

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Tuesday, 4<sup>th</sup> May, 2021

### Special Sitting

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

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

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

### PRAYER

## COMMUNICATION FROM THE CHAIR

### SPECIAL SITTINGS OF THE SENATE

**The Speaker** (Hon. Lusaka): Hon. Senators, I welcome you to this Special Sitting of the Senate. On the request of the Senate Majority Leader vide letter Ref. No. SEN/SML/CORR, dated 2<sup>nd</sup> May, 2021, and with the support of the requisite number of Senators, I appointed today, Tuesday, 4<sup>th</sup> May, 2021 and Thursday, 6<sup>th</sup> May, 2021 as days for Special Sittings of the Senate *vide* Gazette Notice No. 4196, dated Friday, 30<sup>th</sup> April, 2021 and Wednesday 5<sup>th</sup> May, 2021, 2.30 pm, as a day for a Joint Sitting of Parliament *vide* Gazette Notice No. 4200, dated Monday, 3<sup>rd</sup> May, 2021.

In Gazette Notice No. 4196, I indicated that the business to be transacted at these Special Sittings shall be –

- i. Consideration of the Constitution of Kenya (Amendment) Bill, 2020.
- ii. Introduction of the County Allocation of Revenue Bill, 2021.
- iii. Hearing of charges against Hon. (Amb.) Mohamed Abdi Mohamud, the Governor of Wajir County.

While in Gazette Notice No. 4200, in consultation with the Speaker of the National Assembly we have made arrangements for a Joint Sitting of Parliament, pursuant to Standing Order No.26(2) for an Address by the visiting Head of State being, Her Excellency Samia Suluhu Hassan, the President of the United Republic of Tanzania.

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(Applause)

Hon. Senators, today, the Senate shall resume debate on the Constitution of Kenya (Amendment) Bill, 2020, which is currently at the Second Reading stage.

Allow me to reiterate that consideration of this Bill shall be in accordance with Standing Order No.141 as relates to the Second Reading, Standing Order No.145 as relates to the Committee of the Whole and Standing Order No.153 as regards Third Reading of the Bill.

Contributions in the debate will continue to be guided by Standing Order No.106 (4), where each Senator speaking shall have a maximum of 20 minutes and Part XVII of the Standing Orders with respect to Rules of Debate. If debate is concluded, voting shall be conducted on Thursday, 6<sup>th</sup> May, 2021.

Hon. Senators, pursuant to Standing Order No.182, the Chairperson of the Standing Committee on Finance and Budget has published the County Allocation of Revenue Bill (Senate Bills No. 30 of 2021) which is listed for First Reading in Order No. 2.

The Bill seeks to allocate among the counties, the revenue allocated to the county level of government on the basis determined in accordance with the resolution in force under Article 217 of the Constitution. Upon First Reading, the Bill shall stand committed to the Standing Committee on Finance and Budget pursuant to Standing Order No.140 (1). The Committee will be required to consider the Bill and to table a report in the Senate in accordance with Standing Order No.143.

Hon. Senators, regarding the Joint Sitting of Parliament, the President of the United Republic of Tanzania, Her Excellency Samia Suluhu Hassan, will address Parliament on Wednesday, 5<sup>th</sup> May, 2021, at 2.30 pm, in the National Assembly Chamber. The Sitting arrangements are being put in place and will be communicated by the respective political leadership.

Hon. Senators, with respect to hearing of charges against Hon. (Amb.) Mohamed Abdi Mohamud, the Governor of Wajir County, I will issue a separate Communication at a later time.

Hon. Senators, in accordance with Standing Order No.30 (5), the business specified in the Gazette Notice, and as outlined in the respective Order Papers, shall be the only business before the Senate during the Special Sittings, following which the Senate shall stand adjourned until Tuesday, 11<sup>th</sup> May, 2021, at 10.00 am, in accordance with the Senate Calendar.

I thank you.

What is your point of order, Sen. Wetangula?

**Sen. Wetangula:** Mr. Speaker, Sir, normally during recess, when we call special sittings, we compensate the recess by extending the time of resumption. The Senate Majority Leader is here.

Could we be advised whether the special sittings we have had last week and this week will be compensated by an extension of the recess *pro rata* to the time spent?

**The Speaker** (Hon. Lusaka): Can the Senate Majority Leader give a response?

**The Senate Majority Leader** (Sen. Poghisio): Mr. Speaker, Sir, I thank Sen. Wetangula for that reminder. I will request that appropriate compensation in terms of extension of resumption be done. That will not be something new as we have done it before.

I leave it to you, Mr. Speaker.

**The Speaker** (Hon. Lusaka): Next order.

## BILL

### *First Reading*

#### THE COUNTY ALLOCATION OF REVENUE BILL (SENATE BILLS NO. 30 OF 2021)

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

**The Speaker** (Hon. Lusaka): Next order.

## BILL

### *Second Reading*

#### THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2020

*(Sen. Poghisio on 28.4.2021)*

*(Resumption of debate interrupted on 29.4.2021)*

**The Speaker** (Hon. Lusaka): Sen. Kibiru.

**Sen. Kibiru:** Thank you, Mr. Speaker, Sir. I stand to support the Constitution of Kenya (Amendment) Bill, 2020.

From the onset, I would like to say that from the day we started talking about the BBI, I was among the people who were elated because as it was said during the making of the 2010 Constitution, there were some issues that were never addressed well.

When we went round, especially for those of us who were in the background, we were being told that the 20 percent that was not very good would be amended in the future. The future is now and I want to persuade those who were feeling uncomfortable with the Bill that there is always another time to amend the Bill.

Mr. Speaker, Sir, I am of the opinion that the---

**The Speaker** (Hon. Lusaka): Sen. Shiyonga, what is your intervention?

**Sen. Shiyonga:** Mr. Speaker, Sir, if it is a discussion on the Constitution of Kenya (Amendment) Bill, 2020, I thought I had remained with 18 minutes and I did not know that you have changed the order.

**The Speaker** (Hon. Lusaka): Okay, it has been brought to my attention but since we do not want to interrupt Sen. Kibiru's thought process, I will still give you your 18 minutes.

**Sen. Shiyonga:** Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Kibiru.

**Sen. Kibiru:** Mr. Speaker, Sir, I will be repeating what many people have said. I was listening through Zoom and I heard what the 20 or so Senators who spoke supported or opposed the Bill. We have been listening and it would be unfair to deny other Senators an opportunity by repeating what other people have said.

For those of us who are supporting the Bill, we feel that an opportunity has come for us to make right some of the issues that are not in the best---

**The Speaker** (Hon. Lusaka): There is another intervention by Sen. Wambua.

**Sen. Wambua:** Mr. Speaker, Sir, I am very keen on this. I have heard my colleague, Sen. Kibiru say that those who are uncomfortable with the Bill, will have another time to amend it. He has said that on record. Which time and what process will be used to amend this Bill at that time?

**Sen. Kibiru:** Thank you, Sen. Wambua for that correction. I meant amendment of the Bill. To me, we are about 97 percent in terms of achieving some of the issues that needed to be highlighted during the amendment and passage of the 2010 Constitution.

Mr. Speaker, Sir, while I was listening, I was shocked because everybody including my friend who has just spoken and corrected me on the issue of the amendment, are all talking about some seeds going to a certain region.

Time and again, some of us always feel a bit uncomfortable when Kenyans stand up and start talking about some populous people from Mt. Kenya. We did not choose to be born there. For the record, I attended my high school in South Nyanza. My best man comes from Siaya, so I am a Kenyan. When some people stand every time to say that Mt. Kenya is unfairly benefiting, we feel slighted. We are Kenyans like any other person and we have a right to be Kenyans.

I want to tell the people who stand up every now and then to propagate some propaganda that Mt. Kenya is benefiting that we do not benefit; we work hard. It should be on record that Mt. Kenya works hard and we should never be seen as being favored by anybody.

Mr. Speaker, Sir, some of us came from very rural areas and we have been able to eke a living up to where we have reached. Let us all look at one another as Kenyans.

The other day when the coffee rate came up, the highest rate that came out ---

**The Speaker** (Hon. Lusaka): Sen. Wetangula has a point of order.

**Sen. Wetangula:** Mr. Speaker, Sir, is my Chairman of the Finance Committee in order to make very reckless insinuations?

In law, we say: *expressio unius est exclusio alterius* which my distinguished friend the Senator for Tharaka Nithi knows. It means to specify one is to exclude others.

When he says that Mt. Kenya people work hard, he means that other Kenyans do not work hard.

Is he in order to make such reckless insinuations against communities of this country in a matter where we have said repeatedly and he knows that the centrality of the 2010 Constitution and any amendment subsequent thereto is equity among the people of Kenya? It matters not who works harder and who does not because some work harder because circumstances and conditions for working harder are placed before them. Others are seen not to work hard because they are not accessing those circumstances and conditions.

**Sen. Kibiru:** Mr. Speaker, Sir, you know I read somewhere and those were not my words that some of us are very good in grammar and we always put that grammar in use while we are debating.

I would not be surprised that Sen. Wetangula who is a Member of my Committee has spoken good grammar. All he has said is that he confirms that certain environments, which by nature are endowed to work hard, work hard.

We have what we call comparative advantage. I cannot compete with Sen. Wetangula when it comes to football but I can compete with him favorably when it comes to business. When we look at issues of comparative advantage, we need to respect the fact that certain regions are endowed in certain ways of doing things. With regard to that, I would want to respond as such.

Moving forward, I am just requesting that as Senate, let us stand to our calling. Let us pass the Bill and agree that we will continue making the amendments.

I was reading the other day that the American Constitution has been amended 27 times. We will not tire in amending as and when we deem it fit. This is a live document and it can be amended even in the next Parliament.

People are talking about issues of record and this is a House of record. Time and again, I have heard 'Team Kenya' and other Members standing here to tell us that some people were arrested and it is on record and I heard it during those days.

I want to put it on record that I wish we could put an inquiry of the Senate that some of them did ask to be arrested. Some of them did even send pin locations on where they can be collected. So, when people start talking about people being arrested and putting it on record here, they should be ashamed of themselves.

**The Speaker** (Hon. Lusaka): Order. There is a point of order from Sen. Lang'at.

**Sen. Lang'at:** On a point of order, Mr. Speaker, Sir. Is it in order for the Senator for Kirinyaga, the 'Deep State' Man, to tell this Senate that some people organized for their arrest? No one can do that. That one is so bad and it should not go on record. I would like to ask him to withdraw that particular statement and even apologize on the same.

**The Speaker** (Hon. Lusaka): What is your point of order, Sen. Mutula Kilonzo Jnr.?

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, Sen. Kibiru is normally in a very good mood and is a very good person, but today he is just going to mess our mood.

We must be responsible for the statements we make. The statement Sen. Kibiru has made has no basis. I will explain so that if he can substantiate then he can bring that on record.

I have in my office here a record from the National Police Service (NPS) indicating that no Senator sent a pin to be arrested. We know where that pin was sent from. Can you substantiate which Senator stage-managed his arrest and give us evidence because we have the record?

**The Speaker** (Hon. Lusaka): Order! Before you respond, hon. Senators, remember we are live on television. Some unfortunate incidents have happened to colleagues here that we would not want to be reminded of. We would want it to remain in the past. Be sensitive because people went through some not very good experiences. Sen. Kibiru, withdraw and apologise.

**Sen. Kibiru:** Mr. Speaker, Sir, I thought we were a House of order. I wanted to clarify. Sen. Mutula Kilonzo Jnr., is my friend. He is very persuasive. As much as I would want to withdraw, I will do so with conditions that in future---

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): No, Sen. Kibiru, you cannot withdraw with conditions. You just withdraw.

**Sen. Kibiru:** Mr. Speaker, Sir, it is because I am telling the truth. If need be, why do we not have an inquiry and find out what happened instead of having people standing here talking about issues that were inflated by others?

For the unity of this House, I withdraw and apologise, but the facts are there. As was said the other day, Kenyans understand we did not come to Nairobi the other day, so we know what happened.

As we progress, we are talking about very critical issues in the Building Bridges Initiative (BBI), especially on proportional representation whose importance needs not be overemphasized.

Mr. Speaker, Sir, we have a constituency in Kirinyaga County that has almost 200,000 voters or thereabout. The constituency enjoys the same benefits as some constituencies that have less the 30,000 voters. When we talk about proportional representation, it is not that we are infringing on other people's rights, but a question of looking at equality and equity.

During debate on the revenue sharing formula, people said that money should go to the devolved units. When the amendment proposes that 35 percent goes to the counties, it is a call that we must adhere to because we have always been saying that the funds go the counties.

What better way can that be of protecting the counties? Let us stand and be counted to support the Bill, so that the funds can move from the national Government to the counties. That is one way of supporting devolution.

I have heard stories of people saying that we need to include coffee, tea, *ndengu* and so on, in the amendment Bill. From a reasonable, economic or legal point of view,

those are issues that can be addressed from another point. It is not possible to give guaranteed minimum returns in a constitution.

I urge that as Senate, please, let us support this. On areas where one thinks that there are issues that need to be addressed, we can still address them in the future. For now, let us support the amendment Bill. As I said, I do not want to keep on talking and saying there are unconstitutional issues because several lawyers looked into that. For anything that would come, there would be people arguing because from their point of view, they are not satisfied with certain issues.

There will never be a time when everybody will be satisfied, including in our homes. Even when we are looking after our children, there could be one who thinks that dad favors some over others. It is a natural phenomenon. For those who are agitated or opposing for certain reasons, join us to pass the amendment Bill. Moving forward, we will support any other amendment that you bring in future.

I surrender my time to Sen. Shiyonga because it looks as if I jumped the queue. I urge people of goodwill, including Sen. (Prof.) Kindiki, who is my good friend, to support the amendment Bill.

**Sen. Shiyonga:** Thank you, Mr. Speaker, Sir, for giving this opportunity to contribute on the amendment Bill. My colleague is not surrendering the opportunity to me; it is you who gives opportunity for Members to contribute.

I thank the promoters of the BBI through the 'Handshake' for coming up with the document that we are discussing now. I also thank the Chairperson of the Committee on Justice, Legal Affairs and Human Rights, Sen. Omogeni, and the team for the Report they laid in this House, which we are made to understand is talking on the same issue.

I had said I would touch on a few issues concerning this Bill with regard to gender representation, constituencies and funding of devolution. If time allows, I will talk about other things, including corruption.

Concerning gender representation, Clause 14 of the Bill seeks to amend Article 98 of the Constitution on the Membership of the Senate; from the current number and the nominations to a Membership of 94 from each county, by electing a man and a woman who will be elected directly from the counties to represent the people of Kenya in this Senate.

Looking at Clause 21, the Bill, which proposes to repeal Article 121 of the Constitution makes a provision to do away with voting by delegation in this Senate. As a result, Members of the Senate will have equal opportunity and rights of voting.

Clause 47 of the Bill proposes that we amend Article 182 of the Constitution that provides the election of the county governors and deputy county governors. These amendments are aimed at achieving gender parity where a male or a female shall be elected to represent in the position of governor and deputy governor respectively.

Nomination has been looked at as selecting people with no value. As we see right now when we see Members of this Senate, I being one Member of a Delegation, I feel that if I am elected directly by my people in the county, then I will represent them with all the energy other than being nominated as is in the current Constitution.

On constituencies, I would like to correct my last speech where I talked of 70 counties rather than 70 constituencies.

I have listened to the Chairperson and Sen. Kibiru speak on the issue of creation of 70 constituencies, which are specified in 28 counties as stipulated in the Bill. I do not dispute them. However, it takes away the independent mandate of the IEBC on delimitation of boundaries as outlined in Articles 88(a) and 89. Therefore, I wish that the constituencies remain as outlined.

We should remember that it is the mandate of the IEBC to conduct delimitation of boundaries. It is its responsibility to work together with the concerned stakeholders to make sure that boundaries are people driven on how and where they will be.

Mr. Speaker, Sir, devolution as presented is a platform for grass root progress and not an avenue for corruption. The Bill, therefore, provides for additional allocation of funds to the counties from the current 15 per cent to 35 per cent. This is a positive way to further the development in our counties.

Therefore, it is my view that devolution needs to be protected at all cost. For it to succeed there must be services and development in the counties. Therefore, counties need resources that are manageable and sustainable.

In addition to funding, citizens will have better and accessible services and counties will not have to borrow or have pending bills as it is, currently.

Clause 54 of the Bill proposes to insert Article 207 to establish the Ward Development Fund, which comprises of at least, 5 per cent of all the county revenue for each financial year. The Members of the County Assemblies (MCAs) are the first people in this level to benefit. These funds will ensure actualization of the rights granted under Article 43 and people get the services.

Mr. Speaker, Sir, we need equitable distribution of resources. If MCAs get these funds at the ward level, they will conduct development projects hence improve the lives of our constituents.

The Bill seeks to empower the MCAs who have been at the mercy of county governors. They will no longer stoop low to beg for funds from the governors. They will be independent because they will have manageable resources. They will be answerable to the people who elected them rather than the current situation where they are elected from a different party or are independent candidates. They are at the mercy of the governor. It is upon the governor to favor them or not in allocation of these funds, hence inequitable distribution of resources.

Mr. Speaker, Sir, the Bill provides for the Executive arm that will partially come from Parliament. This goes against the doctrine of separation of powers. However, the officers that will be from the National Assembly will be accountable both to the President and the people who elected them to these positions.

They will be subject to scrutiny, which will enhance transparency, hence they will be forced to deliver. This is because they will come from the National Assembly and will be closely following the debates to make sure that what is going on in the legislative arm is dealt with without them being sanctioned or pestered.



When members of the Cabinet come from the Executive arm and are not elected, it is hard for them to understand that they are supposed to answer these questions and progressively cooperate with Parliament to make sure that some of these reports, Statements and Petitions are answered.

It is hard to invite Cabinet Secretaries to come to Parliament to give their submissions to the Committee. However, when they come from one House of Parliament, it will be easy for them to follow and give the submissions and responses that Members need.

Mr. Speaker, Sir, in the Bill---

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

**The Speaker** (Hon. Lusaka): Sen. Cherargei, what is your intervention?

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

**The Speaker** (Hon. Lusaka): Does she want to be informed?

**Sen. Shiyonga:** Yes, Mr. Speaker, Sir.

**Sen. Cherargei:** Thank you, my sister and neighbour. I want to inform her that under---

**The Speaker** (Hon. Lusaka): How is she your neighbour?

**Sen. Cherargei:** Mr. Speaker, Sir, she comes from the neighbouring County of Kakamega where we borrow each other the famous *Kiberiti* and *chumvi*.

I bring your attention to Article 153(3) of the Constitution, 2010. It states that-

“A Cabinet Secretary shall attend before a Committee of the National Assembly, or the Senate, when required by the Committee and, answer any question concerning a matter for which the Cabinet Secretary is responsible”

To top up on what Sen. Shiyonga was saying, Article 153(3) is already in the provision of the current Constitution, unless it is proper elaboration.

**Sen. Shiyonga:** Thank you, neighbour for that. It is important to acknowledge that as much as the Committees are mandated to summon the CSs to come and answer questions, it has been a difficult process. Some of the Committees go further to sanction or fine the CSs so that they appear before us.

I totally agree with you that it is important for Members of the Executive to come from Parliament. This way, it will be easy for them to know what the debate is about their mandate.

Mr. Speaker, Sir, the Bill seeks to amend Chapter Six of the Constitution on Leadership and Integrity to strengthen the fight against corruption by providing mechanism for expeditious conduct of investigation, prosecution and trials on corruption related matters.

The culture of corruption has grown roots in the society of Kenya. It has become a disease that we grow up with.

Corruption persists in Kenya primarily because there are people in power in various offices, who benefit from institutional governance, but lack integrity in the capacity they hold.

Mr. Speaker, Sir, we need transparency and therefore, this Bill will help fight corruption. It also stipulates the number of days that corruption cases should take for

office bearers. That way, corruption cases will have been dealt with by the time new people assume those positions.

Corruption cases take too long in court, even after extension of time to present evidence has been granted. This matter is not funny anymore and individuals are taking the judicial system for a joke. People think they can always bribe their way out. How I pray that this disease will be capped in this Constitution and allow our beautiful nation to grow without thieves who steal from their own citizens.

In conclusion, the Youth Commission has been highlighted, and our youth are set to benefit. However, just like any other Commission, the Youth Commission looks more like ceremonial because it does not have responsibilities attached to it. We need a Youth Commission that will look at the issues of the youth.

Mr. Speaker, Sir, I appreciate and support this Bill. Anything else can be amended in policies and Acts, and Kenyans have the opportunity to either support or reject the Bill.  
*Aluta continua.*

**The Speaker** (Hon. Lusaka): Sen. Cherargei, proceed.

**Sen. Cherargei:** Thank you, Mr. Speaker, Sir, for this opportunity. From the outset, I wish to state that I do not support this constitutional amendment Bill for reasons that I am going to talk about.

One, the promoters of this Bill say that they collected the views of Kenyans, but no one has shown us what Kenyans want or how these ideas were collated. Therefore, there is an assertion that Article 257 talks about popular initiative. This popular initiative should be a Parliamentary initiative by the political parties of President Uhuru Kenyatta and Rt. Hon. Raila Odinga. They should have used their political parties to push this agenda.

You cannot have a popular initiative where you have a secretariat that uses tax payers' money, contrary to the *Okoa Kenya* and *Punguza Mizigo* Bills that we already had. Therefore, under Article 257 on the popular initiative, the threshold of popular initiative is so high that you cannot compare what this Bill tries to talk about.

Another misnomer is that Kenyans expressed their views through the Building Bridges Initiative (BBI), but they were not captured. When you look at Article 94 on the Role of the Parliament; Article 257; and Article 259 on construing of the Constitution--- My good friend, Prof. Mutakha Kangu, who taught me Constitutional Law, said that you do not interpret the law in isolation.

There are people in this country who want to interpret Article 257(7) of the Constitution in isolation. When you look at the construing of the Constitution, legislative power has not been taken from us.

Some people want to say that Parliament is playing the role of flower girls or pageboys, and we are keen. People are forgetting that under Article 1 of the Constitution, we are representatives of the people and represent the interests of the people. When I speak here, I do so on behalf of more than 875,000 residents of Nandi County who gave me the mandate.

This is what Thomas Hobbs and Aquinas said:

“That when life was short, nasty and brutal, we surrendered and created a sovereignty where all or some individuals could exercise this power”.

If you say that Parliament is just playing a salutary role in this process, and that we should not give an input, then we are abdicating our responsibility to Kenyans.

Therefore, I hope that when the time comes, Sen. Kang’ata, Sen. Wambua and I, will be allowed to amend and refine this Bill during the Committee of the Whole Stage. The same people who are telling us that there is room for amendment are the same ones who told us in 2010 during the 2010 constitutional amendments process that ‘*tupitishie halafu tutarekebisha baadaye*. Now, they are repeating the same lie and we cannot allow that to happen again. We must do the right thing at the right time. We are tired of amending the Constitution after every ten years to suit particular political interests.

It is unfortunate that President Uhuru Kenyatta and Rt. Hon. Raila Odinga are giving Kenyans the kiss of Judas; the kiss of betrayal. I am disappointed with my party leader. When we re-elected him, after the Supreme Court nullified his election, he promised Kenyans the Big Four Agenda.

As a Member of Jubilee Party, we never sat anywhere and said one of the agenda is constitutional amendment. This is a kiss of Judas to the 47.5 million Kenyans, who should have stopped wearing chains of slavery, corruption, poverty, poor governance. They should be wearing the star of liberty, prosperity and success for this nation.

**The Speaker** (Hon. Lusaka): There is a point of order from Sen. Madzayo.

**Sen. Madzayo:** Hoja ya nidhamu, Bw. Spika. Taratibu za Bunge la Seneti zinaeleza kwamba huwezi kumtaja yeyote ambaye hayuko ndani ya Bunge au hajaitwa Bungeni na hawezi kujitetea.

Je, ni haki kutusi au kutumia lugha isiyofaa kwa viongozi wa Kenya, hususan Baba, Raila Odinga, na kiongozi wa Taifa la Kenya, Mhe. Uhuru Kenyatta?

Ni haki kwa kijana ninayemjua na kumpenda sana, ndugu yangu, Sen. Cherargei, Seneta shupavu sana wa Kaunti ya Nandi, kutumia lugha kama hiyo anapojadili ugeuzi huu wa Katiba? Je, kitendo kama hicho ni sawa?

**The Speaker** (Hon. Lusaka): Sen. Cherargei, do not let emotions overtake what you want to say. Do not drag party matters into this House. Please, keep to the lane.

**Sen. Cherargei:** Thank you, Mr. Speaker, Sir. Of course, matters of political parties should not reach here. I am told that the latest is the Orange Democratic Movement (ODM) Party, but that is neither here nor there.

Sticking to the issue before us, Clause 3 of the constitutional amendment Bill talks about shared prosperity. I remember when the BBI Taskforce visited Nandi County where tea, coffee and sugarcane farmers wanted their issues included in this Bill. That is why, given a chance, I would like to amend the Bill and ensure that the pricing of produce and products, should not come below the cost of production. I will also amend so that farmers get subsidies on fertilizer.

As we talk, the long rains for the planting season have begun in the North Rift region. There is no subsidized fertilizer and the economy is doing badly. When farmers are unable to farm, then we cannot have sufficient food supply in this country. I would have expected that in the spirit of ensuring that we protect farmers, we should have

ensured that the pricing is right. We should have ensured the costs of farm inputs and production are factored in the pricing of farm produce.

Secondly, there were some typos and many other errors in this Bill. When you look at the index according to the Kenya Yearbook, we had around Kshs497.8 billion in the Financial Year 2017/2018. So, agriculture, be it horticulture or tea farming, is very important.

Farmers are suffering because there are many reforms by the Government and resistance within the tea sector. There are also issues facing the sugar industry because they want to privatize leasing of Nyando Sugarbelt, which Nandi County is part of. We were told of the establishment of a Cherry Fund for the coffee sector. That has not been captured.

Mr. Speaker, Sir, when I was in Kabuchai, I had an opportunity to--- There were several lessons learnt from that event. Some of them are not so good. In that entire region, our people depend on agriculture. I can see the party leader of Ford Kenya, Sen. Wetangula, smiling. I do not know what he knows that I do not. There are many lessons that I learnt. I realised that maize is also grown in that area and they depend heavily on other factors of production.

Agriculture has not been addressed adequately, including the shared prosperity. Does shared prosperity mean only for one family or Kenyans? How do we ensure shared prosperity when farmers in this nation continue farming yet the biggest beneficiaries in the value addition chain are brokers? Milk prices are also being dictated. I have said before in this House that the Competition Authority of Kenya (CAK) has failed the nation as far as issues of crop production are concerned.

I would like to talk about the issue of constituencies. I agree with Sen. Wambua. We the people of Nandi feel that we were shortchanged because Nandi has a population of 895,711. However, we were given one constituency only. Kwale which has 866,820 people was given three constituencies, but its population is less. Busia with a population of 893,681 was not given any constituency. Kitui's population is 1,136,187 but it did not get any constituency.

We the people of Nandi did not expect one but two or more constituencies. This is because Kwale, which has 866,820 was given three constituencies. This is a clear violation of Article 89(5) that provides features of sharing of constituencies.

There is a Second Schedule that purports to suspend the main Article by creating 70 new constituencies thus increasing the number from 290 to 360, yet there are provisions on delimitation in Article 89(5) on sharing or creation of constituencies. Not to mention that our Parliament will be the largest consideration with our population of about 47.5 million. We will have a double-decker Parliament. The cost of running Parliament will increase by more than Kshs20 billion and that is not good for the economy that is in the Intensive Care Unit (ICU). Technically, Kenya is on receivership. That is why we are borrowing. Looking at the budget for FY 2021/2022, the Ministry plans to borrow more than Kshs1 trillion to cater for the deficit.

The Senate has not been given many powers. Rather, it will be a gender ground where the threshold should be met and make our women feel nice. However, they will

share the 35 per cent of the revenue. They are being chased away from the National Assembly where 65 per cent remains. They are being asked to come and share the 35 per cent because they do not need women representatives. I love the women of this country unconditionally.

I would like to say the following. The Affirmative Action Fund that was created should have been more beneficial to women. Now that they will be relocated to the Senate, that Fund should have been retained because they can change the lives of women, Persons with Disabilities (PWDs)---

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

**Sen. Nyamunga:** Mr. Speaker, Sir, I would like to ask the Senator for Nandi to stop misleading us because the Women Representative seat has been removed, but that Fund still remains in the National Assembly. It can still be allocated to any other woman to continue utilizing it for the benefit of the people of Kenya.

*(Laughter)*

*(Sen. Nyamunga consulted loudly)*

**The Speaker** (Hon. Lusaka): Order, Sen. Nyamunga. Maybe you should move closer and consult with Sen. Wetangula. There is another invention from Sen. Omogeni.

**Sen. Omogeni:** Mr. Speaker, Sir, the women I represent from Nyamira are listening and we do not want them to be misled or confused. Could Sen. Nyamunga clarify because she has left me more confused? She should clarify to the House how we are going to have the Affirmative Action Fund meant for the 47 Women Representatives yet the Constitution proposes to amend Article 97(b) to do away with the women representative seat. Can she shed light to the House or explain? I would like to know the legal miracle that will happen whereby you scrap the seat, but leave the Fund without somebody administering it. Can we have some clarification?

There is also this statement that I would like my women in Nyamira to listen to. When she tells the House that this Fund will be given to the other women, which women are these? The Fund was to be given to the Women Representatives sitting in the House, representing counties. Which other women will get the money?

**The Speaker** (Hon. Lusaka): Sen. Shiyonga, what is your intervention?

**Sen. Shiyonga:** Mr. Speaker, Sir, as much as the good Chair here is right, but whose women? He said my women in Nyamira, is he talking about his wife or which woman? Is it the Women Representative? What does he mean?

*(Laughter)*

**The Speaker** (Hon. Lusaka): Order, Senators. I think that is a moment of comic relief. Sen. Nyamunga, you are out of order because Sen. Cherargei was on the Floor. What you were raising was a point of argument. So, it cannot be a point of order.

Proceed, Sen. Cherargei.

**Sen. Cherargei:** Mr. Speaker, Sir, I think women play a critical role. This is coming at a time when President Samia Suluhu, the first female president of the United Republic of Tanzania, is in the country. I just want to challenge women that they should fight for these positions. They should work hard so that they become who they want to be.

We have Funds such as the Ward Development Fund, the Constituencies Development Fund (CDF) and other funds, but there will be no Affirmative Action Fund that was under the Women Representatives in the National Assembly following the proposed constitutional amendment.

Finally, I would like to talk about the issue of representation in the amendments. I heard the Secretary-General of the Central Organization of Trade Union (COTU) supporting the BBI, but I think he had not read Article 97 where there is a proposed amendment. I would like to tell the trade unionists lawyers, including my seniors here, that the special seat for workers has been removed. In Article 97, the workers used to have one representative, but that has been removed. How will the trade union and labour issues be legislated?

I hope officials of the labour unions and movements are listening. We have the Kenya National Union of Nurses (KNUN) and COTU among other organisations. Let them know that the role of workers has been removed in this document.

Having said that, I would like to say something about the amendment on the issue of the Ombudsman. I thought that my time had been frozen. The Judiciary Ombudsman should be retained in the Chief Justice's office. I propose that we delete that from the Constitution. The role of disciplining, reprimanding or suspending a judge should be retained within the Judicial Service Commission (JSC). However, the JSC should allow a tribunal to investigate a judge. That is practiced all over the world.

We know what happens in this country. Somebody can easily chase you if they do not like your face. The Judiciary Ombudsman should remain in the Chief Justice's office. They should be allowed to do their work because they have done it well. When we launched the strategic plan in 2017 and 2018 when I was the Chairperson of the Committee on Justice, Legal Affairs and Human Rights, there were 3,515 complaints against the Judiciary. The Judicial Ombudsman addressed 2,324 complaints. That is significant. Let us allow the Judiciary Ombudsman to remain in the office of the Chief Justice.

The Inspector General of Police should not be given unvested powers to promote or discipline officers. Instead, he should work as per Article 245 of the Constitution. Promotions and discipline should be done with the approval of the National Police Service Commission (NPSC). If the Inspector General of police is given all that power, they can fire an Officer Commanding a Police Station (OCS) if they do not like them. The Inspector General of police has girlfriends and boyfriends and they can give them those positions. We know how raw power can work.

I do not know if we have had an imperial presidency because we had President Moi. In this Constitution, there is recreation of an imperial presidency. We should not give the Inspector General of police unvested power because we know what happens

when someone has those powers. Let such decisions be made with the approval of the National Police Service Commission.

There is no hurry in this country. I have heard people say that the elections will delay when this Bill is passed, but I want to tell them that the term of Parliament is very specific under Article 102 of the Constitution. I have heard people tell the President that he is too young to retire and that Covid-19 delayed his projects yet the law is very clear. We have to fix this country at the end of the five years.

Thomas Sankara, the celebrated leader who changed the name of Upper Volta, the country of upright men, to Burkina Faso, said that; ‘democracy and revolution and good governance belong to the convinced people. It does not belong to the concurred people. It does not belong to people who have resigned their fate. We must take charge of our destiny.’ This is the moment.

Parliament has to do many amendments. I want to see my brother, the Minority Whip, our brilliant legal mind and the future governor of Makueni County, give us amendments that will help fine tune this document before we pass it. No one will kill us if we amend this document. President Uhuru Kenyatta and Raila Odinga will not kill us. Let us amend this document for the future of this country. Some of us still have a lot of time in this world. Some people are almost making phone calls in heaven because of their number of years, but some of us still have the opportunity. We want to see the future.

I thank you and I reject this amendment.

**The Speaker** (Hon. Lusaka): Sen. Cherargei, I do not know what is exciting you. Just be economical with what you say.

**Sen. Wetangula:** Thank you, Mr. Speaker, Sir, for the opportunity. Remember the old adage that, hell hath no fury like a woman scorned. When you hear the young Sen. Cherargei thundering and ranting, you know where that is coming from.

This is one of the most critical Bills that have come to this House this term. To amend the Constitution of the Republic Kenya is not an ordinary legislation. It is a legislation that touches on the foundation of our legality and existence as a nation. In doing so, we have to be very careful. When we were pursuing the 2010 Constitution, towards the end, we had two competing interests; *Pitisha tubadilisha, badilisha tupitisha*. That is what everybody was saying. The proponents said, ‘*pitisha tubadilisha*’. The opponents said, ‘*badilisha tupitisha*’. We have gone round and reached a centre point where both can now meet. *Tulipitisha tubadilisha, hatukubadilisha tukapitisha sasa tubadilisha*.

The genesis of all these comes from the handshake. We have been told and convinced that the philosophy of the handshake was born out of the need to resolve fractures, quarrelsome and divisive elections in Kenya. That is what took us to the streets. That is what divided those who were in NASA and those who were in Jubilee. The country was divided top bottom. Our country had become ungovernable and it was at a standstill. Teargas became a popular commodity in the hands of our police force.

Now that we are here, have we born fidelity to the purpose for which the handshake came into being? When you look at this amendment, it tells you of a classic case of a good job done badly. The good idea has been derailed by competing interests.

Certain things in this Bill should never have found their way there. I do not understand the reason as to why we are creating a Youth Commission. We have so many laws that govern our youth. Kenyans must learn to understand that youth is neither a disadvantage nor a disability. It is a transient state in human life. I came to Parliament as a youth. Sen. Cherargei is now a youth today, but he will soon abandon all his excitement and behave like a statesman because he will no longer be a youth.

*(Laughter)*

We have overloaded this Bill with things that ought not to have been there.

I went through all the submissions by the 47 counties and I did not find a request by any Kenyan for 70 additional constituencies. Here and there were a few people who felt disenfranchised and oppressed by their majority neighbors and they wanted their own constituencies. The Kurias and the people from Mount Elgon Region demanded for their own Counties and those from Kitui asked for their County to be divided. However, I did not see anywhere a request for creation of 70 constituencies.

In creating the 70 constituencies, we go ahead in violating the other provisions of the Constitution. The Constitution is very clear. Delimitation of the boundaries of constituencies and wards is an exclusive constitutional preserve of the Independent Electoral and Boundaries Commission (IEBC). They are the ones who work with the other Government organs such as the Kenya National Bureau of Statistics (KeNBS) and listen to Kenyans then determine where to have a constituency. The proponents have sat somewhere and without any justification decided that Kenya deserves 70 constituencies, and allocated them without any rationale. This is not right.

In fact, my county of Bungoma was allocated three constituencies without consulting anybody. The Director General of the Kenya National Bureau of Statistics (KNBS) came to the Committee where the distinguished Senator for Machakos was - I think the Sen. Omogeni's Committee - and told them: "No. Bungoma deserves four and not three." So on what basis were we given three and not the four that we deserve if the allocation was being rational and scientific and where did our extra one go?

Mr. Speaker, Sir, when you look at Nairobi we are creating constituencies. The Constitution is very clear on the parameters, taking into account population, land mass, community of interest, means of communication and all those things. In my humble view, Nairobi needs more wards and not more constituencies because we are going to create constituencies in Nairobi that one will take 10 minutes to walk across.

What about North Horr that is physically bigger than the former western, nyanza and central provinces put together and it is still left as one? Where is equity? That is why I do not agree with those proponents who say that we cannot amend this Bill. If you read Article 257 to the letter, nothing ousts the authority of Parliament to amend a Bill including a Bill such as this.

Secondly, the law is dynamic. It is growing, it is moving every day and we can set precedents by doing things we have not done before, including amending constitutional Bills.



When for example, the committee chaired by my distinguished learned junior, senior counsel, Sen. Omogeni says that the schedule to this Constitution on constituencies is unconstitutional and then tells us to pass it, what are we being told? It is unconstitutional but pass it!

When they tell us that the provision on the Judicial Ombudsman is unconstitutional and then they leave it there. What are they telling us? Ordinarily, committees of Parliament, when they bisect and dissect a Bill, they bring a report to guide debate, but they also bring amendments to the Bill that will be consistent and in consonance with their findings in the report.

One would expect that the Omogeni Committee would have brought some amendments that will come at the next stage when we go to Committee Stage so that we can consider them. Changing the Constitution is not something that we should do casually.

My colleagues, the womenfolk, both here and out there have been clapping their hands and smiling uncontrollably about the issue of 47 women coming to the Senate. I have no problem with that, but I expected that the women of this country would look at this more critically. The empowerment of the Kenyan woman by creating the 47 county representatives to the National Assembly came with empowerment of resources. Now that those women have been uprooted from the National Assembly and dumped in the Senate with no corresponding resources, who is going to speak for the raped woman or the defiled girl? Who is going to give money to young girls for bursaries? Who is going to set up centers for rehabilitation for bastardized and abused girls?

Mr. Speaker, Sir, it is not true like my colleague Sen. Nyamunga said that the money is following the women. There is no money to follow the women and it is not going to be there. Those women---

**The Speaker** (Hon. Lusaka): There is a point of intervention from Sen. Nyamunga.

**Sen. Nyamunga:** Mr. Speaker, Sir, I just want the senior Senator for Bungoma not to mislead the House. You can look at the HANSARD; that is not what I said. So, do not stand in the public gallery and make accusations about something that I did not say. Just be articulate in whatever you want Kenyans to hear, but do not mislead and incite people against me. That is an incitement.

**Sen. Wetangula:** Mr. Speaker, Sir, you have been in that Chair when my distinguished and very good friend, a daughter who is married in my county and we get along very well, spoke. She said that that money will remain there and will be given to other women. She was challenged to tell us who are the other women and there were none. There were none! In fact, those women in the National Assembly, each woman in each county gets Kshs8 million per constituency in her county for affirmative action work. This amendment is a claw-back on the empowerment of women. I want to encourage our women folk not to be hijacked by populism, but to be guided by facts so that they can help the disadvantaged women of this country.

I know for a fact that that Fund will disappear and it will not be there. If anybody thinks that that money will follow the women to this Senate then you can ask a question.

If TharakaNithi has my distinguished learned friend as a male Senator and another woman Senator, what justification will be there to give a woman Senator money for affirmative action and not the male Senator? It will not work.

Mr. Speaker, Sir, there is the issue of the Judicial Ombudsman. The Judiciary of this country has done us proud. In the face of serious adversity, the Judiciary has risen to the occasion. In fact, I dare say that this Senate continues to be what it is because of the Judiciary. From the advisory opinion that we sought and the many things including but not limited to you leading us to the Judiciary to file a case, this House has been able to force the reluctant Speaker, my good friend Hon. Muturi of the National Assembly, who looked at this House with terrible disdain. He has been brought to order by the Judiciary to realize and appreciate that Article 110(3) of the Constitution was not put there to carry the Constitution. It was put there purposely for the Houses to work together properly.

Now we are saying that the Judicial Ombudsman will, among other things, sit in the JSC. However, he will enhance the reign of terror on judges by, among other things, warning, reprimanding and suspending them. How can we vest such powers in any organ in our country that tomorrow a judge sitting --- I want to tell my colleagues behind me that my distinguished brother from Kilifi who worked with me before in his earlier life was a judge. This country has gone through a history that is terrifying.

Sen. (Prof.) Kindiki can tell you that we had a European judge who when hearing cases of the notorious *Mwakenya* used to walk to State House carrying a file to go show the judgment he was drafting against charged individuals. He was told “*hiyo sawa sawa*” and then went back. Sen. Omogeni also knows that.

By having such an insertion in a constitution--- I always remind you that When Zulfikar Ali Bhutto was the Prime Minister of Pakistan, he passed a law that no foreign lawyers, kings or Queens Counsel (QC) would practice law in Pakistan. He was overthrown by a terrible general called Muhammad Zia-ul-Haq and arrested on trumped up charges of murder.

Zia-ul-Haq terrified every lawyer in Pakistani and they could not defend Ali Bhutto who brought a Queens Counsel from the UK. They brought him the law that said QCs could not practice law there. He was told it was the law he had passed.

When Justice Ringera was teaching us law, he always ended his lesson by telling us that if we wanted a test of good law, we should imagine it in the hands of our worst enemy. If you feel safe, then it is a good law.

*(Applause)*

Mr. Speaker, Sir, that is what we need. I imagine a case being heard where Sen. (Dr.) Milgo is facing trumped up charges for abandoning Jubilee party and pursuing the ‘*Tanga Tanga*’ quartet. The judge hearing the case is summoned before the Judicial Service Commission (JSC) and reprimanded, warned and suspended. Once he is suspended, the case goes to another judge because it does not die because the judge has been suspended. If the judge who will pick Sen. (Dr.) Milgo’s file will remember the fate of the judge who handled it earlier, will Sen. (Dr.) Milgo get justice? Never!

Americans say: “If it is working, do not fix it.” The JSC is working. We have seen judges being dealt with under the JSC. I personally have reported judges who have taken bribes and have gone there and testified. There are many others who have done so and it is working.

Mr. Speaker, Sir, we are not trying to create an organ that will do what our Prof. Okoth Ogendo used to tell us: “Visit on you the fear of God and the terror of the devil, tied together.” You can imagine what you can do when you are staring at the fear of God and the terror of the devil. We should not do this to our country. I urge that, that provision is a claw back on the independence of the Judiciary. We need to rethink it seriously.

I fully support that we give more money to counties. In fact, as the National Super Alliance (NASA), we used to fight for 45 percent. We have not moved to 35 percent. We have also said that institutions of governance in Kenya are too weak to manage these resources. These include the office of the Auditor-General, the Controller of Budget (CoB), the Ethics and Anti-Corruption Commission (EACC), and the Director of Public Prosecutions (DPP).

It is on record from our President that Kenyans working for the Government are stealing Ksh2 billion daily and they stand here and tell us they are more hardworking than others. Imagine Kshs 2 billion daily!

*(Laughter)*

I expected this amendment was going to strengthen the institutions of governance so that we do not have a situation where as one professor said, at every election we elect 47 ordinary Kenyans as governors. At the end of five years, we have increased the number of billionaires in Kenya by 47. We want to see a situation where public resources are protected at all costs. Anybody found to have dipped a hand in the public till must face the consequences.

Mr. Speaker, Sir, what do we see today? I come from a county where respect for public resources is an act of history. It is stuck in history; nobody remembers. People use public resources as if they are their monies. They do not know the difference between public and private resources. That is what is happening.

A governor goes to a funeral and tells people---

**The Speaker** (Hon. Lusaka): You time is up.

**Sen. Wetangula:** Add me a few minutes, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): You have three minutes.

**Sen. Wetangula:** Mr. Speaker, Sir, a governor walks to a funeral and tells mourners: “When I finish my speech, follow me and *nitamumina kitu*.” In my language *kumina kitu* is to place something in somebody’s hands. These are not his resources but yours. A theft in Bungoma is a theft in Tharaka Nithi. A theft in Bomet is a theft in Kitui. A theft in Meru is a theft in Nyamira because we are denying people resources for development.

In Korea, four former presidents are in jail. One drove to a seaside and leapt from a cliff into the sea and died because they were about to arrest and take him to court.

When we look at our country, the richest people in Kenya are former or current civil servants. If you want to be rich quickly, you do not have to run your law firm, Sen. (Prof.) Kindiki. Go and be a procurement manager in some innocuous organization and procure for yourself every day. We must strengthen the institutions of governance. This country is not poor, but very rich. I do not agree with Sen. Cherargei that we are under receivership. We are not. This country is rich but its wealth must be managed properly.

Mr. Speaker, Sir, we must demolish bastions and hideouts of criminals who do not distinguish between public and private resources so that our children can go to schools, our women can have water in their houses, so that we can put food on the table and drive on good roads and our police are paid well. They should not assume that being put at a roadblock is a license to pick money from motorists. Members of Parliament should not investigate public servants with an agenda of being paid to let them go.

We have repeatedly been bastardising the police for corruption. Corruption is domiciled in Parliament. Today, governors who come to appear before committees of this House come smiling and leave smiling. This is dangerous for our country.

Mr. Speaker, Sir, as we amend this Constitution, we must also address the issues that have condemned certain regions to endemic poverty. If we know we are allocating resources to electoral areas--- I agree with the President who said he wanted to see money in wards and constituencies. We then create 70 new constituencies and some regions do not get any. It means that the areas getting those constituencies are the ones given additional resources and those that are not getting are being denied resources. The centerpiece of the Constitution 2010, as I have said over and over again, was equity and fairness for the people of the Republic of Kenya. It will remain so. It does not matter at what stage we amend our Constitution. If we lose sight of fairness and equity, we are laying ground for a distorted future for our country.

*(Applause)*

I urge the Committee of Sen. Omogeni, Sen. Orengo, Sen. Mutula Kilonzo Jr., Sen. Cherargei and others, who are lawyers or not, that we expect them in Committee Stage, to bring amendments to this constitutional Bill. Let nobody frighten you that you cannot amend, you can.

Thank you, Mr. Speaker, Sir. I will vote when it comes.

*(Laughter)*

**Sen. Halake:** Thank you, Mr. Speaker, Sir. I rise to support the Constitution of Kenya (Amendment) Bill, 2020.

I am a bit confused. I have said this before that a great debate or speech does not only capture the truth of the moment, it can also capture the big lies. As I sit here, I have

seen my colleagues speak in perfect language about stuff that when put in context, can be qualified as big fat lies.

*[The Speaker (Hon. Lusaka) left the Chair]*

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

There is always a disconnect between the oratory expertise, the manner in which people have expressed this and the vote at the end of the day. As I sat here, I kept writing down. I will look out for the alignment of the debate to the vote at the end of the day. Of course, we will all vote at the end of the day.

That being said, the beauty and strength of our Constitution is in its ability to be amended in various ways as stipulated in Article 256 by a parliamentary initiative or directly, by Wanjiku, Fatuma or Cherop under Article 257 of the Constitution.

Madam Deputy Speaker, in this particular case, this draft constitutional amendment Bill is a direct exercise by Wanjiku, Fatuma and Cherop of their constitutional and sovereign right, to amend and exercise the flexibility of its strength, to allow us to amend where it is not working.

This is to address the concerns of a structural element that had not been anticipated or that had not worked for us in the last 10 years of the implementation of our Constitution.

When I look at this Bill, in the Memorandum of Objects and Reasons, the promoters have indicated that it seeks to address arising implementation gaps, specifically the need to resolve issues of divisive elections and promote gender equity in governance; strengthen the structure of devolution; increase resource allocation to the counties; broaden mechanisms for all the people of Kenya to benefit from economic growth; harmonize certain roles and functions of the bicameral Legislature; fortify our national ethos by specifying the responsibility of citizens; and strengthening accountability on public resource and the fight against corruption.

Madam Deputy Speaker, who can fault this and say that these are things that had been resolved by our Constitution of Kenya, 2010?

As I sat here, I was saddened by the tone and patronizing debate on the issue of the womenfolk. We were told that we were laughing and clapping but who can tell us that the two-thirds gender rule, under the Constitution of Kenya, 2010 was achieved? It was not achieved. Of all the significance legislation that was to be implemented, that was the one piece of legislation that was defeated by the Legislature.

To insinuate that we are clapping for something that had worked for us is to lie to this nation. At least, as far as the Constitution of Kenya, 2010 is concerned, and the two-thirds gender rule, that promise, aspiration and vision was never achieved. This is our chance to try and get it right under the BBI and the Constitution of Kenya (Amendment) Bill, 2020.

That is not to say that there are no gaps in this Bill. For instance, I also have concerns around the 70 additional constituencies. I know that I come from Northern

Kenya where not a single constituency, especially in upper Eastern has been given. It has been said and is a known fact, North Horr, for instance, which is the largest constituency in our country, has had no additional constituency. To purport that Kenya is just a function of its people and not its borders or land, is an under-statement and to run away from the truth.

Madam Deputy Speaker, it has been said that North Horr can accommodate Western, Central Kenya and other provinces, but it did not get a constituency. That having been said, Isiolo County for instance, with its vast expanse of land has not gotten any. Can we look at other innovative ways at the sub-county to ensure that resources and services are taken to the lowest level of the frontline of service delivery to the people?

It was also mentioned that the sunset clauses are too close for women. The women of this country are not looking for affirmative action in perpetuity. We are not asking for affirmative action to the end of the world. We are asking that the environment in which we play, work and live is made level for us. We are not asking for tokens for the rest of our lives.

If BBI is the one thing that will level the field for us, it is what we will go for. However, to patronize us and say that we are clapping, laughing and dancing for something that has been taken away from us, is to miss the point. This is because the women of this country are some of the smartest people. They carry this country on their backs and are a majority in the country. We should not pretend that we need to be given certain projects and programmes that are sidelines. We must be mainstreamed. That is why I welcome women to come to the Senate.

It has been said that the position of the women representatives has money. What money is Kshs8 million to buy tents and such things? I do not consider that empowerment. However, if a woman can come here and vote for billions of shillings to go to our counties, that is empowerment. That is where the work is and where we should be serving the people.

In fact, there is nowhere this Constitution says that the role of a woman or legislator is to buy tents or build roads. Our role is to make laws and policies that will follow our resources. Those resources will be used at the devolved and national levels in accordance with those laws so that we mainstream.

To give us little amounts as tokens that are not mainstreamed and are on the sidelines so that we can buy ourselves a few water bottles and carry them on our backs is not empowerment. It is keeping us out of the mainstream and in the periphery as women and youth.

Madam Deputy Speaker, I, therefore, reject the notion that we should continue to be relegated to affirmative resources and positions in perpetuity, forever. We should be streamlined. Part of coming on equal terms to the Senate is a good starting point for the women of this country.

Madam Deputy Speaker, I have looked at, read and re read this Bill. This Bill seeks to expand the criteria on many of the provisions. It seeks to add and not subtract. I can go on, clause by clause, which I will not do, but will just skim through.

Clause 31, for instance, is expanded to reflect the new normal of data-driven economy and socioeconomic and political rights. These are some of the things we had not anticipated in the Constitution of Kenya, 2010. Therefore, to amend the structures to ensure that certain aspects that had not been anticipated like this pandemic, issues around data or the fourth industrial estate, this must be accommodated and dealt with through amendments. This is because the strength of our Constitution is in the ability of *Wanjiku* to amend it to reflect its new realities.

Madam Deputy Speaker, I am a little confused by the Committee's recommendation to implement and have this this Bill passed, but at the same time, talk of the unconstitutionality of a constitutional amendment. How on earth can any constitutional amendment that has been given a mechanism for amendment be termed unconstitutional?

What contradiction is it then to say that even though our Constitution has anticipated us being able to amend it, and given us a blow-by-blow mechanism and different approaches to do so, we then go back and say it is unconstitutional? I am a bit confused. I am not a lawyer, but I see contradiction in the Committee's assertion that certain provisions are unconstitutional.

Perhaps you can talk of the content not being agreeable to you, but I do not understand how a process that is in law can be termed unconstitutional and in the same breath, asked to pass it because it is a good one. I know that the Senior Counsel is a lawyer of great standing and knows why he is saying that. However, from where I sit, it looks like confusion of speech from both sides of the mouth. The recommendation is to pass the Bill, but the unconstitutionality of the constitutional amendment is what we are being told it is.

How can it be wrong to expand the parameters of certain provisions in our Constitution that have not worked well for us in the last ten years – tweak and make them better to accommodate and include – be termed as something unconstitutional or below optimal?

Madam Deputy Speaker, as I said, if we need to revisit the issue of the 70 constituencies, we do not have to do so within a constitutional amendments Bill. It has been said again that the work of delimitation of boundaries and allocation of constituencies is the constitutional mandate of the Independent Electoral and Boundaries Commission (IEBC). Why not leave that to the IEBC and pass the Bill? As a draft Bill, unless we take it back to *Wanjiku* for her endorsement, I do not see how at this level, we can decide to amend.

If we were going through Article 256 of the Constitution, for instance, and it is a Parliamentary process, we are mandated to do that. However, *Wanjiku* chose a direct approach, where she has control over the outcome of the process. Taking that away from her is to insinuate that this Constitution did not know what it was doing when it gave us two different approaches. One is where parliamentarians can influence, change and take control of and another where *Wanjiku* can exercise her power directly, and do as she pleases.

It is arrogant for us to think that there is nothing we cannot do. Our role is clear and limited to what has been mandated of us. It cannot be that we do as we please.

I do not want to go on too much and so, let me conclude. I would like to allude to Article 203 of the Constitution because it---

**The Deputy Speaker** (Sen. (Prof.) Kamar): Senator, there is a point of order from Sen. Wambua.

**Sen. Wambua:** On a point of order, Madam Deputy Speaker. I really hate to do this, but just allow me to raise this issue. My friend, Sen. Halake, is confusing me. On one hand, she says that if the provisions in terms of the constitutional role assigned to IEBC are unconstitutional, then why not just remove them and pass this Bill. On the other hand, she says that you cannot do anything to amend this Bill. I am looking for clarity as to what her position is on the matter of the allocation of constituencies to counties. I am trying to follow and would want clarity.

**Sen. Halake:** Madam Deputy Speaker, the clarity is as follows: Delimitation is the mandate of the IEBC, but Wanjiku, Cherop and Nduku have a right to propose what they would like. Unless you have an issue with the proposals as given to the proponents, then it is something that at the sovereignty of *Wanjiku*, she has a right to propose anything under the sun. That includes what is mandated of Senators and the IEBC in our Constitution. That is my clarification.

Let me now quickly move to last year's issue of revenue allocation. On 17<sup>th</sup> September, 2020, the Third Basis for Revenue Allocation among counties was adopted by the Senate, pursuant to Article 217(1) of the Constitution. The Division of Revenue Bill, 2021, which was before Parliament, was drafted to account for the third basis for revenue sharing.

The Committee has observed that the amendment to Article 203 did not pronounce itself on the fate of the Third Basis for revenue sharing, which was developed on the basis of Article 203, as presently rendered in the Constitution. As a result, if the Bill is passed while the Third Basis for Revenue Sharing among counties remains in place, there will be two conflicting constitutional provisions on revenue sharing.

Going on, with these findings, what has been emphasized and the observation on the Constitution provides that every five years, the Senate shall by resolution determine the basis for allocation of revenue among counties. I do not see how that is a contradiction because for the next five years, what we agreed in September, 2020 will hold. At the end of the five years, the Senate under Article 217(1) of the Constitution will determine a new basis.

Again, Madam Deputy Speaker, I wish to bring to the attention of the House and the country that it is incorrect for the Committee to confuse us on this basis. We already have a basis that will run to the end of the five years. At that time, this issue, under Article 217 of the Constitution, will be revisited with new realities under a new context and dealt with conclusively, as was done in 2020.

On that account, I support. I know that my time is running out, but I have quite a few other things to say. Having said that, I laud the Committee for having gone through



this with a toothcomb. The fact that the Bill of Rights was untouched is an indicator that the rights and responsibilities of Kenyans were preserved.

What is more important is the fact that the rights and responsibilities of Kenyans were preserved. Only structural and other provisions that are easily amended based on the provisions and proposals of Kenyans were included in this. On that basis, I would like to laud the team for not tinkering at all with the Bill of Rights, which has been lauded as one of the best and most dynamic in the Constitution of Kenya, 2010.

I would like to mention one last thing. We know the population numbers and the constituencies given. Presuming and assuming that all factors remaining constant, when Kwale got three or four more, they had exact same numbers to begin with. Again, we cannot say that is the reason because Kwale could have had much less and been given fewer constituencies in the past.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Your time is up!

**Sen. Halake:** Madam Deputy Speaker, could you give me a few more minutes?

**The Deputy Speaker** (Sen. (Prof.) Kamar): You have attracted a point of order from Sen. Omogeni. Therefore, I will give him one minute because you are winding up.

**Sen. Omogeni:** Madam Deputy Speaker, the Senator should allow me to inform her. She is creating the impression---

**The Deputy Speaker** (Sen. (Prof.) Kamar): Do you need information?

*(Sen. Halake spoke off record)*

*(Laughter)*

**Sen. Omogeni:** Madam Deputy Speaker, the good Senator is creating the impression that we are misleading or misinforming the House. What we have done is just to highlight what is in the Constitution of Kenya (Amendment) Bill, 2020.

On the issue of revenue, what we have highlighted to the House is the implication of the amendment that introduces Article 203(n), which seeks to introduce per capita policy in sharing of revenue. If you take into account the report that was given to us by the Parliamentary Budget Office (PBO), then there are counties that will lose money. Seven of them will lose a total of Kshs8.2 billion.

What we have given to the House is a direction implication on what will happen to the sharing of revenue among the 47 counties once the proposed Article 203 (n) is implemented. We have not in any way tried to mislead the House. We have just given the House facts as they are.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you Chair of the Committee. Sen. Halake, I will give you one minute to digest that information. You do not have to respond.

**Sen. Halake:** It is okay, Madam Deputy Speaker. I have digested because everything that has been given by my good friend and Chair is here, and I have read and re-read. That having been said, again, I do not understand from where I sit how the Chair

will know the counties that will lose five years later using the same criteria. If we apply that criterion as expanded, I am sure this House will ensure---

As I conclude, Madam Deputy Speaker, I thank the proponents for ensuring that certain aspects that had not worked in the Constitution of Kenya, 2010, especially regarding marginalized communities and women of this country--- We all know that the two-thirds gender rule did not see the light of day, but that is being dealt with. I thank the people of Kenya for ensuring that our Constitution is flexible enough to continually adapt to the changes we see in our country.

I thank you and support.

**The Deputy Speaker** (Sen. (Prof.) Kamar): We have had Sen. Seneta waiting online for a while.

Proceed, Sen. Seneta.

**Sen. Seneta:** Thank you, Madam Deputy Speaker, for also giving me a chance to add my voice to this important constitutional Bill. Before I go to the Bill itself, I just wish to note a few things here. As a country, we are in the middle of a pandemic; we are in an economic crisis. I thought COVID-19 is an issue that we should be discussing at the moment. However, a constitutional amendment is very important. Therefore, it is an important moment for us to add our voices as representatives of the people.

Madam Deputy Speaker, I will be very particular about the Bill. You will also allow me to read a few Articles. Allow me to look at the amendments. The amendment provides for 94 Senators, who will be elected to the Senate---

*(There was a technical hitch)*

**The Deputy Speaker** (Sen. (Prof.) Kamar): Sen. Seneta, we are losing you again. Can you come in the afternoon? Maybe you will be in a better place?

**Sen. Seneta:** Let me check my internet.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Now or in the afternoon?

**Sen. Seneta:** Possibly in the afternoon.

**The Deputy Speaker** (Sen. (Prof.) Kamar): We will allow you in the afternoon. Since you have used five minutes only, you will have 15 minutes.

Sen. (Dr.) Langat needs five minutes. Before I allow Sen. (Prof.) Kindiki, who is next, I would like to clear people with backlog, who got messed up with the system. Sen. (Dr.) Langat will have five minutes and then Sen. (Prof.) Kindiki.

Sen. (Prof.) Kindiki, are you on a point of order?

**Sen. (Prof.) Kindiki:** Madam Deputy Speaker, this is an important Bill. This House passed a Motion that each Senator should speak for 20 minutes. To my information, that decision has not been rescinded. Therefore, I beg that you allow us to debate. I cannot say what I want to say in five minutes. I heard you say that Sen. (Dr.) Langat will have five minutes and Sen. (Prof.) Kindiki will have five minutes. In any case, I was next.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Hon. Senator, if you were patient, you would have understood what I said. Can I repeat what I said? Last week you were not

here. We heard Sen. (Dr.) Langat for 15 minutes, but lost him, as it has happened with Sen. Seneta.

**Sen. (Prof.) Kindiki:** But I am next; he can speak after I finish.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Sen. (Prof.) Kindiki, you know the rules very well. We normally allow people with balances to finish first. We had people with backlog. We had started with Sen. Seneta. When we come back in the afternoon, we will allow her to finish. Sen. (Dr.) Langat went off after 15 minutes and has a balance of five minutes. Everybody has a right to speak for 20 minutes. We passed that at the beginning of this debate. Therefore, nobody will lose their time.

What is it, Sen. Linturi?

**Sen. Linturi:** On a point of order, Madam Deputy Speaker. I have heard you keenly. I am seeking your indulgence, so that we can manage our time as well. You have said that Members with balances will have the first opportunity to speak and exhaust their time.

Could you kindly guide us further, so that those that have not had an opportunity to speak to this Bill like Sen. Linturi, Sen. Kihika, Sen. Kinyua and others can excuse themselves and get back here in an hour or so? This is so that we are sure that when we come back, at least we will have an opportunity, rather than sit here up to around 1.00 p.m. Probably, we would be doing something else that is still beneficial to the country.

**The Deputy Speaker** (Sen. (Prof.) Kamar): What is your point of order, Sen. Kinyua?

**Sen. Kinyua:** Madam Deputy Speaker, I have heard my colleague, Sen. Linturi. He has asked for your guidance on when we will speak, yet we are paid to sit in this House.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you, Sen. Kinyua. You have answered your colleague. If the House rises when you are on the Floor and you have a balance of time, you will be given priority in the next sitting.

Sen. (Dr.) Langat, you have five minutes.

**Sen. (Dr.) Langat:** Thank you, Madam Deputy Speaker.

**Sen. Kihika:** On a point of order, Madam Deputy Speaker.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Do you have a point of order, Sen. Kihika?

**Sen. Kihika:** Yes, Madam Deputy Speaker. I have heard what you have said and do not want to argue, but seek an understanding. You have said that if one has a balance of time, they will be allowed to use all their time before we move to the next Member. Why did that not happen when we started at 10.00 a.m.? Other Members have spoken before him. He should have been the first person to speak. I do not understand how it applies now and not then.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Sen. Kihika, if you came in at 10.00 a.m., you may have realized that Sen. Shiyonga, who had a balance of time, was not the first person to speak. You cannot demand that the person who had a balance must be here when we start our sitting. There is a Senator who spoke before Sen. Shiyonga. It was actually Sen. Kibiru.

If you were here at that time, you must have realized that Sen. Kibiru spoke because we do not demand that the Member who has a balance has to be here when we begin the sitting though we respect the fact that the people who are here must be given a chance. Sen. Kinyua has put it right. We are all supposed to be here for us to take our opportunities when the time comes.

**Sen. (Dr.) Langat:** Thank you, Madam Deputy Speaker, for giving me the opportunity to complete what I was talking about last week.

A Constitution is an important document that guides development framework, ethos of a country, and also an instrument for good governance. Therefore, any amendment brought to it must be very important. My expectation to this instrument is that it should have been presented in a very utilitarian manner. I expected it to be designed in a useful and pragmatic way. To the contrary, it does not meet all those standards.

I will begin with the office of the Prime Minister. This is an important office that requires immunity and should not be open to abuse. You will realize that the office is under the mercies of the President. This office is not reliable; it is open to abuse. If the President gets into a 'handshake' with a friend, it will be easy for him to undermine this office or even get rid of it, unlike the current office of the Deputy President. The impeachment or removal of the Prime Minister and the deputies should be brought to the Senate, a House of reason, for this House to exercise justice and fairness to that office.

I am not convinced on matters inclusivity. I do not understand how the 42 plus tribes in this country have been captured in the executive position. I am not convinced and I think that what is captured is a sweetener that was created to convince people that the post-election violence always come as a result of lack of inclusivity. Post-election violence has been there because those who have been defeated refuse to accept defeat, and that is what should have been addressed.

I am also not convinced with the creation of the office of the Ombudsman in the Judiciary. That is a retrogressive action. This country has come a long way. This issue was addressed by the Constitution, 2010. From my reading, I have found that the Ombudsman's office and the Judiciary Service Commission (JSC) overlapped in most of their functions. The overlap creates a lacuna and conflict in the same office. My recommendation is that this Bill should have strengthened the JSC.

I am also concerned with the creation of other offices, which are burdensome to the taxpayers. The office of the Prime Minister and the two deputies, the office of the ombudsman and creation of the 70 constituencies are a grade up burden to the taxpayers. I would have wished that another robust Bill and amendment that will relieve the taxpayers be brought.

*(Sen. (Dr.) Langat's microphone went off)*

**The Deputy Speaker** (Sen. (Prof.) Kamar): Your time is up.

**Sen. (Prof.) Kindiki:** Thank you, Madam Deputy Speaker. These proposals help us to reflect about our country; where we have come from and where we are going. If you

ask people around this country on what is so fundamentally life changing in this Bill to make us pass it by all means possible before the next election in the midst of a pandemic, you will get blank stares. Nobody will tell you the reason BBI is so urgent, and that includes its top proponents.

Our Constitution will endure if every citizen is determined to exercise his or her duty set out in Article 3(1) to defend the Constitution. Therefore, I stand here today in defence of our Constitution as a patriotic Kenyan. It appears to me that the real intent of these proposals is to expand the positions of power at the extent of citizens and to negotiate post-regime political deals.

I respectfully submit that the attempt to water down one of the best constitutions in the world is not only illegal, but also null and void. It is my strong view that this is neither a parliamentary initiative nor a popular initiative. Those are the only two approaches by which a constitutional amendment can be initiated. It is neither of them.

Instead, it is a legal hermaphrodite unknown to our Constitution, having been initiated by the Executive with the unfortunate support of the Opposition. The people were roped in at the very end, in a desperate attempt to sanitize an illegal process.

Madam Speaker, this Bill aims at removing what the Executive considers as the inconveniences of the 2010 Constitution on the limits of the powers of the Executive. The implementation of these proposals will lead to higher taxes to cater for a larger Parliament and Executive. The potential of our Parliament is going to be 640 Members of the National Assembly and Senate theoretically.

This Bill is surprisingly silent on how to tame the fundamental problem of a high public wage bill in our country. How will I support a Bill that interferes with the independence of the Judiciary by introducing an ombudsman nominated by the Executive, vetted by Parliament to spy on Judges, intimidate and harass them, and claw back on the independence of the judicial arm of the State?

The Judicial Service Commission must always remain with a majority of commissioners coming from the Judiciary and not other arms of Government if we are to retain the independence of the Judiciary.

Madam Deputy Speaker, my conscience will not allow me to support a Bill that claws back on the democratization of the police by undermining police reforms that were aimed at transforming our police from a force to a service. I cannot countenance an amendment of this Constitution to neutralize the powers of the National Police Service Commission and concentrate those powers on the person of the Inspector-General of Police.

How does a right-thinking Kenyan lawyer of my stature support a constitutional amendment that removes the rightful role of trade unions, Parliament, through the Parliamentary Service Commission, and the civil servants through Public Service Commission, their right to nominate commissioners of the Salaries and Remuneration Commission?

There is zero mention or no attempt to deal with the question of the public debt, which is crippling this country. This country is on the verge of being wound up and

nobody is talking about it. Instead, we are talking about the Prime Minister and Deputy Prime Minister and more members of parliament.

I have heard people defend the 70 per cent of Gross Domestic Produce (GDP) debt burden in this country as sustainable; it is not. I have heard some cavalier mention of the debt burden in Japan, which is 250 per cent, Singapore at 131 per cent and the USA at 106 per cent, as examples why 70 per cent of Kenya's debt is sustainable. Nothing can be further from the truth than that.

Take the example of Japan. Ninety two per cent of the debt of Japan is domestic; it is not foreign. Much of Kenyan debt is foreign. Most of the debt for Japan is owed to the Bank of Japan, which is the equivalent of the Central Bank of Kenya, in form of government bonds. The interest rates are almost zero. The interest rates of our loans, which are mainly commercial foreign loans, are 7 per cent and 9 per cent.

Japan is a manufacturing giant and, therefore, that debt is cushioned by a huge export portfolio. One may want to ask: What does Kenya export? Japan's debt is also cushioned by the fact it is the largest creditor on earth with overseas assets and foreign currency to the tune of US\$3 trillion. What does Kenya own abroad?

This country is staring at bankruptcy, and very soon, we will be humiliated the way Sri Lanka has been humiliated to cede its port to the Chinese. Similarly, Zambia, our brothers down south, are being humiliated to release their international airport, the Kenneth Kaunda International Airport and their equivalent of KPLC to the Chinese because of the greed for loans. That is what this BBI should have been about.

I will not support this Bill because, among other things, the gains that are few in this Bill can be realized without even touching a single article of the Constitution. I will give you an example. Implementing just one Article – Article 10 - which we have refused to implement, will speak to the entire eclectic mumbo jumbo of legal amendments that we do not require.

Allow me to read Article 10 that speaks of the national values and principles of governance of our country, which binds every organ of State and every arm of Government whenever it is interpreting the Constitution, applying the Constitution or even implementing public policy decisions.

What values should guide public institutions? They are patriotism, national unity, devolution of power, rule of law, democracy, public participation, human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and the protection of the marginalized. Good governance, integrity, transparency and accountability and sustainable development is all we need to implement.

With respect to the 70 proposed new constituencies, I submit as follows: One, this is an illegal usurpation of the powers of the IEBC, which cannot be countenanced, unless there is an amendment to the Constitution, further to what we have at the moment. Two, the list in Schedule 2 is dividing Kenyans, and is actually a contradiction to the stated ideals of inclusivity in the BBI. Twenty eight counties will get new constituencies, while 19 counties will be left on their own. What message are we passing here?

I want to go on record that I have no objection to having more constituencies in any part of this country, but for Heaven's sake, Nairobi now has 18 Members of

Parliament, and you want to add 12 others. There will 30 Members of Parliament in Nairobi. Kiambu has 12; if you add six, there will be 18. Within the two counties of Nairobi and Kiambu, you will have 50 Members of the National Assembly, which is the size of some parliaments in some countries the size of Kenya. If that was the intention, why is Kitui not on the list? Why is Marsabit not on the list? Why is Tharaka-Nithi not on the list? Why is Wajir not on the list?

**The Deputy Speaker** (Sen. (Prof.) Kamar: Senator, there is a point of order from Sen. Sakaja.

**Sen. Sakaja:** Madam Deputy Speaker, I was initially enjoying the submissions by Prof. Abraham, who happens to have gone to a very good school, the Duke of York. However, is it in order for a lawyer of his stature, who happens to understand the principle of equality of the vote, to question why Nairobi with 17 should get more, when one constituency in Nairobi, with 400,000 people, is represented by the same person, yet in Tharaka-Nithi it is a quarter? It goes against the same principle that he is extolling as a legal scholar. Why is it a problem?

If you want to get a constituency, it does not mean that those who deserve should not get. You should lay claim as to why you should also get. We cannot have those who are underrepresented; 300,000 or 400,000 people with one Member of Parliament, and we are talking about equality of vote.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Continue, Sen. (Prof.) Kindiki.

**Sen. (Prof.) Kindiki:** I hope you held my time for two minutes.

**The Deputy Speaker** (Sen. (Prof.) Kamar): I do not know if we have something called 'points of argument' nowadays.

Continue.

**Sen. (Prof.) Kindiki:** The Senator of Nairobi did not listen to me. I have a lot of respect for him. He came to the school I went to 30 or 40 years, thereabout, after I left.

Madam Deputy Speaker, I said that I have no grudge against any part of the country getting a new constituency. I just asked why it is not North Horr constituency, which is the size of central Kenya, western and Nyanza combined. Unless you want to tell the people of North Horr that they are not Kenyans, we will not understand this proposal.

Madam Deputy Speaker, the timing is wrong. With the Covid-19 pandemic and an economy in shambles, we do not need these amendments. A faithful implementation of this Constitution will cure all the ills that have been denied by so many people.

I have heard people talk about there being a constitutional moment in this country. There is none. In my humble view, a constitutional moment would exist when there is a general and near universal convergence of opinion among the general public that the amendments are not only necessary, but also in the public interest. These amendments are neither necessary nor in the public interest.

Many of the provisions in the BBI Bill are laughable, to say the least. We are amending the Constitution to make Kenya compliant with the regional integration issues. Should we need to? Article 2(5) that provides that the general rules of international law shall from part of the law of Kenya is the avenue to use to reach these desired

amendments. How do I support an amendment to include duties and responsibilities of the citizen? Just implement the African Charter on human and people's rights, which Kenya ratified in October 1981.

How do you support amendments to strengthen Chapter Six and fight corruption, when we have 12 Acts of Parliament speaking on corruption, and corruption has tripled in the period?

We are only creating a larger Parliament and Executive and entrenching exclusion by saying that once we have representatives of two or five of the 44 communities of Kenya represented in the National Executive, then there will be stability, and the rest of the 39 are left to their own devices.

I have seen a curious amendment. I will speak to two things because I can see I have five minutes. First, the danger we are creating by deleting Article 123, which speaks to the question of decision-making in the Senate, will live with us for the next two centuries. Many people who are proposing that the Senate now becomes a one Senator-one-vote matter do not understand the fundamental differences between the National Assembly, which is wired ideologically as a majoritarian House, and the Senate, the upper House which is supposed to balance between the interests of the nation by equalizing counties, irrespective of population and size.

Upper chambers around the world exist to only perform that role. As much as we are pushing for One-man-One-Shilling, we should not lose the nation. That is why in this House, Lamu with its two constituencies has one vote and Nairobi with its 18, has one vote. Unlike in the National Assembly, this is an ideological issue. I am ashamed that my colleagues Senators can sit here and supervise the massacre of devolution and this House.

We are now going to have 94 Senators. The extra colleagues who are coming on gender issues will have no work. This is a House of devolution. Remain in the National Assembly and do affirmative action programmes. What are you coming to do here that the elected Senator per county cannot do? We are a House of equity, devolution and balancing the units and the center.

Madam Deputy Speaker, finally, I remain of the respectful and firm view that BBI and its proposals to amend the Constitution are the unpleasant result of an unfortunate process aimed at settling political scores. All the proposals can be effected without tampering with the Constitution by faithfully implementing the Constitution---

**The Deputy Speaker** (Sen. (Prof.) Kamar): There is a point of order from Sen. Nyamunga.

**Sen. Nyamunga:** With all due respect to the Sen. (Prof.) Kindiki, what is his insinuation of the women who will be elected to this House as the county members? Does it mean they will not add value to this House?

**The Deputy Speaker** (Sen. (Prof.) Kamar): Sen. (Prof.) Kindiki, you have two minutes remaining.

**Sen. (Prof.) Kindiki:** For that reason, I will ignore the question because it is not relevant to what I said.

I conclude with a message to the people of Kenya. I have lived long enough in this country and know what is likely to happen when this Amendment Bill is presented to



you in the referendum. By fire, by force, this process may go on with or without what we have said. For Kenya, our dear country, to advance from where we are, the people must learn to be the rightful masters over all the three Arms of government and the organs of state: The Legislature, the Executive and the Judiciary.

Therefore, the people in the instant case ought to overthrow not the Constitution, but the men who seek to pervert the Constitution. Wherever they are holed up, smoke them out, overthrow them and defend the Constitution.

Madam Deputy Speaker, this afternoon, on the Floor of the House, so that I, Kithure Kindiki, Senator of Tharaka-Nithi, will be found to have stood on the right side of history when it mattered; at a time when our country is going through unprecedented difficulties, I will be on the people's side and stand on the right side of history.

I oppose this Bill in totality.

### ADJOURNMENT

**The Deputy Speaker** (Sen. (Prof.) Kamar: Hon Senators, it is now 12.30 p.m., time to adjourn the House. The Senate, therefore, stands adjourned until today, afternoon, 4<sup>th</sup> May, 2021 at 2.30 p.m.

The Senate rose at 12.30 p.m.