

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 4th May, 2021

Special Sitting

*(Convened via Kenya Gazette Notice
No.4196 of 30th April, 2021)*

*The House met at the Senate Chamber,
Parliament Buildings, at 2.30 p.m.*

[The Deputy Speaker (Sen. (Prof.) Kamar) in the Chair]

PRAYER

BILL

Second Reading

THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2020

(Sen. Poghio on 28.4.2021)

*(Resumption of debate interrupted on
4.5.2021-Morning Sitting)*

Sen. M. Kajwang’: Madam Deputy Speaker, I rise to support the Constitution of Kenya (Amendment) Bill, 2020.

I have just been reminded that I should put on my mask. This means that it would be negligent of me to proceed to this important subject without sparing a minute to consider the thousands of Kenyans who have died as a result of the Covid-19 pandemic.

When we came for this special sitting, there was hope from Kenyans who are uncertain around vaccinations, supply chain for medication and the plight of frontline workers, that we would find some time to talk about the greatest pandemic that this country has faced for a long time.

Madam Deputy Speaker, this House should find some time, the same way we have found time to discuss this constitutional amendment Bill, and listen to the address of

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the Tanzanian head of State. As important as these are, I hope that the Leadership of this House will call a special sitting so that we look at the Covid-19 situation in the country.

As I support the Constitutional of Kenya (Amendment) Bill, 2020, I also take note of the proposals that were given by the Justice and Legal Affairs Committees of both the Senate and the National Assembly.

I thank the Co-Chairperson of the Committee, Sen. Omogeni, the co-Chair from the National Assembly and Members of the Senate who sat in that Committee. Since that debate came to this House, a lot of flowery language has been used to refer to the debate before this House, in the House and outside.

It does not get more flowery than what, Sen. (Prof.) Kithure Kindiki, expressed in the afternoon. He referred to the Constitution of Kenya (Amendment) Bill, 2020 as a legal hermaphrodite. How colorful is this? Other people outside this House have referred to those who are not in agreement with the Constitution of Kenya (Amendment) Bill as demagogues whose only achievement is good English.

Madam Deputy Speaker, in politics, you can decide to be pessimistic or optimistic. I choose to be optimistic. What I see in the Constitution of Kenya (Amendment) Bill, is a glass that is half full rather than half empty. It is only a fool or a stranger who will begrudge the 'handshake' of its calming and cooling effect on the political temperatures in the country.

As someone who was consistently on the streets every other Monday, which we used to call 'teargas Monday', the business community in the city and the people in formal employment wanted an end to the cycling violence that they saw every five years. They wanted an end to the economic disruptions that this country faces every five years.

None other than one of the great economists in this Republic, Mr. David Ndihi has, in a different forum, demonstrated to us the effect of our politics on the economy. The graph is always predictable. Every five years, our economic growth deeps and in between, it rises. It rises because of good rainfall and by single luck rather than deliberate actions of the Government.

Madam Deputy Speaker, many Kenyans want to ensure that we can have elections four times in two years, just like the way Israel is doing, but be able to provide vaccines to our people. We can have elections four times in two years, like Israel, but the economy can still grow. That is the Kenya we need to focus on.

There is one man who said that Kenyan politics has always been a struggle within the elite for personal reward and to direct resources towards specific communities for political and personal benefit. If you look at that as a description of our politics then, all of us are guilty of using the Kenyan political population for our own personal gain. It has gotten to a point where in this country, when one man gains, an entire community feels that they have lost. It has gotten to a point where if people contemplate a Raila presidency, an entire community feels that they will be left out. When people contemplate a Ruto presidency, an entire community feels that they will be victimized. We have to bring this to an end.

Madam Deputy Speaker, I support this Bill because it is not just one Bill that we are discussing today, there are 20 different pieces of Statutes that have been proposed that

this House will process in the next one or two years. There are also provisions relating to corruption.

Madam Deputy Speaker, this House has found itself in an embarrassing position. When I was in the County Public Accounts and Investment Committee, we used to refuse to listen to governors who had been asked to step out of office. It is now three years since some governors were asked to step out of office. For example, the governor of Samburu has been running Samburu from “wherever”. He has not been allowed to go back to the office for almost three years. Charges have been pressed against him and the matters are in court, but they are taking forever.

Madam Deputy Speaker, I hope that of the various legislations that Parliament will need to pass, we will fast-track that one that has to do with economic crimes. I know other speakers have said that the Constitution already has sufficient safeguards to ensure that we deal with corruption in this Republic, but it does no harm to add greater clarity to what the Constitution already has.

If you ask about the ideology of the regimes that have been in power in this country - I will not say that it has been democracy or good governance and such altruistic goals – it has been pragmatism. There was no greater pragmatist than Mzee Jomo Kenyatta or the late Daniel Arap Moi. Of course, President Mwai Kibaki was less of a pragmatist and more of an economist, but there is no greater pragmatist than President Uhuru Kenyatta who, in the heat of a disputed election, he was able to face one of his greatest political adversaries, shake hands and agree to chart a different course for the country.

What Kenyans hope for is that they are genuine in this conversation. If they are, then we will have found the ingredient that has been lacking in this country since Independence. Integrity and honesty when discussing issues that affect the Republic. Compromise and pragmatism have been the hallmark of this Republic.

Those who have followed Constitution making in this country, in the 1950s the Lyttleton Constitution which allowed for the first time, eight African members to be elected to the Legislative Council of Kenya (LEGCO), was said to be too little. It had great opposition and there were intellectuals from the white highlands who vehemently opposed having people elected into the LEGCO. It was passed and we made certain incremental gains.

Later on, the *Lennox-Boyd* Constitution came, that expanded the number of Members from eight, by six, to 14. Again, it was considered to be too little because we did not even have universal franchise for the African man.

However, Madam Deputy Speaker, these compromises were the building blocks that led to independence and to the greater freedoms that we enjoy today. Even if you go back to the 1960s Lancaster House I, II and III, there is the incidence where the Maasai community that went to Lancaster House was forced to walk out because they felt their issues around land had not been taken into consideration.

The Lancaster House conferences made many compromises. What was the solution to the land question? That was the biggest problem at that point in time. Just the same way today, perhaps, one of the biggest questions is on ethnic antagonism and how to revive our economy. Compromises were made on the land question. Not everybody

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was happy. Jaramogi was unhappy, but he decided to let the view that was espoused by *Mzee* Kenyatta to take precedence.

Madam Deputy Speaker, even *Mzee* Kenyatta did not get everything he wanted. The Kenya African Democratic Union (KADU) had a position which was at variance with the position of the Kenya African National Union (KANU). Had they not compromised, we would not have got the Independence Constitution.

Compromises were made on the coast question. The Senators who come from the coast know very well that it was not until Independence that the coast was considered part of the Republic of Kenya. There were those who felt that the coast should remain a separate entity or that it should federate with other regions like Zanzibar and other islands, but they made compromises. Not everyone was happy.

Today, we have a united Republic and we are so proud of the coast because it is one of our greatest sources of forex revenue in this Republic. If it was not for that compromise, you can imagine what Kenya would have been without the flavour, the beauty of the girls and the nice Swahili of our brothers and sisters from the coast.

Sen. Mutula Kilonzo Jnr.: I tell you.

Sen. M. Kajwang: Madam Deputy Speaker, those are the compromises that made Kenya what it is today.

Compromises were made on federalism. The question was whether to go *Majimbo* or central Government. KADU was strictly for federalism. When our leaders went to Lancaster House, they were convinced that for us to get Independence, let us make a compromise, have a federal Government and have a Parliamentary system.

Madam Deputy Speaker, compromises were made on the release of *Mzee* Jomo Kenyatta. Before his release, he was not a central player in the political party activities of the day because he had been in detention for far too long. It took Jaramogi Oginga Odinga to make a compromise and break ranks with his colleagues in the African Elected Members Organisation (AEMO).

Many people, including Tom Mboya, were unhappy. The children of home guards who were in the Legislature, were unhappy because they thought *Mzee* Kenyatta was a leader unto darkness. It was because of that compromise that we got *Mzee* Kenyatta as our first President.

In the 1990s in the repeal of Section 2 (A) of the Constitution, compromises were made. In the repeal of Section 2 (A), none other than people who are today Presidential candidates, had declared that Kenya was not ready for multipartyism. President Moi went against the advice of clever lawyers and sycophants at that point, to read the national mood.

In 1997 in the Inter-Parties Parliamentary Group (IPPG) that brokered a truce that heralded the Constitution under new set of regulations for the elections, compromises were made. In 1997, again, there were people who are even Members of this Senate who opposed the IPPG deal. Today, everyone says that IPPG is probably one of the best compromises we have ever made in our political history.

Madam Deputy Speaker, I am saying all these to illustrate that when you are making a Constitution, you win some and you lose some. This is why the Constitution of

Kenya (Amendment) Bill, 2020 has some good provisions and we should not throw out the baby with the bath water.

When it comes to compromise, even in the Constitution, 2010 there were compromises. There was a debate on unconstitutional constitutional amendments. I wish that the Members of the Senate who were present at Serena, were here today. It is because this Senate has the advantage of the institutional memory. At least three Members – Sen. Orenge, Sen. Wetangula and the late Sen. Mutula Kilonzo – were present at Serena Hotel.

At that point, the idea of a Grand Coalition Government was unconstitutional. If you spoke to the smart lawyers of the day, they would have told you all those compromises were unconstitutional provisions. There was no way President Mwai Kibaki was going to share power with the Rt. Hon. Raila Odinga and people who were pretending to have won the election. That was the perception and President Mwai Kibaki had already been sworn in.

A compromise was made. Something that appeared unconstitutional was agreed on and from that consensus, we got an Act of Parliament that established the Office of the Prime Minister and brought us some much-needed breathing space in the politics of Kenya.

Madam Deputy Speaker, this country has always done well. Whenever we set aside our egos and decide that for the greater benefit of the country, we will move together knowing at the end of the day, we will not win or get everything. That is why the debate on this Bill has sounded as if we are reporting on a report of IEBC on delimitation of constituencies.

I know there is a lot of pain across on the issue of distribution of the new constituencies. I will go on record that the people of Homa Bay County and I are not happy because from the submissions that were made to the Joint Committee, Homa Bay County deserved at least two constituencies. However, we need to look at the bigger picture. Is it the constituencies or the strengthening of devolution that should be the conversation at this point?

Being in the Senate, I will spend more time to see how this Bill will strengthen and entrench devolution because that was the conversation at Independence as Lancaster House. It was about federalism or *Majimbo*. It was about resisting the munition of big tribes and communities. Even the conversation today about constituencies has the same undertones. We hear some regions are getting more constituencies than others.

We are still at the point we were at Independence, where we are fighting against domination by the so-called big tribes or communities. The solution is devolution. Give people the power to make decisions on matters affecting them. Let us have political and fiscal decentralization. Let us allow our assemblies the power to make laws on matters that affect them. This draft Bill proposes just that.

Madam Deputy Speaker, we are strengthening devolution by increasing the allocation from 15 to 35 per cent. I disagree with those who think that it is impossible to allocate these resources to counties. I know that many functions that have been allocated to counties in the Fourth Schedule of the Constitution are still sitting in Nairobi. If we took the money that is in the Ministry of Lands, the Ministry of Water, Sanitation and

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Irrigation, the Ministry of Agriculture, Livestock, Fisheries and Cooperatives and the Ministry of Health to the counties where it rightfully belongs for implementation, we will have achieved 35 per cent of fiscal transfers to the counties.

I like the proposal of having accountability of the Government in Parliament. You can clearly see even in this House. Our colleagues who have been in charge of Ministries and those who have been Ministers and Assistant Ministers, even the quality of their debates and participation in this House is much higher because they were brought up in an environment where there was accountability by coming to Parliament and explaining what they were doing in their Ministries.

I am only unhappy because I said the glass is half full. It means that I am generally happy, but I am also unhappy about certain provisions. How I wish that that accountability, through Parliament, that even the Senate was involved in a way.

Madam Deputy Speaker, I am going to speak about my feelings around Article 257 of the Constitution. My view is not as boisterous and elegant as the lawyers', but I see Article 257 as a very dangerous provision in our Constitution, especially if we develop a jurisprudence around it that Parliament has got no role in amendment to the Constitution by popular initiative. What is going to happen is that this process is going to be a dry run for further constitutional amendments.

If we establish today that the people can come up with a million signatures, get 24 county assemblies, go through Parliament as ceremony and take it to a referendum, I foresee a number of things happening. One day this Senate will be scrapped. Already the Senate is a nuisance to the powers that be. We speak too much English and spend too much time. We were supposed to have passed this last week, but we are here still debating.

When the Prime Minister will be sitting in the National Assembly and we subject his laws to review in the Senate, after three or four attempts, this Senate will be dissolved through Article 257. How I wish that in the spirit of consensus, we allow the Joint Committee to advise us on a proper jurisprudence that will guide us in future in the event of a popular initiative. Even though---

(Sen. M. Kajwang's microphone went off)

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senator, your time is up.

Sen. M. Kajwang': One minute, Madam Deputy Speaker.

The Deputy Speaker (Sen. (Prof.) Kamar): Just finish the sentence.

Sen. M. Kajwang': I agree with the Chair of the Committee on Justice, Legal Affairs and Human Right that amendments to the form should be considered rather than amendments to the substance. However, whatever we establish today, if Parliament is just to pass through as ceremony, then Motions to abolish the Senate, extend term limits, and extend the tenure of the current presidency will come hot on the heels of the BBI amendment.

Nonetheless, Madam Deputy Speaker, I support the Bill.

Sen. Kasanga': Thank you, Madam Deputy Speaker, for giving me this opportunity as well to add my voice to this important debate. There is no understating

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that indeed in this country, we are in a great constitutional moment. I am privileged, as my colleagues are, to be in this House to participate in this process as it has found us here.

I am truly grateful to the Committee on Justice, Legal Affairs and Human Rights chaired by Sen. Omogeni. I have read their report and saw how they canvassed the issues. I have to thank them because of bringing forth the difficult issues. It is important to bring to the fore the difficult issues so that as leaders, even as we go to speak to our people, then we know how to canvass whatever difficult conversations there may be.

I would like to start my debate by making reference to the report itself. I am a supporter of the BBI because I believe in the process that was done, especially when I remember the first BBI and the issues that were brought forth after going round and canvassing in the nation. I believe that this process was born out of a conversation that Kenyans really wanted to have. These issues are still there with us and we continue to talk about them.

Of course the Committee on Justice, Legal Affairs and Human Rights looked at the process in depth before telling us the nature of this Bill, so that we know as we debate going forward. Now that it is at the technical level, is it one of the Parliament or the public by popular initiative? It is good that their own recommendation and observation is that it is one of a popular initiative in which case we know how we can form our thoughts and minds. We also know the role of Parliament in such a case.

Many of us here are frustrated that we cannot change and make amendments to this document, but it is a document by the popular initiative and so be it. However, we can have the chance to have this conversation and where our tasks will be placed as legislators and leaders in this country.

There is the issue of what is unconstitutional about the constitutional amendment. I like this sentence. I keep referring to it that arising from the above, these are the observations of the committee, it is evident that an unconstitutional amendment becomes constitutional if it is approved by the people in a referendum. It took me some time to canvass and understand that sentence.

There is one or two issues that I brought to the Committee when they were receiving submissions, but later I understood it. When I spoke to several Members of the Committee on Justice, Legal Affairs and Human Rights, I understood what actually this meant. If this Bill is by popular initiative, then by all means, let the people decide, but our role will still remain. We will try and advise as far as possible on the critical areas.

Should the Bill be passed by the people, then as a House, we will have a task to go back and look at the critical areas where issues were raised and do what is needful either through legislation or policy, so that we address some of the challenges that clearly have come out based on this report by the Committee on Justice, Legal Affairs and Human Rights.

I had one issue in particular. I am the one who came here to present a memorandum by the Architectural Association of Kenya (AAK) to do with the harmonisation of fees for consultants to the counties. This is an issue that I was tasked on. Though the committee determined that harmonising the rates paid by national and county governments to the professional consultants may be objected, it is not unconstitutional.

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It took me a while to understand what it means that it is not unconstitutional. That was explained to me and I felt persuaded. It is not unconstitutional because there is no particular constitutional clause that speaks to this particular issue, but it is one issue that is undesirable because the idea that when consultants consult for national or county governments, their fees are different from those who consult for the private sector.

That is a claw back. Consultants will hold back their consultancies from the executives of both national and county governments. What does that do? The running away from consulting means we are not getting the best in the country. For me, that is a serious claw back when it comes to issues of capacity building, quality and moving this country forward into the first world, may be in another 30 years. So, this is an issue from where I sit.

Following the recommendation of the Committee that this matter will require reconsideration at the appropriate time, then this becomes a critical issue. We do not want the counties and the national Government to lose out from getting the best practice and the best consultancies from its citizens, who it has invested heavily in through education.

I have heard many submissions from my fellow colleagues on the issue of the two-thirds gender rule. The 12th Parliament, which is the Parliament that we sit in, was unable to enact a law that would ensure that we meet the two-thirds gender rule. We are sitting here unconstitutionally as we were reminded by the courts of law. This is the first methodology brought forth by the citizens, which will help bring the two-thirds gender rule into Parliament. I celebrate it because it is a beautiful thing.

I have heard all sorts of submissions. I have heard people say that we are taking away the Women Representative position from the National Assembly hence they will lose on their kitty when they move to the Senate but I say no. The House of Senate, being the highest House in this country, is a national platform. Where else can we showcase the work of women if not in a national platform like the Senate? If we are truly going to move forward together as one people, why should it be that the women are the ones who should be left at the National Assembly with a small kitty to deal with women issues? We are not aliens. It is the work of the Government to deal with issues of all Kenyans. Therefore, I strongly feel, especially having served in this House, that women at this national level will be a game changer.

As it is, the oversight work at the Senate is so much. I have said it on this Floor that the Committee on Lands, Environment and Natural Resources is so busy and it can do with subcommittees if we are to canvas all the petitions that come to this House. Kenyans believe in the Senate. I look forward to having more women who can serve in the committees such as the Committee on Lands, Environment and Natural Resources, the Committee on Roads and Transportation and the expanded committees which can lead to subcommittees. I am sure that the Committee on County Public Accounts and Investments cannot canvas all the oversight work of each county. What are we talking about?

I do not know why anyone would think that women in this House are an addition to Kenyans. I still grapple with that issue. I look forward to women contributing in the County Integrated Development Plans (CIDP) of their counties to ensure that issues of

women and children are canvassed. They can also question the national Government in the committees on why issues of women and children have not been canvassed.

I recently brought a Statement on a policy programme that has not been rolled out by the Government. It has to do with women and children on sexual abuse. It is a national plan of action of 2018 on sexual and gender abuse of women and children. It is a policy that is beautifully drawn up, signed by the Cabinet Secretary for the National Treasury and Planning, complete with budget lines, but it has not been rolled out. Look at where we are with Covid-19 and how gender based violence has become such a big issue. I look forward to an expanded committee that can deal with such issues. I look forward to a committee that will have women who can push for such agendas.

Without any doubt, it is about time that we brought the two-thirds gender rule. I look forward to it. The BBI has many issues with it, but the few good ones are too good to throw away. We want these changes. This is something that I feel strongly about. I look forward to it.

I will discuss the issue of equitable share in a few minutes. The issues are glaring. When you look at Clause N, the Committee states that the Executive and Legislature need to put in place mechanisms to ensure that no counties are disadvantaged as a result of application of the new criteria that has been proposed in the Bill and that is the criteria that we can call one man one shilling criteria. I want to deal with it in a short while when I talk about how we should look forward to the other issues.

On the Judicial Service Commission (JSC) and the National Police Service Commission (NPSC), there are definitely areas of concern and the Committee has tried to tell us the way forward on those issues. They largely told us to pass the Bill. It is a Bill that belongs to the people so we will let the people decide. Whereas I am a supporter of this Bill, it is good that these issues are brought to the fore. That will help us know how to discuss these issues when we go back to debate in our different platforms.

Whereas the document may have issues and may not be perfect, it is still the perfect beginning to providing an incremental change to our Constitution and that is something that we must celebrate. Nothing is static. Everything has to evolve based on the times that we are in. The times now are demanding that we expand the Executive because of the perception that the leader's region is the only one that benefits. Let us expand the Executive. Let us have more regional leaders going up to the top. After all, there is Kshs1.5 trillion that we all have a piece of. Let us deal with that right now. That is how this Bill is dealing with it and it is a step forward. After 10 years, we may have received enough equity which can then lead us to adjust it, if need be.

I look forward to the positive issues that the BBI is bringing about. I look forward to more money to the counties. We are aggrieved because of the Kshs1.5 trillion that is left at the national level, but we at least have Kshs370 billion that is going down to the counties this year. As we move forward, our focus should be on hitting the 40 per cent because we have achieved 35 per cent. That is a step forward and we must accept to move forward. This Bill now proposes that the Constituencies Development Fund be entrenched in the Constitution. It has been unconstitutional, but this Bill seeks to entrench it in the Constitution and that is more money to the people. The same applies to the Ward

Development Fund. The county assemblies do not have to wait for a governor to propose and neither do they have to push for the governor to allow for a ward fund.

All the other provisions that the BBI is giving on corruption are a must. I agree with Sen. M. Kajwang' when he said that it is true that the current Constitution has some provisions. Many people have argued that we have not fully rolled out the old Constitution, but what is wrong with adding a few more provisions? After all, we all know that corruption is what is killing us in this country. Let us add more provisions to tighten it. Why not? As we roll out into the next election cycle, the legislators will now push for implementation of these things.

I am happy with the increase of the oversight of the Senate. The Senate should have probably gotten a little bit more and it is possible that we did not get what we felt that Kenyans needed out of a Senate, but we have moved one step forward. In the next five years, we shall look at own-source revenue and the other things which have not been looked at including the extra funds that go to the counties that we never get a chance to look at. I commend the Committee on Health for looking into the Covid-19 funds. When else would they have been looked into? These are the monies that the county governors and others have fun with instead of giving services to Kenyans. That expansion is a step towards the right direction.

The entire raft of legislation that has come together with the BBI is something worth celebrating. The BBI has proposed an increase in the responsibility of Kenyans as citizens. That is a critical item. It is good for us to have the conversation on the role of citizens and the discourse of us, as Kenyans, and the role that we have to play towards building our nation. The role of the citizen is very critical and I am glad that the expansion has been done. Kenyans have a duty and a responsibility towards paying taxes, being good citizens, calling out on corruption when they see it, towards looking out for each other. The expansion of the responsibility of the citizens is very critical.

I cannot believe that my time is almost over. I do not want to forget something that I really wanted to say, as we move forward I feel that we need to really look at the right economic philosophy that will take our country to the next level. We have to look at it very pragmatically and not theoretically.

I am talking especially about the one-man-one-shilling focus where we tend to look at the value of the shilling which is the sweat of Kenyans, the tax money and how we should invest back into the country. Let us not look at by just looking at the population, but rather look at investing that shilling to where we can create an enabling environment.

What I am saying is that we should be looking at opening up other counties that have been left behind. Let us invest in agriculture, education and health in counties that have been left behind because what that does is that it gives every Kenyan an equal opportunity to go and look for opportunities anywhere in this country.

Truly speaking, when you speak to any citizen today, they will tell you, I just want to raise my family. I want to be able to work in a good environment. I do not care whether I am in Kiambu or Nairobi. I will go and look for those opportunities where I find them.

The task of any government should be to create an enabling environment. At any one time we are looking at how to invest that one shilling. That is the direction we should be at.

Can you imagine if we had railway lines that were crisscrossing this entire country from north eastern to Kisumu and across on the other way from other counties and crisscrossing the country so that Kenyans can move the way they want?

I should be able to wake up today and go to Turkana and not be worried about whether, should I get sick, will I be able to fly back to Nairobi or can I be evacuated? We should have hospitals everywhere. We should have schools everywhere for our children.

The most important resource in this country is the people. Kenyans are the best resource of this country. We should not look at investing money towards where people are crowded, but rather we should look at spreading it across the country so that Kenyans can go anywhere they want, any time they want and so that they can make the most out of their talents and what they want.

For this reason, I feel that, yes, we have started the conversation. I believe that starting the conversation is the right step because we are making baby steps towards moving in the right direction and having the right conversations that affect us now at this point and time. Let us not forget that.

So, even as we go out to advise Kenyans on how we should move forward, let us not forget to look at what is good and what has made us move one step ahead. We should just keep this spirit of moving forward because a constitutional amendment like any other legislation is not static; it can be changed. Let us move forward together as one people.

I support the BBI and I submit.

Thank you, Madam Deputy Speaker.

Sen. Kwamboka: Asante Bi Naibu Spika, kwa kunipa fursa hii kuchangia huu Mswada wa marekebisho ya Katiba, 2020.

Naunga mkono Mswada huu. Ningependa kuwakumbusha wananchi mahali tumetoka na kwa nini Mswada huu uliwekwa ili tuweze kuujadili. Tukikumbuka wakati tunapo enda katika uchaguzi, baada ya miaka mitano sisi huwa tunapoteza watoto wetu na akina mama wanaaga dunia kwa sababu ya vita. Shida ni kuwa kuna upungufu fulani katika huu Mswada na katika Katiba ya nchi yetu.

Ukiangalia Kifungu cha 23 wameweka ubunifu wa nyadhifa za juu. Katika hicho kipengele kuna viti ambavyo vinatajikana viongezwe kama kiti cha Waziri Mkuu na Naibu Waziri Wakuu wawili.

Tukiangalia wakati wa uchaguzi huwa tunachagua Rais na mdogo wake. Ikifika wakati wa ugavi wa mali ya hii nchi, mali huwa inaenda katika eneo mbili. Huu Mswada umeletwa kwa madhumuni ya kuleta ujumuishaji. Katika huo ujumuishaji, hizi viti nne zitaenda kwa eneo mbali mbali.

Bi Naibu Spika, mwaka 2017, wakati tulipofanya uchaguzi, sisi katika chama chetu cha ODM--- Hata leo nimevaa hii nguo kuonyesha vile tulivyoteseka. Tulikuwa tukitimuliwa na vitoa machozi. Huu Mswada ni mwema sana ---

The Deputy Speaker (Sen. (Prof.) Kamar): Kuna hoja ya nidhamu kutoka kwa Senata wa Laikipia.

Sen. Kinyua: Bi Naibu Spika nimeskiza kwa makini kabisa, nikamsikia mwenzangu akisema kwamba haya marekebisha kwa Mswada huu yataleta mawiano na hakutakuwa na utengamano. Jambo ambalo anazingatia ni kusema ya kwamba kutakapokuwa na ugavi wa mali katika nchi hii ya Kenya, mali itaenda kwa sehemu nne kulingana na vile ametuambia. Amesema ya kwamba katika Katiba kuna Rais na makamu wake. Kwa hivyo, mali inaenda katika sehemu mbili. Akasema ya kwamba kukiongezwa Waziri Mkuu na manaibu wake, mali itaenda katika sehemu nne. Hii inamaanisha Kenya ina sehemu nne ama wale wananchi wengine wa Kenya hawana manufaa kabisa katika nchi hii?

The Deputy Speaker (Sen. (Prof. Kamar): Sen. Madzayo.

Sen. Madzayo: Bi Naibu Spika, kama ni kutafsiri, hiyo sio hoja ya nidhamu.

Sen. Mutula Kilonzo Jr.: Bi Spika, mimi pia nataka kukubaliana na Sen. Madzayo kwamba hiyo sio hoja ya nidhamu. Huyu mwenzetu kama ana maswala ambayo anataka kuyapinga kulingana na ufasaha au kulingana na maneno ambayo yanasemwa na Sen. Kwamboka, anaweza kusubiri nafasi yake. Mambo anayosema ni wasia wake kikatiba na katika *Standing Orders* zetu, ana haki ya kufanya hivyo.

Asante, Bi Naibu Spika.

The Deputy Speaker (Sen. (Prof. Kamar): Asante sana. Inaitwa *point of argument. Let us wind up.*

Sen. Kwamboka.

Sen. Kwamboka: Asante Bi Naibu Spika na Seneta wenzangu kwa kumrekebisha mwenzangu hapa ambaye alikuwa anajaribu kuingilia masaa zangu ambayo ninafaa kuchangia.

Tukiangalia vizuri, katika Mswada huu kuna viti 70 za eneo bunge ambazo zita ongezwea. Ninaunga mkono kabisa kwa sababu katika jimbo la Nairobi tutaongezewa eneo bunge 12. Ukiangalia idadi ya watu ambao wako Nairobi ni wengi lakini hawajawakilishwa vilivyo kwa sababu zile pesa ambazo wanapata hazitoshi.

Ninajua vizuri kwamba tukipata hizo pesa, huu Mswada ukipitishwa nina uhakika bara bara zetu za Nairobi zitakuwa nzuri, watoto wataenda shule, akina mama watapata maji na kutakuwa na maendeleo.

Tukiangalia katika huu Mswada pia kuna pesa rasmi ambazo zitakazoenda katika bunge za kaunti. Mimi nilikuwa mbunge wa wadi ya Mountain View mwaka wa 2013 mpaka 2017. Kuna change moto mingi sana katika hizi wodi. Najua wakiongezwa hizo pesa, watoto watasoma, wataweza kujumuika na wananchi waamue vile hizo pesa zitatumika katika kila wodi na wananchi watanufaika.

Tukiangalia upande wa Bunge la Seneti ninaunga mkono asilimia mia moja huu Mswada kwa kutuongez akina mama ili tuwe 50-50. Tumechoka kuitwa "*flower girls*" kwa lugha ya kiingereza. Ikifika wakati wa kupiga kura inapatikana kwamba wale wenzetu ndio wanapiga kura na sisi tunaangalia. Tumechoka, ni wakati wetu akina mama tutoke tupigania hivi viti kama wanaume kwa sababu tunaweza. Wale wanaopinga, wanaogopa wanawake kwa sababu tuta---

(*Matatizo ya kimitambo*)

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Asante Bi. Naibu Spika. Sitaki kuongezewa muda.

The Deputy Speaker (Sen. (Prof.) Kamar): There is a fluctuation of the sound. Go ahead. You will see the light when you have five minutes remaining. You are okay, be patient. The microphones are being rectified.

Sen. Kwamboka: Bi Naibu Spika, sijui ni nani ana ingilia maneno yangu kwa sababu nilikuwa nazungumzia *point* nzuri zaidi. Nina shanga sana nikiwaona wale wanaume Wabunge ambao wako katika Bunge hili wakipinga Mswada huu. Wanaogopa nini? Kile ambacho wanaume wanafanya, wanawake watafanya bora zaidi.

Wale Wabunge wanaume walio katika Bunge hizi wasiogope kwa sababu akina mama---

The Deputy Speaker (Sen.(Prof.) Kamar: Kuna hoja ya nidhamu kutoka kwa Seneta wa Nandi.

Sen. Cheragei: Bi. Naibu Spika, singependa kumkatiza rafiki yangu, Sen. Kwamboka. Amesema kuwa Maseneta wateule hawapigi kura. Nina fikiri hivyo nikutosema uwazi kwa sababu kulingana na Katiba, kuna maamuzi mengi tunayo fanya katika Bunge la Seneti. Kusema hivyo ni kuchanganya uma. Angesema ya kwamba Maseneta wateule wamekuwa wakipiga kura kwa maamuzi yasiyo husu Kaunti.

Haitakuwa vyema kusema wamekuwa wakitazama tuu. Hawakuwa wakitazama *Viusasa* hapa. Wamekuwa wakichangia nakufanya maamuzi katika mambo mbali mbali.

Sen. Kwamboka: Bi Naibu Spika, hiyo si hoja ya nidhamu. Ningependa kumkumbusha ya kwamba ukiangalia katika Kaunti ya Kakamega, kuna wale Maseneta wateule ambao walikuwa wamepewa ruhusa ya kupiga kura kama Seneta wa kaunti hiyo hayupo. Tuliona katika kisa cha Kakamega ambapo Seneta wa hiyo Kaunti aliwanyima nafasi Maseneta wateule kupiga kura. Ndiyo nina sisitiza ya kwamba akina mama tujitoe kinaga ubaga ili tuweze kuenda katika viwanja tupigane viti hivi sawa sawa.

Bi Naibu Spika, nikizidi kuzungumza, hiki kiti cha Seneti cha akina mama kuna wale wanasema akina mama walio chaguliwa katika kaunti na walio kwenye Bunge la Kitaifa wataletwa hapa na hawatakuwa na pesa za miradi. Ninge penda kuwakumbusha kuwa hivyo viti wakati viliundwa havikuwa na pesa za miradi. Wenyewe walika chini na wakatengeneza mpaka wakapata hicho kitita cha pesa. Kuna uwezekano tukikuja hapa hata sisi, tutaka chini ili tujue jinsi ya kupata hiyo pesa ili iweze kusaidia wananchi wa Kenya.

Bi Naibu Spika, Mswada huu utafaidi kila mtu. Hata kiongozi wa Upinzani atapata nafasi katika Bunge la Kitaifa. Akiwa huko ataweza pia kuwaliklisha wale ambao wanamfuata.

Katika viti vya Wabunge Wateule, katika Bunge la Kaunti na Bunge la Kitaifa, ikifika wakati wa uchaguzi, akina mama wanaofaa kujaza viti hivyo kuna wale Maseneta, Wabunge wa Kitaifa au Kaunti walioteuliwa na vyama vyao wanao pitisha wakati unao faa. Katika Mswada huu pame wekwa kwamba mtu anaweza kuteuliwa kwa muda wa miaka 10 pekee ili aweze kuachia wengine kuteuliwa.

Bi Naibu Spika, kuna fedha za kusawazisha au *Equalization Fund*, kwa wale ambao hawata pata nafasi ya kuongezewa maeneo bunge, wata faidika kwa pesa hizo ili waweze kujiendeleza.

Kuna Bodi ya kusaidia vijana inayoundwa. Hiyo ni ya maana kwa kuwa watafuatilia kila kaunti kuangalia kama pesa hiyo inatumika inavyotakikana. Ukienda katika kaunti nyingi, utapata kuwa kuna zile kazi ambazo vijana wanafaa kufanya ambazo hawapewi ila zinapewa watu wengine.

Nina himiza wananchi wa Kenya tushikane tupitische Mswada huu kwa sababu hakuna kitu ambacho kilicho kizuri asilimia mia moja. Kila kitu kina kasoro. Huu ni mwanzo. Tutapitisha na wakati mwingine wengine watakuja na kubadilisha.

Nina himiza akina mama wote nchi nzima kuwa Mswada huu ni wetu. Tuungane tuupitische kwa sababu utatusaidia na kusaidia wenzetu watakaokuja baadaye.

Asante Bi. NaibuSpika. Ninaunga mkono Mswada huu mia kwa mia.

(Loud consultations)

An hon. Member: The system has gone off!

The Deputy Speaker (Sen.(Prof.) Kamar): We are struggling, but I can remember the next three contributors off head. Sen. Madzayo is the next one. We are waiting to see how we can sort out the issue. My memory reminds of Sen. Madzayo, Sen. Nyamunga and Sen. (Dr.) Mwaura. We will not leave anybody out.

Proceed, Sen. Madzayo.

Sen. Madzayo. Bi Naibu Spika, kwanza nina mshukuru sana Mwenyekiti Sen. Omogeni pamoja na Kamati yake ya Haki, Masuala ya Sheria na Haki za Binadamu.

Ningependa kuongea kwa niaba ya watu wa Kaunti ya Kilifi na Kenya kwa ujumla. Hisitoria sasa hivi ina andikwa katika Kenya ya kwamba jambo kama hili limketokea. Tumepata bahati ya kuweza kugeuza Katiba hii. Kwanza ieleweke--

The Deputy Speaker (Sen. (Prof.) Kamar): Senators, try to re-log in.

Sen. Madzayo: Ama kwa sababu tunaunga mkono ndio sasa imekuwa---

Bi Naibu Spika ninaunga mkono Mswada huu. Kipengele cha kwanza cha Katiba kinasema kwamba-

“Mamlaka yote makuu ni ya wananchi wa Kenya na yanaweza kutekelezwa tuu kulingana na Katiba hii”

Hii inamaanisha Mkenya yeyote pahali popote alipo amepewa jukumu la kuambia aliyemchagua ni kitu gani anatakikana kutafuta, kusema au kuwakilisha katika Bunge.

Kipengele cha pili kinasema ya kwamba Wakenya wataamua utawala wao kupitia kwa wale wanao wachagua ndani ya Bunge.

Maseneta wengi wamechaguliwa na wengine wameteuliwa. Lakini, sote tumepewa majukumu na wale tunao wawakilisha hapa ndani ya Bunge. Kule nyumbani kuna sitofahamu ya watu ambao hawawezi kuelewa. Kwa Kiswahili tunasema ya kwamba ‘mto au maji hufuata mkondo’. Lazima tujukumikie waliotupa mamlaka haya ya kuja kuwakilisha ndani ya Bunge kwa kusema, kuyanakili na kuyatimiza.

Watu wa nyumbani walipiga kura nakupitisha Mswada huu. Kwa hivyo ni jukumu langu kama kiongozi wao ndani ya Bunge pamoja na dada yangu, Sen. Zawadi, kuwakilisha na kutetea haki zao hapa ndani. Ndio sababu ninasimama hapa nikisema ya kwamba niwajibu wetu kupitisha Mswada huu. Ndio sababu ninasema ninaunga mkono.

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Watu waliweka vidole vyao Kenya nzima katika fomu ambazo zilikuja na kuthibitisha ya kwamba wanaunga mkona Mswada huu. Katika ulimwengu mzima, hakuna Katiba iliyo sawa. Nina maanisha ya kwamba sisi kama wakoloni wa Uingereza, wako na Katiba Nzuri. Lakini sio hao pekee, Waamerika wako na Katiba pia. Lakini, Waingereza waliotutawala hawana Katiba. Wao wanaiita kwa Kizungu *un-written Constitution*.

Katiba ya USA ambayo imekuwa ikiwaongoza kwa miaka mingi, mara kwa mara imeweza kufanyiwa--- Jambo la kushangaza ni kwamba ile *un-written Constitution* ya Uingereza inawaezesha kujitawala.

Katika Mswada huu, kuna kasoro kidogo ambayo imeweza kutendeka. Ndio sababu watu wengi wamesema kuigeuza italeti nafuu. Ningependa kukosoa pahali pamoja ambapo panasema mamlaka ya *Judicial Service Commission* (JSC), ikiongozwa na Jaji Mkuu itakuwa na mamlaka yakuangalia uendeshaji wa ratiba za koti. Mamlaka hayo yamwekwenda kwa *Ombudsman*. Ni hatari kuona ya kwamba *Ombudsman* atakuwa na mamlaka ya kumchunguza na hatimaye kumondoa jaji atakayepatika au kuonekana na hatia.

Ukweli wa mambo ni kwamba, *Ombudsman* atakuwa ni chaguo la Rais. Hili ni jambo ambalo watu wanaweza kukaa na kuongea. Katiba ilivyo sasa, kazi ya *Ombudsman* ni ingine. Kwa hivyo, akuwe ndani ya ofisi ya Jaji Mkuu na JSC iachiwe uchapakazi wakutafuta, kuangalia au wakiona kama mwenzao ako na shida ama amepatikana na hatia waandika kwa Rais ili ateua jopo lake analolifikiria kama *Tribunal* ya kumwanguka jaji na hatimaye chochote kitachotoka hapo kipelekwe kwa Rais na hatua ichukuliwe. Lakini, kwa hivi sasa, hatuoni umaarufu au haraka ya kugeuza sheria kama hiyo.

Naibu Spika, kuna mambo mazuri ndani Mswada huu. Jambo la kwanza, kunayo faida ya kuona ya kwamba ugatuzi ndani ya serikali za mashinani umekithiri. Kwa sababu hiyo, kuna bahati ambayo imetoka. Kuna wengine wameweza kupata na wengine wamekosa. Vilevile, jambo kama hili watu wanaweze kuketi chini na kuelewana na kujua ya kwamba kuna wakati mwingine. Watu hawawezi kupata kila kitu ambacho wamekitarajia.

Bi Naibu Spika, umuhimu wa hii Katiba ambayo tunataka kuipitisha hivi sasa ni kwamba ina mafanikio mengi. Dada zetu wanaweza kushindana na wanaume wenzao mashinani. Kwa mfano, Naibu Spika, unaweza 'kuchapana' na wanaume na kushinda kiti. Lakini namba yenu inakuwa ndogo. Ndio sababu tuliona ya kwamba ni vizuri ndani ya Bunge kuwe na akina mama ambao watachaguliwa na wananchi ambao watakuwa Maseneta. Watakuwa wameteuliwa na wataweza kupiga kura. Hiyo inamaanisha ya kwamba watakuwa 47 wanaume na wanaume. Itaongeza nguvu ndani ya Bunge la Seneti.

Hivi sasa kumetokea jinsia ambazo hatuzielewi. Tumeona katika magazeti ya kwamba wanamlaumu Kiongozi wa Waliowachache kwa kupinga BBI. Lakini katika matamshi yake yeye kama wakili, na hapa ndani tukiwa na mawakili waliobobea, ni haki ya wakili kusema kipengele ambacho hakipendezi ili kuwe na marekebisho ili kuwafaa wananchi.

Bi. Naibu wa Spika, ninaposema hivi, isibainike kwamba pengine Sen. Orenge anapinga. Vile ndugu yangu, Sen. Wetangula, alitangulia kusema, itafika wakati ambapo

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yeye pia atapiga kura. Siwasemei lakini nina hakika kwamba kura yao itakua ya kupitisha huu Mswada.

Kuna tamaduni mbalimbali hapa Kenya. Zingine ni mbaya na zingine ni nzuri. Mimi ninatoka upande wa Pwani na katika tamaduni zetu, mtu angekufa angepakwa jivu ili kuhifadhi mwili. Siku hizi, kuna vyumba vya kuhifadhi maiti ambako mtu akifariki, mwili unapelekwa kuhifadhiwa kwa siku kadhaa.

Tamaduni zingine kama za kutahiri watoto wa kike zimepitwa na wakati. Kwa hivyo, hii sheria pia 'haijaketi' bali 'inatembea. Mara kwa mara, tunataka kugeuza. Hata sheria yoyote ulimwenguni lazima igeuzwe kuambatana na wakati. Wakati huu ambapo ni sisi tuko, tugeuze tunachoweza kugeuza. Kile tusichoweza, kitageuzwa na watakaokuja nyuma yetu.

Langu ni kuunga mkono nikisema kwamba tupitisha huu Mswada. Asante.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Senator.

Sen. Nyamunga, you may take the Floor.

Sen. Nyamunga: Thank you, Madam Deputy Speaker, for giving this opportunity to add my voice in support of the Constitution of Kenya (Amendment) Bill, 2020 that is before this House.

Before I say more, I would like to appreciate the work that was done by the Joint Committee on legal matters. From their work, we have learnt many things. We now understand this Bill in a very subtle manner and we can explain the pros and cons anywhere we go.

I want to remind Kenyans that it has been a long journey to reach where we are today. It did not come on a silver platter. There were many sacrifices that our fore leaders made to make us realise what we are now seeing today. Let me also remind Kenyans that you cannot get everything in one day. Even if we look at our individual lives, we have a story to tell about where we started and where we are now. This is a story that each one of us can tell.

As a nation, we must have a story. We must tell them what was there during the colonial days and what our leaders went through to get Independence and a Constitution. We must tell them what our other leaders went through to get the Constitution, 2010. Most of us thought we had arrived. As we passed that Constitution, it was very clear to us that some things were missing and that we needed to amend it.

Madam Deputy Speaker, we are amending this Constitution for the first time. Developed democracies have amended their constitutions. From history and records, we know that the United States of America (USA) has amended their Constitution 27 times, and that is a developed World. What of us who are developing?

We cannot trivialize the 'Handshake' and BBI. I remember on 9th March, 2018, we were in a meeting in the governors' offices in Westlands and from nowhere, somebody came and switched on the television. We saw the President and the former Rt. Hon. Prime Minister shaking hands. I tell you, we were so excited and did not know what else to do.

We were happy because most of us have always been in the Opposition. It is not that we have always wanted to be in the Opposition; we wanted to make sure that the Government is run properly and that what is due to Kenyans is given to them. That was

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our stand. However, when the two leaders saw that the issues between them were much smaller than Kenya, they put all their differences aside. They sat and deliberated on the issues and had a handshake.

From that day, I have felt I am a Kenyan. I started seeing any other person from any other tribe as a brother. I remember growing, when a person from another tribe was even a bigger sister or brother to me. In the process, our leaders misled us and brought a lot of confusion. From then, we have never seen peace that we should have seen as a nation that got Independence.

Madam Deputy Speaker, because of that, I support this Bill not because it is perfect, but because the gains are big and will unite Kenyans. The most important thing is the unity of our country, something we have lacked. We have seen each other as enemies. From now and from the day of the handshake, I have already mentioned that I have seen myself as a Kenyan. I can go and even trade anywhere freely with all the people of this country.

Let me mention a few things that have been raised by colleagues. First, we should not be talking about a bloated Parliament when, right now, we are running on an unconstitutional Parliament. If it were not so, we would not be having this Parliament and should have gone for another election. Therefore, we must correct what is not right. We cannot do a wrong and a wrong; we must find a middle ground. The middle ground is that we must bring the womenfolk in Parliament.

As already mentioned by Sen. Kwamboka, when we were elected as women representatives in the last Parliament, we did not have resources. We did not know what to tell our womenfolk who elected us in the villages and knew that all their problems will be sorted out by us. It took us three years to create a fund.

Even in this Senate, I believe that if there will be need to create another fund to make the work of the Senate easier, we will do and manage it. We managed then as women alone. This time we are joint and we can do it. Right now, we cannot even do our oversight in a proper manner. That is a fund that we must look for.

We must tell Kenyans that we need this fund for us to do proper oversight and do our work in a proper manner. If we have that, we will not have to wait for the Auditor-General to say A, B, C and D, and then we run. We cannot be a reactive Parliament; we have to be proactive. We must have functional offices that should be able to identify where the problems are and bring it to the attention of the public. That is one of the things that we will do as a combined Senate, with both men and women.

Secondly, Madam Deputy Speaker, people say there is COVID-19, the country is poor and that we do not have money in the budget. Why have we become poor and who has made us so poor? I believe that some of us who are propagating this idea of a bloated Parliament and saying there is no money, know what has made Kenya poor. We are poor because of corruption.

If we can go by Chapter Six of the Constitution, I believe we should have enough resources to take care of every aspect of our governance, and there will be nobody saying we do not have resources. Kenya is rich. We are endowed and Kenyans are resilient; we work day and night. We have women who walk on their feet and are breadwinners for their families. Their families still eat and they take their children to school. I believe that

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Kenya is a good place. Kenya is wealthy enough for each one of us to produce enough to sustain ourselves. We cannot compare our country to the developed world.

Secondly, we cannot compare our country with the developed countries. Some Members of this Senate have been saying that in some developed democracies, they have only 50 representatives. Those are developed democracies where systems work. Our system is not working. Before we fix our system to make it work, we must make sure that our people get adequate representation. We should not trivialize what is important to us like representing our people adequately.

We are talking of vast constituencies that you cannot go round and finish even if you took two days. You cannot compare that with countries that have developed systems, where you just press a button and things work. We must work towards being there, but before we are there, we must make sure that our people are properly represented.

Those are the main issues I wanted to comment on. I now want to debate on the Constitution of Kenya (Amendment) Bill. As already mentioned, it may not have been perfect. I also have issues but we know that this is the beginning of a process that will continue from generation to generation and with time, other generations will look back and say that the people of Kenya did something.

I would like to talk about the minority rights. As it is, Parliament is not properly constituted. We have already mentioned that the women voice is not being heard. If I become the female Senator for Kisumu County, while my male counterpart may be addressing other issues, maybe more important issues according to them, as a woman, I may address issues that affect women.

We look at gender-based violence. I have never heard men bring anything to do with gender-based violence, child defilement and raping of women. We also have issues of water and health. We must combine efforts to make sure that we give Kenyans representation in wholeness, such that they feel that they belong and leaders take care of them.

The way nominations are done, they look at the number of Members of Parliament (MPs) who have been elected. With the passage of this Bill, it will depend on the number of votes attained by each party. Through that, the minority will be taken care of.

Members, the most important thing we should be looking at is not about us because that is selfishness. It should be about the interest of our people and the people who are voiceless. That is where our concentration should be. If there are minorities, we should make sure that they are taken care of within the Constitution.

I want to talk about economic expansion. The proposed Article 10(a) seeks to promote regional integration and cohesion in East Africa and the rest of Africa. Today, we are hosting the President of the United Republic of Tanzania. Why are we hosting her? Apart from visiting us, I believe there are issues of economic importance that they will address, so that we move as a region, East Africa and Africa. This will also ensure that we enhance our economy and trade. Those are some of the issues contained in the amendments.

Regarding growth of small enterprises, our young people have yearned for that for a very long time. We have had the Youth Enterprise Fund, Women's Enterprise Fund and

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Uwezo Fund. However, the way it is structured, it is difficult for some people to access them. With the proposed amendment targeting the youth and women, there will be access to resources by anybody who wants to get involved in business.

Apart from that, there will be latitude where they will be allowed and given grace periods within which they can grow their businesses before starting to pay taxes to the Government. To me, that is good because when I wake up in the morning, I think of the women, and when I go to sleep, I also think of the women because I know their plight. I know how disadvantaged women are and what widows are going through in this country.

If we give them latitude and an opportunity to manage their lives by being in a position to do their businesses without fearing--- For example, women do not want to hear about Women Enterprise Fund because they have been auctioned. Women have gone through hell and the same women who are disadvantaged have gone through many problems.

Madam Deputy Speaker, I know that my time is up. Lastly is about boosting devolution. Devolution is the best thing that has happened to this country and must be strengthened. If we move it from 15 to 35 per cent and have the bottom-up approach where we take care of people at the grassroots, then I have to support such an amendment without thinking twice because the less fortunate and the People with Disabilities (PWDs) will be taken care of.

Article 224 of the Constitution gives county governments liberty from the restrictions of the Division of Revenue Bill, by allowing them to have own sources of revenue in their budgets. As it is, own source revenues are not being included in their budgets. That is why we have a lot of pending bills because when it comes to budgeting, they talk about own sources of revenue, but when it comes to implementation, own sources of revenue dwindle somewhere. Therefore, this will ensure a lot of accountability.

Finally, is the creation of employment opportunities. The BBI proposes inserting Article 11(a) to enhance economic model base on value creation rather than extraction. This will diversify and integrate the economy, thereby creating more employment opportunities for the youth. The BBI also proposed inserting Article 237(a), which seeks to create a Youth Commission to promote implementation of the rights of the youth as provided in Article 55.

I urge Members of this Senate and members of the public out there that this may not be perfect. I know there is an issue with the 70 extra constituencies because we know how it should have been done. It should have been left to the Independent Electoral and Boundaries Commission (IEBC) to come up with a proper number of constituencies to be added to the 290, and not the way it has been put in the Report. I do not know how that will be done, but I think that responsibility should have been given to the IEBC because they know how they will come up with deserving constituencies.

I urge all of us to put anything else aside and support this amendment Bill because it will help our people. We look forward to a time when it will not matter who the President of this Republic is. It will only matter if you have everything you need to do within your locality. You can go to school, hospital and any other place. That will be the best time for this country.

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Madam Deputy Speaker, I support the Bill.

Sen. (Dr.) Mwaura: Madam Deputy Speaker, I rise to make my contribution to this Bill. From the outset, I want to say that in the academy, they teach you how to use logic to arrive at a conclusion. In politics, they teach you how to use emotions to arrive at the same decision, but for effective public policy and governance, we need a dual application despite that latent contradiction that is a dilemma of latter-day democratic leadership.

We are at a historic moment, as a country. We have an opportunity to decide the future, gauging at how we have been able to perform the functions as stipulated in the 2010 Constitution. Indeed, as has been said, the BBI provides us with an opportunity to have a constitutional moment, a consensus towards the future of our country. I want to declare from the onset that I was very much involved in the development of the BBI draft Bill. There are instances when Sen. Wetangula, Sen. Dullo, Sen. (Dr.) Ochillo-Ayacko and I represented the Senate in the hearings of the BBI at the Kenya International Convention Center (KICC). When the Bill came out, I was disappointed because it did not have the provisions for PWDs other than providing for 5 per cent generic principle as provided for in Article 54(2), with regard to political representation.

I lobbied very hard to the extent that the BBI Bill now has got four slots representing PWDs in the National Assembly. There will be two men and two women, and that is a big gain considering that it was not there before. However, I stand here as somebody who represents people who are underrepresented. On one hand, I am the Senator for persons with disabilities together with my sister, Sen. (Dr.) Musuruve.

That is the model that was adopted by the drafters of the Bill, to have a man and a woman to represent each and every county. We are representatives of a huge constituency across the country that is highly underrepresented and under-resourced. We represent a people who are yet to have a true voice in the democratization and equal opportunity in this country. Our African pathos and ethos require that an ambitious leader in a community must provide leadership in the locality where they belong despite their status. It does not matter whether they are male, female, youths or someone with disability.

For the last eight years or so, I have been trying to provide leadership in the County of Kiambu and particularly, Ruiru Constituency. In Ruiru Constituency, we have 490,120 residents within a small radius. Those people are underrepresented. Vihiga County has 475,000 people and it has a Governor, Senator, Woman Representative, five Members of Parliament and Members of the County Assembly. I fight to represent a people and I do the work of a Member of Parliament who is missing in the equation. This is the reality that I have to face and that includes the other Members of Parliament who come from populous constituencies. Unfortunately, it is a zero sum game because that constituency will only have one Member of Parliament at any given point in time despite the fact that resources in this country are shared using the political unit.

Ruiru Constituency deserves four Members of Parliament. If you use the threshold of 132,000 people per constituency, Ruiru will have 3.71 Members of Parliament. If you round it off to the nearest ten, you end up with four Members of Parliament. That will be closer to the Vihiga County matrix of 475,000 with about five Members of Parliament. Therefore, BBI has proposed some rebalancing of historical

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injustice to the effect that those who come from the populous communities have to be represented.

One may ask why that matters. It matters because it determines how much a child gets for their bursary. Based on last year's application where we had about 80,000 genuine applicants, a child in Ruiru Constituency will get Kshs275, while someone from the other regions will get about Kshs54,000 from the same kitty, and that is unfair. If it is allowed to go on, it will end up creating serious imbalances and injustices. I believe that it is time for that to be corrected.

[The Deputy Speaker (Sen. (Prof.) Kamar) left the Chair]

[The Temporary Speaker (Sen. Nyamunga) in the Chair]

If you look at how we allocate money for roads under the Kenya Rural Roads Authority, the recruitment of the defence forces officers and the police, you will realize that it is based on the political units that are called constituencies and what we refer to administratively as sub counties. Therefore, it will be a novelty for our political system to allow us to share resources based on political representation. It is an easier way to resolve this problem.

The BBI Bill has proposed to entrench the National Government -Constituencies Development Fund (NG-CDF) into the Constitution. The current formula for sharing resources is equal amount of money to the 290 constituencies. It, therefore, follows that those who are highly underrepresented, in the current format of government, through the gerrymandering that has been done by the past administration, should get some reprieve. The historical injustices need to be corrected. The 70 proposed constituencies, if well distributed, will help cure the various challenges that I see on a daily basis, such as providing school fees and medical care.

The second issue that I would want to address is the underrepresentation of PWDs in this country. For a long time, PWDs have been treated as people who do not deserve to be at the centre of decision making. In Parliament, the nomination slots are basically sinecure, where you create a position in Government to resolve a problem without resolving the same problem.

I have tried to ensure that there is equity between those who represent special interest groups and those who are elected because these positions are created to cure the inequality and the unfairness. However, it has become traditional and we have actually entrenched discrimination in our systems and structure of representation, such that those who are nominated are actually a second tier of leaders in this country.

The initial BBI draft Bill had actually removed all of the positions that would have guaranteed representation for PWDs. One would then ask: what would they serve if you are in a position where they are actually underrepresented and in a place where they are actually not seen as an equal to their colleagues in Parliament? That serves right because they are able to demonstrate that people like themselves can be leaders.

I am proud of the fact that I have served both in the National Assembly and the Senate, where I have represented persons with disability and that has made a difference.

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As I speak, in this Senate, I am the Senator with the highest number of Bills. I have five Bill as per the last count. Through this representation, we are able to change the narrative of how people perceive us because there is discrimination and stigma. People are able to see Members of Parliament and Senators who are like them and, therefore, stand up and be counted that they too count in this society.

Madam Temporary Speaker, having said that, if I look at the composition under the BBI, I am very proud because we have the four slots in the National Assembly, something that I had proposed in the 11th Parliament, but it was overtaken by events. It is now part of the BBI. We lost in the Senate with regard to the fact that the positions of two nominated Senators, a man and a woman, have been scrapped.

If BBI passes, I will be the last to have served in both Houses to represent people with disabilities. The Senate has got an advantage because we are fewer here. It is easier to introduce Bills and Motions and make something current matter in real time because of the nature of the Senate.

With the removal of that because of the repealing Article 123, it means that then persons with disabilities, not unless one of them is elected as a Senator and it is very difficult, or a woman Senator, will not be represented in this august House.

That for me is a loss because even when there would have been equality of the vote amongst the 47 Senators, it would have been good to have the two representatives of the persons with disabilities, possibly two of the youth and maybe another two of the ethnic minority, to make the House to be 100 people, so that they can be the voice of persons who are marginalized. This is to the effect that even if they do not have to vote as part of delegation, they can still canvass, lobby and still introduce Motions to the benefit of their constituents.

They can do that because the Senate, as envisaged in the BBI, would be bigger in terms of the monies that it is going to oversight. The Senate as envisaged in the BBI will also be vetting members of various commissions.

Some of these issues would of course have benefitted from the inclusion and participation of persons with disabilities. That is to mean, therefore, that if you look at the 5 percent representation in the Senate, then that threshold will not actually be achieved.

When it comes to the county assemblies, currently, persons with disabilities are not properly represented. It is imperative that Article 177(1) (c) of the Constitution be implemented by amending the current provisions of the County Governments Act, so as to provide for a man and a woman to represent persons with disabilities in all of the 47 county assemblies. This is to ensure that that representation is guaranteed within the laws of Kenya, as provided for by the Constitution, but the enabling legislation did not get it right. That is something that we should pursue as a Senate and ensure that it is done before the next general elections.

Madam Temporary Speaker, there is the issue of the expanded Executive. This is a very interesting country because we have ethnicised our politics so much to the extent that people feel actually entitled to certain positions based purely not on any other qualification but on their ethnicity.

As a result, the BBI proposes a consensus where we create a position of Prime Minister, President, Deputy President and the two deputies. True to it, if you look at our

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ethnic conglomeration, then 67 per cent of this country comes from the so-called five ethnic groups. I prefer to call them ethno-political derivatives because they are not really ethnic groups; they cannot speak the same language in one sitting like this. However, it is a political identity, so they are ethno-political identities.

The question would be: if that is what would make the country to move forward, so be it. If that is what is going to make us not fight, so be it. However, two things arise from this consensus. One, how do you make sure that you disperse power of the presidency without emasculating the presidency itself, so that you do not end up with a weak president who cannot command any respect? That is on one side.

On the other side, how do you make sure that you have offices that are functional and do not have an all too powerful President? The most powerful position after the President, in my opinion, is the Attorney-General because he will sit in the Judiciary as a JSC Commissioner; he will be a Cabinet Minister in the Executive and also a Member of Parliament.

In terms of power relations, it will be a question of power dynamics. As I conclude, I think that is a good compromise. However, because I can see that my time is over, I want to say that politics does not always follow logic. Bridging the gap between the two is not only the genius of leadership, but the masterstroke of any country's development.

Politics is not for the perfect; it is about finding relevance in those imperfections and impacting the lives of many for the betterment of society. We, as legislators, have one last moment to interrogate our decision because it does not matter how good you are or how eloquent one speaks, the most important thing is whether you make the right decision for your country.

I believe that a constitutional consensus may not be perfect, and I would prefer if the referendum Bill would have provided for multiple questions, so that you do away with what you do not agree with.

Now that we have to vote for a Bill, I think in my opinion the proposals so presented are largely okay. The intention may be questioned by many people, and I hope and believe that the BBI shall be used for the best interest of this country.

I have reservations with the number of nominated Members. I think that the National Assembly will be very crowded and Members will not even be able to speak. However, that is what we called for when we talked about the two-thirds gender representation, unfortunately. It is like speaking from both ends of your mouth.

I have serious reservations with the issue of the Ombudsman and the way he is appointed, but that office needs to be there in the Judiciary, possibly appointed by the JSC. I fear for Judges because they may actually be intimidated by the JSC, which now has the powers to suspend without the formation of a tribunal as is provided for in the current Constitution.

These are things that would have been cured if we had gone by the logic that whatever went to the county assemblies was the draft Bill and, therefore, that draft Bill can be amended in the Senate.

Since the referendum Bill did not seal all the lacunas in law, I hold the view that I do not believe that Parliament, as it is as per the letter of the Constitution, will have

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powers to amend. We would have arrogated ourselves those powers by having a referendum Bill that expressly provides for such amendments and, therefore, that there should be a consensus.

I seek to rise and support this with reservations on some of those issues, but largely in my opinion, I think this is a good Bill. It may not give us the best that we want, but it is something we can debate. I hope that those weaknesses, if at all the Bill was to pass, will be cured by a watertight legislation that we, Members of Parliament, shall pass before the full implementation of the Constitution.

Madam Temporary Speaker, I support.

The Temporary Speaker (Sen. Nyamunga): Sen. Omanga, online.

Sen. Omanga: Thank you, Madam Temporary Speaker. I would say today that I am perturbed, distressed, agitated and pained that we are debating issues, which are not a priority to Kenyans.

It is not a priority to my people. It saddens my heart that my people are dying of COVID-19 because of lack of oxygen in hospitals and lack of ICU beds. They are unable to pay hospital bills. We do not have enough vaccines to vaccinate our people. Kenyans especially in my county, Nairobi City County, are being evicted. We saw the eviction in Ruai the other day. We saw evictions in Mathare and Ruaraka.

Kenyans are being evicted from their homes against court orders, and instead of us, as legislators, coming to debate these important issues, we are debating things that are not a priority at this point in time.

Kenyans especially those in hospitality industry have lost jobs. Kenyans do not have jobs and cannot sustain their families anymore. No one is talking about it. We are now discussing how the political class is going to share seats at the high table; who will be Prime Minister, Deputy Prime Minister and Cabinet Secretaries, but we are not talking about Kenyans who elected us. My heart is heavy.

Nevertheless, now that I have to painfully contribute to this, it is not a popular initiative. We saw how the process started. When the 'Handshake' cum BBI started, it was the Executive and the Cabinet Secretaries (CSs) who were going round to market it, which gave birth to a constitutional amendment. It is not a people initiative, but an Executive initiative.

That is why when this Bill went to people for signatures, it was the Executive who blackmailed people. I have my people who were in the *Kazi kwa Vijana* programme, who were forced to sign it so that they could continue being employed. The chiefs were using that to get people to give their signatures. The Principal Secretaries and the CSs were intimidating people to sign those documents.

When it went to the county assemblies, you saw Members of the County Assemblies (MCAs) being bribed. They were given car grants and money tokens after voting, while the nominated Members were threatened. Some of them are in court. We have the example of Baringo County MCAs who were given a party position.

This is a constitutional amendment that should be people-driven. Every Kenyan has a right to make their decision. Why would nominated Members be threatened, and if they vote otherwise, they are expelled from the party? That is what is going on.

As a nominated Member of this House, I know that today because I am against this Bill, I will be called. I have always been threatened, but I must stand for the truth. I know that after my submissions today, it may never be the same again because I am against this Bill.

We saw the MCAs pass this document without even doing public participation. Siaya County Assembly was the first to pass this Bill. They were given the document in the morning and passed it in the afternoon without even reading it. To date, they do not even know its contents. They passed it without public participation.

On the gender issues, we may say, yes, we have attained the two-thirds gender rule, but why would we have women in the National Assembly nominated and not elected? I agree that we should have the 47 women in the Senate, but also retain the 47 in the National Assembly.

We know the kind of intimidation nominated Members go through. Imagine over 100 nominated Members in the National Assembly who cannot make an independent decision because they have to toe the party line. You cannot stand with the people because you have to toe the line with the Executive like is happening now. Imagine what will happen now that the numbers are going to increase.

Madam Temporary Speaker, the nomination will be based on the numbers you garner from single constituencies. Where do we leave the areas where we have less population? It means it is an advantage to the constituencies, which are endowed with numbers. What happens to people from Garissa, Wajir and Isiolo? Does it mean we will not have women from the marginalized areas, but will only have women from Nairobi, Kiambu and Nakuru where we have more people? I think that is not equity.

On the nominations in the National Assembly, the Cabinet will be coming from the National Assembly. We have to achieve the two-thirds gender rule in the Cabinet. That means that the nominated women who will go the National Assembly are the ones who will benefit from it. If all the 360 constituencies are for men and we top up with women, we will only have nominated women sitting in the Cabinet. It even kills morale because we need to have elected women in these powerful positions for decision making in this country.

As women, we will also lose the affirmative fund. As much as my colleagues are saying that they sat and came up with the fund and will still do the same in the Senate, it will not be the same. Oversight fund is not the same as affirmative action fund. Kenyans know the benefits of 'Mama County' having funds to deal with the soft issues in society.

It has helped and elevated the lives of our women, youth and children in our communities. If we have them in the Senate, there is no way you will say the 47 women in the Senate will get some affirmative funds and their male counterparts will not get because we are talking about equal rights. Apart from having the 47 women in the Senate, we will still have the 47 elected in the National assembly.

On gender, I also have an issue with the sunset clause of 15 years in the gender rule. What happens in 2037 when the sunset comes and we have not achieved the equity? Would we, as women, start the struggle afresh? I think that clause should be amended to remove the sunset, so that we have gender equity in governance play itself out without capping it to a certain number of years.

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On Judiciary, Clause 43 proposes to amend Article 172(1), where the security of tenure for the judges is lost. What do we mean? We know the importance of the judges having security of tenure. This offers security to ensure the office holders cannot be victimized for exercising their powers, functions and duties. If this clause is removed we can be sure that the judges will be working in fear. They will be manipulated and victimized for making independent decisions.

As a House, we have come from far. We are where we are because of the Judiciary.

If Clause 172(2) as amended, was in place, maybe judges would have been unable to give the rulings that they have been giving. The appointment of the Ombudsman, by the Executive, who will be able to sack judges, will scare everyone to make any independent ruling. This takes away the independence of the Judiciary.

Madam Temporary Speaker, I am perturbed. I wonder how easily people forget. I understand why the shoe is on the other side--- Our brothers and sisters from the opposition have said that they suffered a lot under the ‘teargas Monday’ and were protected by the law through our independent judicial system. However, they are now supporting this. It is so unfortunate because they benefited from an independent judicial system. People forget fast. Therefore, I plead with my colleagues to reconsider and prioritize issues of the people. First, let us look at the welfare of our people before we start indulging in this issue of constitutional amendment.

Madam Temporary Speaker, I do not support this Bill.

Sen. Wario: Asante Bi. Spika wa Muda kwa kunipa nafasi hii niweze kuchangia Mswada ulio mbele yetu. Kwanza, ningependa kuwapa pole waliokufa kwa sababu ya ugonjwa wa Corona. Ninawafariji na kuwatakiya uponaji wa haraka walio hospitalini ili waweze kujumuika na jamii zao.

Ningependa pia kuwapa heri njema Waislamu wote katika Kaunti ya Tana River, nchi ya Kenya na dunia kwa jumla. *Saum maqbul, waramadan karim.*

Ningependa pia kumtakia *janatul firdaus* mwenyekiti wa BBI, Sen. Haji, kwa kunakili Ripoti hii. Yuko mbele ya Mwenyezi Mungu, ninaomba ampe pepo huko aliko mbele ya haki.

Kuna mambo mazuri ndani ya Ripoti ya BBI lakini kunayo mengi ambayo yanahitaji kuboreshwa, kupigwa msasa na kubadilishwa ili Ripoti hii iwe nzuri. Bila kupiga msasa, Ripoti iliyo mbele yetu itatufinya sisi wengine na kutuweka katika hali ya utatanishi katika sehemu tunayowakilisha.

Sehemu ninayowakilisha ya Tana River imewachwa nyuma kimaendeleo kwa miaka mingi. Sehemu yake ni kubwa lakini kulingana na idadi tuko wachache. Kama ripoti aitawasaidia wale wachache walioko katika kaunti kubwa, mimi nikifika Tana River nitajipata katika hali mbaya ya kujichoma kwa maji ya moto.

Nikiunga mkono katika Seneti hii, nitajitia kitanzi kwa sababu Mswada uliopita ya ‘mtu mmoja, shilingi moja’ inakaba koo watu wa Tana River na watapoteza ugavi wa pesa. Ndio moja ya zile *losing counties*. Kwa hivyo, nikiwa mwakilishi wa *losing county* na niunge mkono, basi nikienda nyumbani nitatiwa kitanzi. Mambo haya yanajandika na sio mzaha.

Siku ya leo ni nzuri kwa sababu hakuna makelele. Sisi tunataka kuweka mambo yetu mbele ili yaonekana vizuri. Seneti inafaa kufanya ukaguzi na uchunguzi lakini haikuwezesha kufanya kazi inavyotakikana kwa sababu hakuna fedha---

Sen. Kinyua: On a point of order, Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): What is your point of order?

Sen. Kinyua: Bi. Spika wa Muda, Seneta wa Tana River amesema ya kwamba leo hakuna makelele. Sijaelewa anachomaanisha.

Sen. Wario: Asante rafiki yangu mpendwa, Sen. Kinyua. Kiswahili kinaendelea kukua kila siku. Unavyonisikiza, hapa nilipo hakuna kukuru kakara. Mambo yamepoa kama maji baridi iliyo ndani ya mtungi. Sauti yangu inabobea vizuri. Ndio sababu ninasema hakuna makelele huku na kule.

Seneti ikiwa na fedha na ikiboreshwa vizuri, tutaweza kukagua fedha zinazoenda kwa kaunti. Hii ni kwa sababu kutakuwa na National Government Constituencies Development Fund (NG-CDF) kama ilivyoandikwa kwa Ripoti hii na pia pesa hizi zitaenda hadi kwa wadi. Inatakikana Seneti ifanya uchunguzi na ukaguzi. Kama ofisi ya Seneta haitakuwa na nguvu ya kutembea na kuangalia yale yanafanywa mashinani, Seneti itakuwa na nguvu.

Kulingana na mimi, Seneti ambayo itawakilishwa na mama na baba itakuwa na idadi kubwa. Lakini, kuboreshwa kwa uchunguzi kutafanya iwe mwenyekiti mwenza wa mwingine ili ofisi hio iweze kuwakilishwa katika Seneti na mashinani ili iwe na nguvu zaidi na iweze kuzungumza maswala ya kaunti katika Seneti jijini Nairobi. Ndio sababu nilisema Mswada huu unahitaji kuboreshwa na kupigwa msasa ili ukae vizuri zaidi.

Bi Spika wa Muda, nina wakilisha Kaunti iliyoachwa nyuma kimaendeleo kwa muda mrefu sana. Tangu Kenya ipate uhuru hadi leo, hospitali hazifanyi kazi vizuri katika Kaunti ya Tana River na pia watu wako mbali na huduma. Utalazimika kutembea mwendo mrefu kutafuta hospitali na vile unavyojua, hakuna barabara hasa msimu huu wa mvua. Iwapo pesa za Kaunti zitapunguzwa ama tukose kupata nyongeza kupitia Mswada huu, basi mambo yangu yataenda vibaya. Ndiyo sababu tunasema, tuupige msasa ili tuoboreshe Mswada huu.

Bi. Spika wa Muda, kama nyongeza ya maeneo Bunge 70 ilizingatia zaidi idadi ya watu, kusema kweli mimi ninaangukia hapo. Iwapo hesabu zote zitazingatia tuu idadi ya watu na viti vingi vipeleke katika sehemu zenye watu wengi, basi kuna Wakenya ambao hawata wakilishwa katika Bunge la Taifa kwa sababu ni wachache katika Kaunti kubwa. Mahitaji yao maalum hayatawasilishwa wala kupata nafasi Bungeni. Katika hali hiyo, tutaendelea kuwa nyuma.

Katika kupiga msasa na kuboresha idadi ya watu katika Bunge la Kitaifa, nilitaka tuangalie hicho kipengele sana. Tuangalie sehemu zenye mahitaji maalum, kama ukosefu wa mvua. Wakati mwingi, Kaunti ya Tana River hupata tuu maji kutoka kwa mabwawa saba yaliyowekwa katika nyanja za juu za Mto Tana. Mara kwa mara, tunapata mafuriko na watu wanalazimika kuhama na baadaye kurudi manyumbani mwao.

Sehemu kama hizo pia ziangaliwe kama zenye mahitaji maalum, tofauti na sehemu zingine. Baada ya hapo, wapewe kiti ili wasikike katika Bunge la Kitaifa ili nasi tuwe na nchi ya kujivunia. Ripoti hii haikusema hivyo bali iliendelea tuu kuongeza viti katika sehemu ambazo tayari zishaendelea tangu Kenya ipate uhuru. Hizi ni sehemu

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ambazo ziko na barabara, hospitali, shule na vyuo vikuu vizuri. Huko ndiko haya maeneo mapya ya Bunge yamepelekwa. Sisi hatujapata hata kiti kimoja cha kushughulikia mahitaji maalum kama watu tuliotengwa kwa muda mrefu.

Katika kupiga msasa Mswada huu, hivyo ndivyo mimi na watu ambao ninawakilisha tungesaidika. Ingejumuisha pia wale wanaofanana na mimi, kama vile huko North Horr ambapo ni sehemu kubwa na hata kaunti za Marsabit, Isiolo na Wajir. Katika sehemu hizo, utapata wafugaji wengi wa kuhamahama na mahitaji yao ni tofauti na ya Wakenya katika sehemu zingine.

Maswala yayo hayo ndiyo pia yangepata nafasi ya kuzungumziwa katika Bunge la Taifa. Iwapo tungefanya hivyo, basi Mswada huu ungetusaidia na tungesherehekea kama Wakenya wengine na kusema tuupigie kura kisha tuendelee. Hilo halikupatikana katika Mswada huu.

Bi. Spika wa Muda, hata wewe mwenyewe ukiangalia, sio ati tunazungumza tu hapa lakini pia kuna kusema na kutenda. Kuna mahitaji maalum ambayo hakika, hayakufika katika Ripoti hii. Kwa hivyo, dosari nyingi zinaonekana.

Kwa kweli ukiangalia Mswada huu, waliouandika walipoteza wakati wao mwingi. Walikaa usiku na mchana na kuzunguka lakini mahitaji yetu hayajawekwa katika Mswada huu. Ukiangalia hivi, hatuna sababu kamwe ya kusema Mswada huu upite. Ni lazima tuwekewe madaliko hayo.

Bi Spika wa Muda, asante kwa kunipa nafasi.

The Temporary Speaker (Sen. Nyamunga): Thank you, Senator for your contribution.

Sen. Linturi, you have the Floor.

Sen. Linturi: Thank you, Madam Temporary Speaker for this opportunity to contribute to this Bill that is before the House.

Before I go into the substance of the proposed amendments, allow me with humility, to remind the people of this country that through the Preamble of the Constitution, we especially recognized the aspirations of all Kenyans, for a Government based on the essential values of human rights. These are; equality, freedom, democracy, social justice and the rule of law. My contribution will be centred and based on the journey of our current Constitution. It is the same Constitution that we all vowed or took oath to protect.

If you go further into the Preamble, you realise that when we exercised this sovereign and inalienable right to determine the form of governance of our country, Kenyans gave themselves this Constitution because they fully participated in its making. They enacted and gave themselves this Constitution and for the future generations. That is what part of the Preamble of our Constitution says.

Madam Temporary Speaker, I have thought about this process for a long time since this debate started. I have not been persuaded by anybody who has contributed before or the public participation debates that have been ongoing out there. For the record, I just want to share my views and thoughts on what this Bill is all about. I have a serious problem with the procedure of bringing this constitutional amendment Bill. In fact, my view is that this Bill is an unconstitutional constitutional amendment.

When contributing to this debate, I could see my good cousin, the Co-Chairperson of the Joint Committee, was really at pains to explain and justify this process. When Kenyans gave themselves this Constitution, they recognized the sovereign power they have, under Article 1. They then accepted or ceded that authority to exercise that sovereignty to us, as their elected representatives. I am left imagining what this particular constitutional provision was meant to achieve.

When you look at it, whenever we are unable, the citizens can exercise their power by themselves.

I am sure that our action and power is limited when dealing with matters concerning the public in a manner that is provided for explicitly in our Constitution.

The process of amending the Constitution is provided for. There are various ways of how we can amend this Constitution. Article 257 is what we are dealing with, but let us not forget that there are Articles 255 and 256, which we must always look at especially at a time like this because the constitutional amendment before us has certain issues that squarely would not--- If the intention was to address any mischief or anything that anybody thought required to be amended, they should not have taken this long route. However, because of the dishonesty and failure by ourselves and other leaders to come straightforward and tell the people the truth, that is why we find ourselves in this situation.

Article 257 is what people are talking about, where we have the popular initiative. My understanding on the provision on how to amend a constitution is that Parliament can make amendments through a parliamentary initiative. There are issues that we would have addressed through the parliamentary initiative.

The only reason this Bill is before us today is because the perceived promoters of this Bill, who are supposed to be members of the public, are not. We must tell the country the truth. We must be honest about this and tell the public that we are here today discussing this Bill because it is as a result of what we all refer to as the “handshake”. It is as a result of two individuals because of having had protracted political competition for years and they wanted to have peace with one another. They decided to shake hands and tell the people that they are amending the Constitution because the people want it. This is meant to serve the interests of two people in this country.

I am saying that this initiative is clothed in popular initiative because those two people have good legal minds that advise them. They know very clearly that though the intention was to expand the Executive and get power from commissions that are provided in Chapter 15, such as the IEBC, the Salaries and Remuneration Commission (SRC) and the Judicial Service Commission (JSC), the only way to do it was to bring it as a popular initiative. This is because a popular initiative cannot be amended by Members of Parliament (MPs) since it is taken to be an initiative from the public, who bestowed their sovereign power to us.

In my view, that is the reason public funds were put into this. The first promoters were the President and the former Prime Minister. If anybody tries to interrogate the process of collection of signatures in support of this Bill, they will be told that the chiefs were actually telling the public that they will not get money if they do not sign this Bill, yet they benefit from the cash transfer programmes, and that is why they must support it.

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I do not understand how signatures were collected. This is one of the worst frauds in this country that is bigger than the Goldenberg Scandal or any other. This has demonstrated a situation where we are all captives of a few people in this country, where we cannot speak our minds freely, be allowed to give divergent opinions and people must interfere with institutions of oversight that are meant to protect the sovereignty of the people.

Article 248 is about independent commissions. If you read Article 249, you will see the objects and purpose of these institutions, which are to protect the sovereignty of the people and promote constitutionalism. When we have a Bill that proposes to take away power from institutions and vest them in individuals, there can never be any other serious assault to our Constitution like what we are doing because this is even creating a bigger and stronger imperial President, which we should not be having at this material time.

Madam Temporary Speaker, I am lucky to have been in this Parliament for quite some time. I am lucky that in 2008 we worked day and night to amend the Constitution of Kenya to share power. We should not ask ourselves why we did that. Are we getting ourselves back to 2008 that we have to amend the Constitution to create positions of power for individuals?

I am repeating this because in the proposed constitutional amendment, I want to tell the country that the problem of this country is not about who is the president, and it does not matter which positions you want to create. We must be in a position to agree that in any election, there will always be a winner and a loser. Whenever somebody loses in an election and accepts, you can never have people fighting because of the results. They will always say that elections will come after five years, and they will be ready.

I had the opportunity to debate and propose amendments to this Constitution. I think the threshold for making amendments according to the recommendations from Naivasha was 75 per cent. That is why we never amended it that time because we could not raise the numbers. I remember what happened that time.

Concerning the creation of the positions of Leader of Opposition and positions of influence, so that somebody comes and mobilise their team within Parliament, we felt it was very unfair to leave a presidential candidate out of politics. That was seriously opposed before we even got to where the draft was done. Some of us had ideas on who we thought would be President. When we talk of amending or making a constitution, it must be done for posterity, bearing in mind that what we do should be for the good of the people and not a few individuals.

It pains me knowing the kind of freedom that was secured through enactment of this Constitution, which is now continually getting eroded because of the failure of the system to implement it. We are behaving as if Kenya will never have any change in leadership. Let us think about politics and dynamics. Let us reason and see what we can do.

This document will go to the people out there. This is not yours, but a document of a few people. We are only lying to ourselves because we have all decided to become subject to their ideas and minds. We are captives! Parliament has been captured. They are now getting to the Judiciary to capture it.

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The public should stand and seriously defend this position because we have been lied to that this is a popular initiative when it is not. People know that. If the Executive wanted to make any change, they would have applied Article 256.

They would have come here; we would have debated and made amendments. In that case, we would have participated in it, but we have people who are running away from the provisions of Article 109. Legislation is done through Bills and the Bills are assented to by the President to become law.

Now, somebody wants to run away from that provision and they are telling us that this is a Bill and you can only talk or do A, B, C and D, but cannot amend a comma or do anything else. That is serious dictatorship. We must free this country by rising up. We should go back to the people and campaign against it. That is how we can secure this country.

I have looked at Article 89 where the Independent Electoral and Boundaries Commission (IEBC) derive the power to create constituencies. I have noted that this document violates it, yet it is meant to ensure fairness and equity. The foundation and the cornerstone of our Constitution under Article 10 is fairness and equity. What equity are we discussing and what fairness are we talking about? If you are to apply the formula provided for by the Constitution, the County of Meru, which I represent, should have gotten an extra constituency by application of a formula. It will be foolish of me to sit here and start talking about supporting a Bill, which continues to perpetuate an inequality and unfairness to the people of Meru, yet the NG-CDF is shared through constituencies. My people we will be losing one constituency.

Why can we not agree that each of us should stick to their lane? If it is a proposal to create constituencies, let us propose to create 70 constituencies and then leave the matter to IEBC. How do you want me to participate in passing an unconstitutional Bill, which proposes to take a prefect to sit at the judiciary to prefect judges, who are supposed to act independently and decide matters on merit?

If any institution or the Executive is greedy for power to the extent that they would want to extend their tentacles in Parliament, Judiciary and everything else, we must tell them “no”. This must come to a stop. This Executive greed for power will bedevil everyone.

Many Members have spoken, but most of them have never been victims of state conspiracy. They cannot ensure their safety by getting small favours or some small kind of power by virtue of being Senate Majority Leader, the Senate Majority Whip or anything else. They are better off with strong institutions like the Judiciary, a good Constitution and good laws. In that case, they will have somewhere to run to for redress when their worst enemy applies the law on them.

We must start thinking of how we can ensure that the elections results are acceptable by everyone. People should be told and must confess that they will accept when they lose elections. Otherwise, this ping-pong game is not about anything else. It is about how we can craft a document that will favour other people to get in power without necessarily getting or drawing power from the people. Let us remember that power must come from the people. It does not come from us changing the Constitution.

We passed this Constitution and should try to implement it to the best extent possible for Kenyans to get the full benefit of it. This Constitution is the most progressive Constitution in the world and we must be proud of it. If we do not do that, then we have a serious problem. The patchwork being introduced in the Constitution, through these amendments, will leave this Constitution in a manner that we will not even be sure of its original form.

My plain understanding of an amendment is that it is not supposed to do an overhaul, replace or repeal a document like this one. I invite other Members who have a similar view, those who have a similar perception and those who are patriotic enough not to agree with this. I did not hear any Kenyan propose the creation of other constituencies or increase of the number of Members of Parliament to 360 or 500. These people are not telling us the cost of that increase. The size of this Chamber and that of the National Assembly will have to be increased. All the other goodies that come with the office of a Member of Parliament is an extra cost and we do not need it. How I wish that there was a proposal to reduce the number of constituencies, work out within the 290 and ensure---

(Sen. Linturi's Microphone went off)

The Temporary Speaker (Sen. Nyamunga): Senator, your time is up. Thank you, for your contribution.

Sen. Mutula Kilonzo Jrn.: Thank you, Madam Temporary Speaker, for the opportunity. I must say that this amendment to the Constitution is a unique moment for this country. It is a unique moment to reflect on this Constitution and amend those places that we think would help in the cause of progressing what the founders of the Constitution and the people who brought about the 2010 Constitution had in mind.

[The Deputy Speaker (Sen. Nyamunga) left the Chair]

[The Temporary Speaker (Sen. (Dr.) Mwaura) in the Chair]

I want to remind this House about the *Okoa Kenya Initiative*. When the Coalition of Reforms and Democracy (CORD) tried to have an *Okoa Kenya Initiative*, the Jubilee Government made sure that they drew monsters, rhinos and things in our books, and we stalled. I was the Vice Chairperson of a Select Committee that was led by Sen. Murkomen and this House attempted a similar amendment, which is nearly on all fours with *Okoa Kenya Initiative* draft and this constitutional amendment. What was the result? This side of the divide then said, 'you are perpetrating a CORD initiative,' and it stalled.

This is an opportunity for the Senate and the country. Our coalition has been unable to get this popular initiative on course, the way this is. I have heard people talk about this in derogatory terms. The Constitution talks about a promoter. It does not talk about a company, a political party, a Cabinet Secretary or anything. It just talks of a promoter. That promoter needs to collect a million signatures; period! Go and complain if you have a problem with a million signatures, but you cannot complain when it is a popular initiative. The million signatures make it a popular initiative; period! That is the

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end of the matter. This is a popular initiative. We have read this Report and found it as such. We have very good lawyers in that Committee.

This country will miss my late father. The 2010 Constitution was not easy. When I get the opportunity to write the memoirs of my late father, I will state the sort of roadblocks that were put in place by cabals of people who did not want the 2010 Constitution. This is yet another opportunity to face the cabals and say “no” to those people who look at every good initiative as a political moment.

I shared a lot of things with my late father. Why do you think that there were people who were so strongly opposed? Now I am speaking to Senators to read the 2010 Constitution because other than the Bill of Rights, the 2010 Constitution changed the way Kenya is governed by introducing county governments. Dispersal of power and resources. They knew the minute we are not kneeling in State House or some place, *kwisha maneno!*

It is called dispersal of power. That is why they were opposing it. What did they do? They put in 15 percent to go to counties. You must follow and listen to the people who negotiated for this Constitution. First, the proposal was to have 14 counties. They thought: “No. Do not make them 14. Make them 47 but give them 15 percent so that they fail.” That was their idea.

My dear colleagues and Senators, somebody has collected signatures for us. Somebody has gone out of their way and promoted this Constitution and they have now proposed 35 percent. Unless you are bewitched, how can you refuse something like that? Unless you are not in this country.

I am going to say this loudly, the increase to 35 percent in strict terms does not require a referendum. It is a parliamentary initiative. However, all of you know that our noisy neighbours across would not allow any amendment by two-thirds from this House.

We have something to take home. I am talking about Sen. Kihika, Sen. Zawadi and Sen. Cherargei. You have something to take to Nandi, 35 percent. That person who spoke about constituencies, unless you want to become a Member of Parliament, what is the big deal?

Sen. Kajwang’ is right. Why are we so flabbergasted by constituencies yet you want to become a governor? Sen. Kihika wants to become a governor; she does not want to become an MP. You want 35 percent. Please, let us wake up.

Secondly, Sen. Kihika, Sen. Murkomen, Sen. Wako, Sen. Kavindu and Sen. Haji know that we could not get anything. We all presented all our English but they ignored us completely. Those of you who were with us in Naivasha, some of you were locked out.

Let me just tell you what happened. It took one Member of Parliament from the National Assembly to make so much noise and create a rowdy scene in front of the President and the former Prime Minister to insist that the CDF becomes entrenched in the Constitution. It is now in the Constitution.

You cannot get even a simple thing but when God is so graceful to you and gives you 35 percent to go to counties ward development fund. You are chasing a bush and forgetting about the forest. That is the problem about this Senate.

We wanted an upper chamber. We made a presentation and explained ourselves. This House has got senior lawyers. We explained why if you put government in the

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National Assembly you have got to have some element of climate control in the Senate, they refused.

I am going to point to a few weak clauses in this. I want to tell the principals that there are people even within the handshake who are responsible for creating this mess and the anomalies in this draft. They are the ones. The sabotage is within you. Small little typographical errors that even a first year student would not make. How do we end up with typographical errors in a document that has come from the highest possible place? It is an embarrassment.

Let me point out to three, what would appear---. You have mentioned about Judges. I had the pleasure of representing two Judges who were removed by the then Minister for Justice, Kiraitu Murungi in collaboration with the late Justice Gicheru in something they called “Radical Surgery” where the surgeon forgot about the past of his patient. Morticians. What was then according to NARC a way of getting rid of KANU Judges and I represented them. Let me tell you, that was the beginning of causing mayhem in this country.

The person who included Clause 43, in my view, is an amateur student of drafting because Article 168 of the Constitution on the question of removal of Judges is a chapter on its own. That chapter talks about how you suspend a Judge. The Judge can only be suspended on the recommendation of the JSC to the President and then the President appoints a tribunal.

This poor draftsman, a person who does not even qualify to be my pupil at Kilonzo and Company Advocates put a clause to suspend a Judge through the JSC without any recourse, policy or a right of hearing. Poor draftsmanship! Can that be enough for us to nullify this draft? The answer is “no” because you cannot implement it. If you think you are going to remove Justice Mwilu by this clause, forget it. It will not happen.

The second one. This House spent a lot of time doing what we call the third generation formula and that is a special jurisdiction, what we call jurisdiction switch genres under Article 217. I know where Sen. Kihika stood and I know where Sen. Cherargei stood. However, in the end we made a resolution for five years.

When you amend Article 203 to include per capita as a method for dividing revenue and you make it a constitutional issue, you have to be an amateur. This is because, one, there is no transition for that per capita to become revenue for third generation. Two, you cannot amend it unless you get 42 Senators which is not going to happen.

If BBI passes and we are 94 here it will become even more difficult. So what was the purpose? I think that person thought by making that amendment he was going to make a few of his tribal people happy. It cannot happen.

The Commission on Revenue Allocation which has the mandate of dividing revenue told us that they considered the question of per capita and felt that you cannot introduce per capita for counties if you cannot introduce it for national. It is discriminatory, it is unconstitutional. You are not building bridges, you are digging holes for counties like Lamu, Tana River and Isiolo. What makes you think they are not Kenyans? It is an anathema.

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The schedule. The schedule on the constituencies, my dear colleagues whether you like it or you do not like it, strictly speaking, if it quacks like a duck, walks like a duck, it is a duck. This one is a duck. It is unconstitutional and let me explain.

A person who is aggrieved under 89 is supposed to go to court and say: “Why did you set up a constituency in Naivasha where Sen. Kihika comes from without consulting me? That is what the Constitution says. With this Schedule you cannot do anything. There is nothing you can do with it. The IEBC cannot follow it because you cannot stop them from doing public participation. You cannot go to court and challenge it because it amounts to nothing. Since it was not there in the previous BBI II, this person just created something that would just cause problems for nothing.

We have a window of opportunity. Unlike the rest, I think the IEBC can be given opportunity to go and collect views of Kenyans, which can be challenged in court under Article 89. This is because we have said that the 70 constituencies are constitutional. The Schedule is unconstitutional because we do not know what to do with it.

I will say this because I am on oath: Those of you who need one constituency for Kitui, Nyamira or Kisii can find your method in the 70 to negotiate because this Constitution is about negotiation. We have failed as a Senate because we did not negotiate. Go and negotiate again. Let us get, within the 70, how we can move this country together.

Can we amend this document? We cannot. I am saying so because I am not only a good lawyer, but also teach law. I have students. I cannot stand here and lie. What will I say tomorrow when I sit with them in my office? The courts have the famous phrase: “If Parliament intended that they could amend a popular initiative, nothing would have been easier than for Parliament to have said so.”

I have not heard it being mentioned here, and I have asked that question: what was the intention of the Committee of Experts in having this clause? The harmonized draft before the 2010 Constitution had a method of entry of Parliament in the popular initiative. They removed it. You should look at our Report.

Members of the Senate, read the Report of the Committee. The Committee of Experts removed that because they did not want Parliament to interfere with the will of the people. If you do not like it, then blame the people who passed the Constitution in 2010 and not anybody else.

I have waited for a Senator to say that we can amend a constitutional amendment even under Article 256. Can we? No! Even in a parliamentary initiative, once it is published, you cannot amend. I have told this to my brother, Sen. Wambua, who has a constitutional amendment to increase the number of counties. Do not make a mistake because if it is published, you will not amend it.

Sen. Orenge, Sen. Wetangula and I were invited to make comments at the highest possible level on BBI II, before BBI III. What was my comment? I said: “Do not publish this document without talking to experts and people here who are parliamentarians because the minute you publish it, you will not amend it.” I am not going to change course to make you feel happy. No! You cannot amend. That is it.

My proposal is that when we pass this Bill, we subject every clause, schedule and the title to a vote. Call the vote. If you do not like the 35 per cent revenue allocation to

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counties, let the people that elected you hear that. You can refuse the others, but let us vote clause by clause. We might not amend this document, but we will have made our point.

In law making, the side-notes of Parliament become a question that can be used in future for thinking of what Parliament was intending. That was what I checked in Article 257. It was not intended that we would make an entry point as Parliament in Article 257. That is it. If we do not like it, we amend it.

I can see my time has run out and I have a lot to say. George Washington, the First President of America said:

“If in the opinion of the people, the distribution of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way the constitution designates, but let there be no change by usurpation.”

Do not touch a document that has come by popular initiative. Do not take away the power of IEBC. That is usurpation.

I would rather take the good things and deal with bad ones, which I have mentioned. I looked for a person who would help me and found a gentle man called Benjamin Franklin. Before the passing of the American Constitution he said-

“Thus, I consent, sir, to this Constitution because I expect no better, and because I am not sure it is not the best. The opinion I have had of its errors, I sacrifice to the public good.”

As Senator of Makueni, I sacrifice 35 per cent for the errors. I sacrifice public good.

Mr. Temporary Speaker, Sir, please, add me one more minute.

The Temporary Speaker (Sen. (Dr.) Mwaura): *Dakika moja tafadhali.*

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker, Sir, the year 2007 was a bad one. Let us not take away the jurisdiction of our institutions. People went to the streets because they did not trust the Judiciary. We cannot gang-rape the Judiciary or IEBC under the guise of popular initiative. It is wrong.

I said this to the Head of State, and I will say it on record. I told him that his legacy will not be the Big Four Agenda or BBI, but to leave a peaceful country. If this document can give us a peaceful election, so be it.

As they say, surely goodness and mercy shall follow us all the days of our life and we shall in the house of the Lord forever.

I support.

The Temporary Speaker (Sen. (Dr.) Mwaura): *Asante sana, Mratibu wa Walio Wachache Bungeni. Nafikiri ungalikuwa mhubiri, usingalikuwa wakili. Sasa hivi ninampa fursa Sen. Kihika.*

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

The Temporary Speaker (Sen. (Dr.) Mwaura): *Hoja ipi ya nidhamu, Sen. Cherargei?*

Sen. Cherargei: Mr. Temporary Speaker, Sir. I am seeking your direction. Sen. Mutula Kilonzo Jnr. has spoken very well, of course, in flawless English. You remember Sen. Kang'ata, Sen. Wambua and I have amendments to the Constitution of Kenya (Amendment) Bill, 2020. We seek your direction on the fate of those amendments.

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There is already a Communication from the National Assembly, where the Speaker there has ruled out further amendments to the Bill. It is important because there is communication out there that the Senate has not taken a position.

Either you will give us direction today on the fate of our amendments or in the future sitting, so that some of us can rest. They say in Kiswahili “*sema neno moja na roho yangu itatulia.*”

The Temporary Speaker (Sen. (Dr.) Mwaura): Asante pia kwa kuwa mkalimani mzuri wa mahubiri. Maoni yangu ya kibinafsi ni kwamba haufai kufanya marekebisho, lakini bado kuna majadiliano yanayoendelea na Spika hususan atatoa uamuzi huo.

Sen. Kihika.

Sen. Kihika: Thank you, Mr. Temporary Speaker, Sir. I also rise to give my contribution towards the Constitution of Kenya (Amendment) Bill, 2020. I have taken note that we have quite a few preachers in the House. If anything, I think we should be in a good place.

The most important thing that sticks out to me is the process of how the Constitution of Kenya (Amendment) Bill, 2020, got to Parliament; both the Senate and the National Assembly.

My opinion is that this is a backdoor kind of popular initiative through Article 257 of the Constitution. I have heard the very distinguished Minority Whip give a very eloquent speech on how as long we have the one million signatures, we should be able to bring a popular initiative. In some way, I agree with that, but I think there is bad faith as far this popular initiative is concerned.

Mr. Temporary Speaker, Sir, there is bad faith as far as this popular initiative is concerned. We are not visitors in Kenya. We have lived here and have been seeing what has been going on.

This Bill was created by two people through something they call ‘handshake’, which I have never understood what it means nor what it brings. That is what has gotten us to this point. From the ‘handshake’ to the BBI, eventually what they claim to be a popular initiative.

I believe that the spirit of the Constitution as well as its framers could not have envisaged that the President of the Republic as well as a former Prime Minister with a party large enough to influence the goings on of Parliament, coming together, would use the popular initiative as the vehicle to bring these amendments.

I believe the spirit of the Constitution was more for *Wanjikus* out there to bring it here. However, that is neither here nor there. It is my weighty opinion that from the beginning, we have a messed up unconstitutional Bill. I will go ahead to explain some of the things that stand out and stink.

We have seen and read that different county assemblies had different Bills from others. We have also been given different Bills. That of the Senate is different from that of the National Assembly. This begs the question as to which will proceed to the people for a referendum, once they have been passed by the county assemblies, Senate and National Assembly. It is quite interesting to watch as we do things using the back door and then try to sanitize them.

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Mr. Temporary Speaker, Sir, we have heard musical and poetic justifications of why the country is pregnant with a constitutional moment. I call it bullshit. We do not have a constitutional moment in our hands. When someone tells us that the Constitution of the USA was amended 27 times, I would like to remind them---

The Temporary Speaker (Sen. (Dr.) Mwaura): Samahani, Sen. Kihika. Hiyo lugha ambayo umetumia haikubaliki katika Bunge la Seneti. Tunakuomba utumie lugha ambayo inakubalika.

Sen. Kihika: Mr. Temporary Speaker, Sir, in the parliamentary language that is softer and nicer, we do not have a constitutional moment at this point.

I was talking about the 27 amendments to the Constitution of the USA that someone talked about on the Floor. I remind the distinguished Senators that the Constitution of the USA has been in place since 1787. So, it has taken 234 years to have 27 amendments. I bring this up to say that we do need to rush to come up with a constitutional amendment.

I believe that at this point in time, our country is facing more difficult and serious issues whose attention we should be focusing on, instead of these constitutional amendments that are not a priority at this point in time. There is no rush.

There are some good things in it that can be discussed as we move on. I also do not believe that as a Senate, we cannot change anything even a comma or a full stop as we are told. I do not believe that the Constitution would give us time to have public participation for it to state that whatever came out of those public participations would not find its way to the amendments. I totally disagree with that line of reasoning.

I join my colleagues who say that we should make amendments. The reason we went through public participation is so that we can take all those other issues that we think should be amended.

Let us talk about the issue of gender. I have heard the women of this House and male Senators as well, very passionately talk for and against. As a big proponent of gender parity in Parliament and our country, I strongly feel that the proposed Constitution (Amendment) Bill has done a disservice to the women of this country.

I do not believe that there is anything to celebrate about in this constitution (Amendment) Bill. I believe that the 47 women representatives should have been left in place. Let us not combine them with the 47 that will come to the Senate. We should separate those two issues. I believe that the 47 elected women representatives should have remained in the National Assembly so that they partake in one of the most critical functions that we as women MPs should participate in. That is in the budget-making process.

The reason I disagree that the 47 women should not come to the Senate is because the constitutional amendment also proposes, assuming that it passes, despite not having my vote, to create the offices of the Prime Minister, Deputy Prime Minister, Cabinet Ministers, their deputies and the office of the Attorney-General, that will be domiciled in the National Assembly

Colleagues, by bringing those elected women to the Senate, you take away the only chance that they have of being able to be appointed Prime Minister, deputy prime ministers, Cabinet Ministers and the Attorney-General of this country.

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Now, we can lie to ourselves and say that enough women will be elected so that those elected in the single constituency seats will participate in that. However, my question is that, is it guaranteed? At least the 47 are guaranteed. What we shall have is nominated women in the National Assembly.

My belief is that there is some mischief in this Bill. Somebody somewhere wants to load the National Assembly with nominated women so that they can use them as flower girls. I say this clearly without fear because we have seen what happened in this House of the Senate.

I have seen Sen. Omanga being called by the party and unfairly disciplined because she did not take a position that she did not agree with. I have seen that happen to Sen. Iman, Sen. Seneta and, Sen. Prengei as well. I have also seen it happen to a member of the Speaker's panel who is now on the Chair, Sen. (Dr.) Mwaura. I have also seen it happen to Sen. (Rev.) Waqo.

I have seen it where we are called for a meeting by the party which I did not attend, but because I am elected, there is nothing the party could do. However, the only thing they could do is come for the nominated Senators to gag and discipline them. They are now in court going through the court process.

So, my believe is that somebody wants to load the National Assembly with nominated women so that they can have flower girls and continue running this country as a kiosk. When they decide to extend their term, they will have enough flower girls whom they can gag and make sure that they vote the way they want.

Mr. Temporary Speaker, Sir, I suggest that the 47 women remain in the National Assembly, in addition to those who will be elected in the single constituencies because I am sure they will be few. Right now, we have about 23. Hopefully, that number will increase given the additional constituencies and then do a top up.

However, I have an issue with the top up. According to Clause 13 of this constitutional amendment, there is a sunset clause which then does away with the affirmative action or top up seats after 15 years. What exactly do they anticipate will happen in this country, as far as gender equality matters in 15 years? I do not think the middle will have moved much. I think it is an exercise that will only give a little to pass this and then take it away in 15 years. We shall then continue having the very few numbers that we have.

In the USA House of Representatives, there are only 23.6 per cent women. I am talking about a House that has been in existence for 232 years and they have only achieved 23.6 women representation. In the Senate, the Upper House, they only have 25 per cent which is 25 out of 100 Senators. Again, that is in 232 years.

Mr. Temporary Speaker, Sir, in the United Kingdom (UK) Parliament they only have 34 per cent women in the House of Commons and only 28 per cent in the House of Lords. This is a Parliament that has existed since the 13th Century. I want us to internalize that.

By telling us that through the sunset clause, you will take away these top up seats in 15 years, then you are just setting us up to fail. That is why I feel as though they are giving with one hand and taking away with the other. At least for now, we have seats such as the Woman Representative, which do not have the sunset clause. Why is it that it

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is only the women seats that are traded around? Why could they not add the 47 to the Senate but also leave the 47 at the National Assembly level?

I also heard some Senators here talking in a very condescending manner about the women in the National Assembly, who have the National Government Affirmative Action Fund (NGAAF) and talking about them only being able to buy tents and chairs. My friend, for the women in the rural areas, those tents and chairs and the bursaries they get from the Woman Representatives mean a great deal. The Kshs8 million per constituency is a lot better than the zero they will have in this House. Women are empowered a little bit with that little than the zero that is here.

Maybe in the next cycle or two, they will be able to run for the single constituency, the Senate or even the governor's seats. So, let us not take away what they have and bring them here where there is zero, where we know how hard it is to maintain these seats without anything.

Mr. Temporary Speaker, Sir, they have talked a lot about the oversight fund that should come here. These people must be visitors in Jerusalem. We have been here fighting for the oversight fund and the same principals who were helping them bring these amendments have not had good faith enough to help us get that. So, let us not give the bird in the hand for two that are in the bush. I propose that the women in the National Assembly with the NGAAF should stay there and then we add more women to the Senate because I also believe they should be able to vote and not be used as flower girls, like we have seen in the last few instances.

We do not need a constitutional amendment to get the two-thirds gender principle in place. If the two hand-shakers who are the principals who are the ones who determined how Parliament votes, who have helped in capturing this Parliament had enough goodwill towards the womenfolk of this country, they would call their MPs – National Assembly Members and Senators – and the two-thirds gender Bill would pass in the morning. By 10.00 a.m., we would have that passed. However, because there is no goodwill, they want to dangle some carrots that we know add no value to us.

On that note, Mr. Temporary Speaker, Sir, I congratulate Sen. Kavindu Muthama from Machakos County because she has helped this House become two-thirds gender principle compliant. I am very happy for that and more women should be empowered. Thank you and I wish you very well as you serve the people of Machakos County.

I can see my light is on. So, let me conclude with the issue of the politics of us versus them that this constitutional amendment Bill pretends to want to cure. We live in a democracy and our politics are democratic, where you lose, you go home and wait for the next time. We do not need a constitutional amendment to appease the loser. You go work hard, build a coalition and come back the next time.

In the US Capitol Hill back on 6th January, 2020 we saw an insurrection; a mob rioted and wanted to go ahead by force and reverse the win of President Joe Biden because they were supporters of former President Trump. What we saw is what needs to happen here. There is no room and no day that the person who loses can then take power by force. If you lose, you should go back, take an account of what it is that went wrong and then try to do better next time. If you are lucky, then you take over.

You cannot tell us that we need to amend the Constitution to appease two people. It is their problems and not that of this country. I completely disagree with that, that we need a constitutional amendment to avert bitterly contested elections. That, my friends, is the nature of democracy. If you are not up to it, then stay away from the kitchen. Do not run for anything, go and sell ice cream. That may be the best career.

Mr. Temporary Speaker, Sir, as for the 35 per cent to counties, we know that right now the 15 per cent under the Constitution is the floor and not the ceiling. If the Government had goodwill, it would give counties even 40 per cent. My point is yes, some time in future, it will be good to put it in the Constitution but right now, it is not a priority. The Government can give more. The Government is broke and as we stand, it has been even unable to give 15 per cent to counties. They are owed almost Kshs100 billion.

When you tell me about quickly putting 35 per cent in the Constitution, first show goodwill by giving the 15 per cent and then next year maybe put 20 or 25 per cent and then I will believe that you can do it.

We had a Ward Development Fund (WDF) Bill by Sen. Kang'ata of Murang'a County. If we really had goodwill and wanted to make sure that we entrench that devolution and come up with WDF, the two hand-shake principals could call their MPS and WDF would not be gathering dust in the National Assembly but would instead be passed. We would then not need to discuss that as a constitutional amendment as it will be in the law.

I support county assemblies and not governors controlling their own funds. As a former speaker, I know how crazy that gets. Governors use that as a stick and carrot. We could do that as a legislation by both the National Assembly and the Senate. I do not believe there is anything urgent at this point, requiring a constitutional amendment.

Mr. Temporary Speaker, Sir, I stand here to oppose these constitutional amendments. There are some good things in it but even if you bake a nice cake with a little bit of poison, it will still kill you and you will not eat it.

I oppose.

The Temporary Speaker (Sen. (Dr.) Mwaura): Asante kwa mchango wako, Sen. Kihika, kutoka Kaunti ya Nakuru.

Sen. Seneta, chukua nafasi yako kupitia mtandaoni.

Sen. Seneta: Thank you, Mr. Temporary Speaker, for giving me a chance to also add my voice to this important Bill. From the outset, I want to go on record and say the Bill is important but it is not a priority for Kenyans.

The Temporary Speaker (Sen. (Dr.) Mwaura): Samahani, Sen. Seneta. Uko na dakika 13. Pia ninataka kutoa uamuzi kutoka Kipengele cha 106 kwamba, kwa sababu tuko na Maseneta watatu ambao wemasalia, basi tutamaliza huu mjadala leo. Kwa hivyo, Mwenyekiti wa Kamati ya Seneti Zima, kuwa chonjo.

Sen. Seneta, unaweza kuendelea.

Sen. Seneta: Thank you, Mr. Temporary Speaker, Sir. I want to go on record that this Bill is important but it is not a priority to Kenyans. Right now, we are in the middle of a pandemic as well as an economic crisis. Kenyans are facing many challenges brought by the COVID-19 pandemic and they are struggling with unemployment.

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Therefore, this is not a priority that the Senate and the National Assembly should be hurrying to debate.

Mr. Temporary Speaker, Sir, I also want to point out a few issues in this Bill. Where is a clause that seeks to ensure that women sit at the top level of leadership in this country if we are expanding the Executive? If the promoters of the Bill are for equity purposes, where is the clause to ensure that women will sit in the Executive? Where is the clause that will ensure that the minority tribes like the Elmolo, Ilchamus and others who do not have numbers sit in the Executive?

If the promoters were genuine that they wanted equity and to address issues of equality, why do we not have a clause or an amendment within the Bill to ensure that the minority are also factored in the Executive? We could have maybe a deputy prime minister or a deputy president for that matter being given to the minority tribe. However, having gone through this Bill, I have only seen leadership coming from majority tribes and populous areas.

I also have an issue with the increase of MPs. An increase in the number of MPs is an increase in the persons who will be attached to the MPs, an increase in the number of offices, an increase in the number of NG-CDF staff, an increase of the human resource that will be attached to the MPs and therefore an increased burden to the already overtaxed Kenyans. Today, not many Kenyans can afford fuel because we are already overtaxed. Therefore, an increase in the number of MPs is a burden that will face Kenyans in future.

There is a proposed amendment to increase membership of the Senate but there is no clause to ensure nomination of minority tribes and representatives of PWDs. I also have an issue of increased allocations going to counties. That will make many Kenyans to think that a lot of money will be going to the counties. At the moment, county workers have been going without salaries for the past three months. If at the moment we are not able to give counties 15 per cent, where will we get 35 per cent with this kind of an economy where Kenyans can barely afford bread?

I also have an issue with women representatives being moved to the Senate without a Fund. The Affirmative Action Fund, which was created for the 47 women representatives was good for women visibility, therefore helping the women to be elected for other elective seats. When you send them to the Senate without a Fund, those women will not be able to do any projects, be it social or physical development that is highly needed by our constituents. That means demeaning and making women appear like they are not able to do any kind of project.

An increase in the number of women in the Senate is welcome. It is a good idea but we should capacitate the women by giving the Senate an Oversight Fund and making sure it is also in the Constitution just like the Ward Development Fund, the NG-CDF and the allocation to the counties which will be 35 per cent. It should also be in the Constitution so that it does not appear like women must always fight to get some little allocation.

Mr. Temporary Speaker, Sir, I think this Bill is just an amendment seeking to create seats and giving power to those who are going to lose in elections. What we should be doing as Kenyans and as a Parliament is to strengthen our independent institutions like

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the IEBC. We should give the IEBC more allocation to prepare for and conduct transparent elections so as to ensure that those who have votes get to offices. It should not be a matter of giving power to people through a Bill.

I thank you.

The Temporary Speaker (Sen. Mwaura): Asante sana kwa maelezo yako ya ufasaha na hotuba yako nzuri. Sasa hivi nampa nampa Sen. Kinyua kutoka Laikipia.

Sen. Kinyua: Asante, Bw. Spika wa Muda, kwa kunipa fursa hii. Kwanza kabisa, napongeza Kamati ya Haki, Maswala ya Kisheria na Haki za Kibinadamu ambapo Mwenyekiti wake ni Sen. Omogeni kwa kazi nzuri waliofanya kuchanganua mabadiliko ya kikatiba. Maswala ya kikatiba ni mambo muhimu ambayo tunapaswa kuangalia kwa mapana na marefu.

Bw. Spika wa Muda, kabla sijajitosa katika hayo mabadiliko ya kisheria, ni vizuri ijulikane wazi kwamba jambo la dharura wakati huu ni maswala yanayowakumba Wakenya. Kuna ugongwa wa COVID-19 unaowasumbua Wakenya. Watu wengi wanasumbuliwa na ugonjwa huo. Kule India watu wengi wanaendelea kusunoneka kutokana na ugongwa huo. Jambo ambalo tunafaa kuzingatia ni kuhakikisha kwamba Wakenya wetu wanajikinga kutokana na ugonjwa huo kwa kuwapa chanjo.

Ugonjwa huo umeleta suitofahamu katika nchi yetu kwa sababu watu wanaendelea kufa. Wizara ya Afya ambayo inahusika inafaa kukubali Wakenya kutumia *the National Hospital Insurance Fund (NHIF)* wakati watu ni wagonjwa kwa sababu watu hawalipiwi wanapopata ugonjwa huo. Hatufai kuwa tunaongelea marekebisho ya Katiba bali jinsi ya kusaidia watu wetu ambao wamekosa ajira kutokana na ugonjwa huo.

Hata hivyo, kwa kuwa tunajadili marekebisho ya Katiba, nitayazungumzia moja kwa moja. Jambo la kwanza ni kuwa tutakuwa na uwiano – kwa Kiingereza wanasema *inclusivity* – kwa sababu tutakuwa na Waziri Mkuu pamoja na wengine ambao wameongezwa.

Nilisikia wenzangu wakisema yakwamba ukiongeza hao viongozi wakenya hawata pigana tena. Hilo si jambo la kweli kwa sababu hao ni watu ambao wanajitakia makuu wenyewe. Yale ambayo tungekubaliana ni kwamba mtu anafaa kukubali anaposhidwa. Mswahili anasema ya kwamba asiyekubali kushindwa sio mshindani. Hatuwezi tukasema ya kwamba tutakuwa na mawiyiano kwa sababu tutatengeneza nyadhifa nyingi. Hilo sio ukweli kwa sababu nchi zingine zina viongozi wengi lakini watu bado hupigana.

Katika kaunti zetu na maeneo bunge, watu hushindani wengi lakini huwa hawapigani. Kwa hivyo, kuongeza hizi viti vya waziri mkuu na manibu wa waziri mkuu ni kuongeza ushuru kwa wakenya ambao wamegharimikia makubwa na wameathirika na ugonjwa wa *Covid-19*. Wakenya wengi wamepoteza kazi na wamefunga biashara zao, haswa wale ambao hufanya biashara usiku. Sioni haja ya kuongeza viti hivyo.

Tumekuwa tukiambiwa ya kwamba pesa zinazoenda katika kaunti zetu zitaongezeka kutoka asilimia 15 hadi asilimia 35. Tulikuwa hapa tukijadili mswada wa *'one man, one vote, one shilling.'* Tulikuwa na Sen. Cherargei, Sen. Kihika, Sen. Loitiptip na Sen. Wetangula. Tulijadili kwa urefu na upana ila ulikuwa kizungumkuti. Ulikuwa ni nguo kuchanika. Sisi tilikaa hapa na kuzungumza bali ilimchukua rais mwenyewe kuongeza zaidi ya Kshs50 billioni. Kwa nini alifanya vile na haikuwa

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imeandikwa kwa katiba. Hakuvunja sheria yoyote. Katiba yasema kuwa pesa chache zaidi zinazopaswa kwenda kaunti ni asilimia kumi na tano. Kwa hivyo tunaweza kuongeza kutoka asilimia 15 kwenda mbele. Kwa hivyo sioni mbona ni lazima hili jambo hili liandikwe katika katiba yetu.

Kumekuwa na shida Kenya baada ya ugonjwa huu kuja kwa sababu kupata hela imekuwa ni kizungumkuti. Tungengoja kidogo kwa sababu hakuna mtu ambaye anasema kwamba kuna ubaya iwapo asilimia 30 itaenda mashinani. Hil ni nzuri tena sana lakini ni lazima uangalie eti unasema hayo maneno wakati gani.

Kuna mambo ya *ombudsman* ambayo ni kizungumkuti. Ndugu zangu wameongea sana kuhusu mambo hayo. Ni vizuri tuwape wanasheria wetu uhuru wa kufanya kazi zao.

Naunga kuongeza maeneo bunge mia kwa mia. Hii ni kwa sababu Laikipia, Ruiru, Kieni na Kipipiri zina watu zaidi. Ni vizuri tujue ya kwamba huduma inapewa watu na sio sehemu. Hapo ndipo tulisimama kidete tukisema, '*one man, one vote, one shilling.*' Hii ni kwa sababu afya inapewa mwananchi na mwananchi ndiye atapita katika hiyo barabara. Hii ndio kwa sababu mimi naunga mkono kuongezwa kwa hayo sehemu 70.

Eneo bunge ya Laikipia Magharibi iko na watu zaidi ya 100,035 na wanawakilishwa na Mbunge mmoja. Katika sehemu zingine humu nchini, utapata ya kwamba mbunge anawakilisha watu 40,000. Kwa hivyo, lazima tutoshane. Waswahili wanasema mgala muue na haki umpe. Lazima tupewe haki kwa sababu sisi sote ni wakenya na tunapaswa kuwakilishwa kwa sababu tunalipa ushuru kama wenzetu.

Tumekuwa tukiambiwa ya kwamba vijana ambao wamemaliza chuo kikuu hawata lipa pesa ambayo walipewa na *Higher Education Loans Board*. Mimi naonelea ya kwamba serikali ingewasaidia kupata kazi badala ya kuwaambia eti wasilipe hiyo pesa. Ni vizuri wapate ajira ndiposa waweze kulipa hiyo pesa.

Mimi ni Seneta wa Laikipia na ninasumbuka rohoni kwa sababu ninaongea kuhusu marekebisho ya Katiba ilhali watu wangu wanaendelea kuvamiwa kwa sababu ya ukosefu wa usalama. Watu wangu wana uawa. Kuna watu ambao walishambuliwa jana. Kwa hivyo, nasikia ugumu kujadili mambo ya Katiba ilhali watu wamenituma hapa kuongea mambo ya usalama wao. Wanataka niulize vile watapata ajira. Huu ni msimu wa kupanda na watu hawana *fertilizer*. Sahizi, tungekuwa tunaongea maswala ambayo yanahusu wakenya na sio maswala ambayo yangejadiliwa baada ya hii ugonjwa.

Tunasema ya kwamba tutaongeza pesa katika kaunti na hiyo ni nzuri. Tumekuwa tukiangalia pesa ambazo zimetumika katika wakati huu wa *Covid-19* na unapata ya kwamba kaunti nyingi hazitumii pesa inavyotakikana. Kwa hivyo, ingekuwa vizuri kama BBI ingependekeza ya kwamba maseneta wapewe tita la hela ya kufanya kitu ambacho kinaitwa *oversight*. Wabunge wako na pesa za *National Government Constituencies Development Fund* lakini Seneta hana lolote. Kazi yake ni kutembea na kuangalia miradi bila chochote.

Ninaunga mkono pesa ambazo zinaenda kwa wajumbe wa wadi, ambayo inaita *Ward Development Fund*. Hii ni kwa sababu huyo mjumbe wa kaunti ndiye anafahamu sehemu aliyotoka na anajua mahitaji ya watu wake kama maji ama barabara. Sen. Kang'ata alikuwa ameleta huo mswada lakini sasa iko katika BBI na tutaiweka mkazo ndiposa tuweze kuipitisha.

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Ingekuwa vizuri kama tungeweza kuangalia kila kipenge cha hii BBI na kuweka kile kizuri. Tungepitisha sukari na kuondoa chumvi kwa sababu ingekukera kidogo. Hiyo ingetufaidi zaidi. Tumekuwa hapa tukijadili mambo haya---

The Temporary Speaker (Sen. (Dr.) Mwaura): Samahani, Sen. Kinyua. Unamaanisha ya kwamba Mheshimiwa Spika hawezi akastahimili chumvi?

Sen. Kinyua: Pole sana, Bw. Spika wa muda. Sikumaanisha hivyo. Nilikuwa ninalinganisha. Sikumaanisha ya kwamba huwezi kustahimili chumvi.

Marekebisho yaliyoko katika Katiba ambayo tunajadili siku ya leo inasema ya kwamba kaunti haiwezi ikapata mara tatu ya vile ambavyo pesa zimepeanwa. Ni vizuri hii ijulikane na ninaiunga mkono kwa sababu sisi sote tuko sawa katika nchi hii. Sehemu ambayo ninawakilisha imebaki nyuma kwa muda mrefu.

Sehemu ambayo mimi nawakilisha imebaki nyuma kwa muda mrefu. Wakati umefika wa sisi kuweza kunufaika kwa sababu sisi wote ni Wakenya na Wakenya wote wana haki ya kuamini kwamba sisi sote ni Wakenya.

Ninajua Kaunti ya Kiambu nyinyi mmekuwa na shida nyingi. Unapata mtu mmoja anapata Kshs5,000 na ukiangalia sehemu zingine mtu mmoja anapata zaidi ya Kshs17,000 pesa zikigawanywa. Hiyo sio haki. Kwa hivyo, ni vizuri mambo yote yalinganishwe na sisi zote tuseme ya kwamba sisi ni Wakenya ndio tuweze kutembea pamoja.

Asante, Bw. Naibu Spika wa Muda.

The Temporary Speaker (Sen. (Dr.) Mwaura): Asante sana kwa kujieleza vizuri sana ila ungenitia kwenye mashaka wakati ulikuwa unasema kwamba Spika hawezi kustahimili makali ya chumvi. Lakini ninakubaliana nawe kwamba lazima tugawe fedha kulingana wingi wa watu, kulingana na rasilmali.

Sasa hivi ninampa nafasi Prof. Ongeru. Kabla hujazungumza, ni vizuri niseme ya kwamba idadi ya Maseneta imeweza kuongezeka, kwa hivyo hatutaweza kuzidisha muda wa kikao Zaidi ya saa 6.30 p.m. Nafikiri kutakuwa na kikao maalum kitakaorejelewa alhamisi ndiposa Maseneta kama Ochillo Ayacko na Christine Zawadi Gona waweze kuchangia.

Sen. (Prof.) Ongeru: Thank you, Mr. Temporary Speaker, Sir, for giving me the opportunity to contribute towards this very important debate.

First, let me say this, that in any country the element of cohesion is so important for the survival of its citizens.

That is why if you look at the historical perspective of this Nation, in the year 2000 to 2002 there was this contentious clause of Article 2A of the Constitution. When we went around, the chair was Prof. George Saitoti and I was the vice-chairman. The issue was raised as to whether we should amend that clause, everybody said yes and that there was no need to have a single party; we need a multi-party democracy.

When this decision was put to vote at Kasarani, those of you who were there will remember that many people pushed that proposal but in the end, the then President Moi saw that it was prudent for the nation to move together so that we avoid any controversy that may arise and asked the membership of KANU at that time to allow Article 2A of the Constitution to be in. That ushered in the multi-party democracy that we have today.

I remember his vice-president then joined the DP and subsequently became the President of this Nation.

Again, if you remember the run up to 2007 we had what we called skirmishes, tribal clashes and many other nasty situations. That elicited Kenyans to look for a way of understanding one another. We had the Serena negotiation team headed by the late, His Excellency Kofi Annan and we were able to manage that item extremely well. I was a member of that committee as well and quite a number of Senators who are here in this House.

That brought in a constitutional moment because the recommendations coming out of that committee ushered in the 2010 constitutional moment that we agreed upon.

In order to put this thing into perspective, when we promulgated the 2010 Constitution, it was agreed that 80 percent of that Constitution's articles were alright but 20 percent of it needed to be corrected.

As you know, our Constitution clearly spells out that there shall be a review of constitutional boundaries in every eight to 10 years. That constitutional moment is now. It is now more than 10 years since we promulgated that Constitution and that 20 percent needed to be re-looked at.

Normally, this initiative would have been carried out by the IEBC but unfortunately because of the 2017 acrimony in the final results of the presidential vote, this ushered in a controversy that saw the country split in the middle.

Let us not cheat ourselves. Let us accept that the handshake did bring about peace in this Nation. Peace is a priceless commodity. You cannot argue against it, you cannot be able to say that there was no peace. Therefore, when I see Members of this House that this is not an opportune time to amend the Constitution, they seem to be oblivious of the fact that this tranquility that they are enjoying now is as a result of that handshake.

The handshake has its moment of truth, the handshake has its moments of light in this Nation that brought the protagonist and antagonist together to be able to pull out the BBI agreement in this matter.

Let me say for purposes of record of this House, if all of you remember, the BBI was launched in Kisii County. We were the first county to be able to launch the BBI. At that time we did enumerate the items that needed to be covered in the BBI. Finally, when the BBI report was ready Kisii County was again the one where they launched the final BBI product.

What baffles me today is that we took part in the launching of the BBI, we took part in the ushering in of the BBI report but we ended up with zero constituencies. That in itself is not fair.

I think it is a matter that needs to be looked at because when I look at the BBI report, it has very many good points but what I really needed to bring out was, yes, it was by popular initiative because it was anchored on Article 257 of the Constitution; this was not a parliamentary process. Let us not on whether it is a popular initiative or for two people or not. The issue is that it was a popular initiative because a lot of Kenyans bought in the peace dividends that they were enjoying at that time.

What we now need to do is to look at these articles that have been elaborated in this Constitution whether they are suitable or not. We do not have to fight about it. We

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need to argue intelligently together. We need to consult each other intelligently and see which is the best way for Kenyans to move forward.

One of the things that I need to say is that Clause 3 has inserted Article 114 on Economy and Shared Prosperity. One of the nagging problems is that there are two levels of government the National Government and the county government. However, the sharing of those resources hitherto has been confined to about 15 percent.

This proposal in the BBI clearly states out that this is no longer going to be day to day business. What will happen is that every county when it comes to sharable revenue, they will be able to get 35 percent and it is being anchored in the Constitution of Kenya. This is a good thing. We cannot say it is bad. Nobody is going to deny the counties to get the 35 percent sharable revenue that they have been denied for the last 10 years. When it gets to that level, it will be a good thing.

When it comes to the question of devolving the resources to the ward level, again in this proposal by the BBI, they have quite cleverly argued that we can be able to create what you call a county assembly fund which will be able to help in the area of devolution because at the moment some of the governors - not all the governors - do not give resources to the county assembly to function independently.

I think in this BBI, there is a moment for us to be able to create a fund for the county assemblies so that the county executives can be able to share those resources with the county assembly and the county assembly will be in a position to oversight the county executive.

The county assemblies will also be able to oversight the county executives on the funds and resources that have been appropriated to them through the Division of Revenue and the County Allocation of Revenue Act (CARA) process, which is a good thing.

Thirdly, the county revenue both the national sharable revenue and the own-source revenue combined appropriate five percent as the Ward Development Fund. This will bring equality and equity to the Ward Development Fund because at that level there is so much that has been left out. Some of the wards have been developed properly while others have not. There will, therefore, be a sense of equity that will be brought in this kind of resource allocation to the ward level. The development will be even and okay.

In terms of resource mobilization and sharing, there have been enough legal frameworks put in place that will benefit from this item in the BBI proposal. I am going fast because if I have I go through the text I had written, it would take too long. I am just summarizing it. So, that is the element I am quite happy with. I do not think I have any qualms with that kind of proposal because it improves on the current Constitution which is only at 15 percent.

One of the elements that I have seen in this proposal is that hitherto this sharable revenue that goes to the county governments, the county governments were unable to access the resources that have been allocated from the national Government to them simply because we have either not agreed on the Division of Revenue Bill or the CARA. This has caused immense delay and difficulties for county governments to operationalize their activities.

In this BBI Report there is a proposal that the Controller of Budget (CoB) can approve up to 50 percent of the shareable revenue so that the county governments do not

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come to a standstill and start borrowing money from banks to support their activities. This will make them functional and not dormant. This is a good arrangement in the BBI Report. I think it is the report we should take on board and agree that it is correct.

There are many other proposals that have also been put in this BBI Report. For instance, the appointment of Ministers, Prime Minister and Deputy Prime Minister from the National Assembly. We have been having problems of accountability and oversight in this place. When we want to oversight a Ministry we have to write a letter through the chairperson of the relevant Committee to be able to get to information.

The chairpersons of committees have been very frustrated because sometimes the Cabinet Secretaries have been unable to respond and give the answers that are needed in this House for debate and discussion. This has been amended. Therefore, Ministers coming from Parliament is a good thing.

I know at my time when we were Ministers, not only were we answerable to Parliament as we are answerable to the constituencies, we were also answerable to the Cabinet for any matter we brought to the House for debate and deliberations.

There would have been no excuse for the Government to say that we were not represented in the House of Parliament and therefore that it cannot provide certain information. They could not also say they were not allowed to step in the precincts of Parliament unless by invitation. This element has been cleared. We are happy with that arrangement because it helps to do well.

In as far as that arrangement is concerned; one of the contentious issues is that there has been contestation in every election, disputes, problems, fights, loss of lives and opportunities for Kenyans to do business. This BBI has brought in a structure that will help us to address those issues that are very important and critical.

The only thing is that I am uncomfortable with is the 70 constituencies that have been delineated by BBI to go to specific counties. Take Kisii County, for instance, we have a very large population in Bobasi Constituency. In the last constitutional review they were promised that they would be the next in line to be given an additional constituency.

Come this time, Bobasi Constituency was on the list of the Kenya National Bureau of Statistics (KNBS) as one of the constituencies to be split into two, but when it came to the final report of BBI, that constituency is not there. What do I tell the people of Kisii County that now they do not have extra constituencies, yet the KNBS said they were entitled to a constituency? How are they going to be convinced?

In the last constituency review they were assured that they would be captured in that. That can be very difficult. I appeal to whoever is looking at this that they must know how to factor in Bobasi Constituency to be split into two.

Kisii Town is growing. It has a very high population. South Mugirango Constituency is also growing and has a very high population. In fact, in order of priority, it would be Bobasi first, second South Mugirango and then Kisii Township as number three. We contribute to the economic prosperity of this nation because we have more than 28 banks operating in Kisii Town and more than 60 percent of the money in circulation originating from Kisii County. It is very important that if that alone can be a factor, then

we should be given an opportunity to move on and get Bobasi Constituency split into two at the minimum.

All those other areas such as Homa Bay and Kitui counties got nothing yet they are entitled. This is an area where I will invite the proponents of the BBI and the IEBC to look at and agree on how they can treat this matter because it is important and needs to be treated well.

There are other issues that have been brought up which are unconstitutional. Where there are typographical errors, we should go ahead and amend and be done with.

On the basis of that, I have expressed my opinion which is the opinion of the people of Kisii and Nyamira counties. I believe we are entitled to that constituency and we should negotiate. We shall not tire until we get it in place.

I support this Bill.

ADJOURNMENT

The Temporary Speaker (Sen. (Dr.) Mwaura): *Waheshimiwa Maseneta, ni wakati wa kuahirisha kikao hiki cha Seneti. Kikao hiki cha Seneti kimeahirishwa hadi kesho, Jumatano, Mei 5, 2021 saa nane unusu alasiri, katika ukumbi wa Bunge la Kitaifa, wakati wa Kikao cha Pamoja cha Bunge zote.*

The Senate rose at 6.30 p.m.