Hon. Senators, a Bill to amend the Constitution by way of popular initiative is one that emanates from members of the public and is required to be supported by at least one million registered voters. The Bill represents the intentions of the promoters regarding provisions, which they wish to be amended in order to address specific concerns or issues in the Constitution.

This is a route taken by citizens who are fully aware and have forgone the route of seeking constitutional amendments by parliamentary initiative. It is a route taken by citizens who recognize that pursuant to Article 1 of the Constitution, all sovereign power belongs to the people of Kenya and that the people of Kenya may exercise their sovereign power either directly or through their democratically elected representatives.

I am persuaded that a proper construction of the Constitution leads us to the conclusion that Parliament’s delegated power to exercise the sovereignty of the people by representing their will does not and cannot extend to subverting, altering or substituting that will, with its own wisdom, where the people have unequivocally expressed themselves.

Hon. Senators, subjecting a Bill to amend the Constitution by way of popular initiative to amendments by the Senate risks altering or substituting the intentions of the promoters of the Bill with those of the Senate and hence, the overall output of the process may be a Bill containing provisions that were neither contemplated nor desired by its promoters.

This is particularly so because if the Senate can amend one clause of the Bill, it can amend two clauses of the Bill. If the Senate can amend two clauses of the Bill, then it can amend all the clauses of the Bill, resulting in a Bill that is unrecognizable from the

one that was submitted to the Senate by its promoters. Can such a resulting Bill still be said to be a Bill by popular initiative?

Hon. Senators, in light of the foregoing, and as supported by the findings of the Committees, there is need to protect the sovereign will of the people. Indeed, the Committees of the two Houses, which considered this Bill, found at Paragraph 364 that-

“Pursuant to Article 257(10) of the Constitution, Parliament cannot replace or usurp the people’s views on a popular initiative with its own. Thus the ultimate authority regarding a popular initiative Bill rests with the people.”

I agree. I, therefore, rule in respect to the specific question asked, that, no amendments may be made to the provisions of a Bill to amend the Constitution by way of popular initiative in the Senate. The Senate has the option of either passing or rejecting the Bill *in toto* in accordance with Article 257(8) of the Constitution.

Flowing from these findings, I declined to approve the notices of proposed amendments to the Bill at the Committee Stage submitted to my office by the Senator for Murang’a County, Sen. Irungu Kang’ata, MP; the Senator for Kitui County, Sen. Enoch Wambua, MP; the Nominated Senator, Sen. Millicent Omanga, MP; and the Senator for Nandi County, Sen. Samson Cheragei, MP.

Hon. Senators, the question then arises whether the Senate still proceeds to the Committee of the Whole on the Bill, and if so, the manner in which the Committee stage is to be transacted. The Committee of the Whole is a mandatory stage for the consideration of any Bill. A Bill for an amendment of the Constitution by popular initiative is no exception. The Committee Stage is the forum at which the Senate is able to consider the Bill clause by clause in a detailed manner.

As Senators are aware, the procedure in the Committee of the Whole is less rigid than that of the Senate in Plenary and permits any Senator to speak to any clause, including speaking more than once to a question proposed. The only difference will be that the deliberation in the Committee of the Whole, including contributions by individual Senators, can only be geared towards the acceptance or rejection of the Bill as a whole.

All the clauses and the schedules will accordingly be read out and proposed as is standard procedure in the Committee of the Whole, but only one question will be put, which shall be that the clauses, the schedules and the title be part of the Bill. Senators will then be expected to vote either YES or NO or ABSTAIN on the Bill as a whole and not any particular clause or part of the Bill on its own.

Hon. Senators, one final matter remains, which is the question whether formal errors may be corrected, and if so, the manner of such correction. This matter is to be approached cautiously because the device of correction must not be subterfuge for substantive amendments to the Bill through the backdoor. Indeed, on this the Committees found that-

“Parliament’s legislative action includes correcting any errors of form or typographical errors that do not go to the substance of the Bill, and that bring drafting harmony to the Bill.”

This is according to Paragraph 365 of the Joint Committee Report.

Standing Order No.162 provides for the custody of Bills and the process after passage of a Bill. Although, as I have indicated earlier in this Communication, no specific provisions exist in our Standing Orders on the processing of a constitutional amendment by popular initiative, I am of the view and I rule that invoking Articles 10 and 259 of the Constitution and applying Standing Order No.1 requiring the Speaker to decide all matters not expressly provided for by the Standing Orders, it is appropriate that the Speakers of Parliament correct 'formal errors' or oversights without changing the substance of the Bill before certification of the Bill and submission to the President. This would apply to those types of errors that the Committees found as inadvertent errors in the copies of the Bill, which were typographical in nature, and did not affect the substance of the Bill.

The Senate is accordingly guided.

I thank you.

What is your point of order, Sen. Mutula Kilonzo Jnr.?

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, before you finished your Communication, you had mentioned something about the Third Reading. I wish we could stop the sun; we cannot. I wish we could stop the lunch hour; we cannot. However, we are ready to vote for the Third Reading.

I am proposing to you, under Standing Order Nos.31 and 1 that you call Committee of the Whole and Third Reading, so that we can vote and leave this Chamber after finishing business altogether. Owing to its momentous position and what we are doing today, I do not see the reason we should take a lunch break before we finish the vote. I believe you can use your discretion to do so, so that we can finish this business. When we come in the afternoon, we will resume with the business that is in the Order Paper unrelated to the Constitutional (Amendment) Bill.

Thank you, Mr. Speaker, Sir.

(Loud consultations)

(Several Senators consulted the Speaker)

The Speaker (Hon. Lusaka): Hold on; I am not under hostage.

Order, Senators. Before I adjourn, I just want to remind you that there will be another vote in the afternoon.

ADJOURNMENT

Hon. Senators, it is now time to adjourn the Senate. The Senate stands adjourned until today, Tuesday 11th May, 2021, at 2.30 p.m.

The Senate rose at 1.15 p.m.