

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

*(Convened vide Gazette Notice  
No. 4005 of 26<sup>th</sup> April 2021)*

**Thursday, 29<sup>th</sup> April 2021**

The House met at 2.30 p.m.

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

**PRAYERS**

**Hon. Speaker:** Nominee 001, I am sure you were tempting heavens when you whispered you think there is no quorum. The Communication is not ready. I am still working on it.

**PAPER LAID**

**Hon. Emmanuel Wangwe** (Navakholo, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Expenditure Estimates for the Financial Year 2021/2022 and the Medium-Term from the Judiciary and the Judicial Service Commission (JSC) and related documents as follows:

- (i) Programme Based Budget.
- (ii) Programme Performance Report for the Financial Year 2017/18 to 2019/2020.
- (iii) Medium-Term Expenditure Framework Budget Report for the Financial Year 2021/22 to 2023/2024.

Thank you, Hon. Speaker.

**Hon. Speaker:** Very well. Next Order!

**BILL**

*Second Reading*

THE CONSTITUTION OF KENYA (AMENDMENT) BILL

*(Hon. Amos Kimunya on 28.4.2021 – Afternoon Sitting)*

*(Resumption of Debate interrupted on 29.4.2021 – Morning Sitting)*

**Hon. Speaker:** Member for Kilifi North what do you want to say.

**Hon. Owen Baya** (Kilifi North, ODM): Thank you, Hon. Speaker. We are discussing an important Bill and the experience in the morning of 15 minutes for each Member was quite a lot of time. Many Members are looking for an opportunity to speak. So, I would like to request that we reduce the amount of time to 10 minutes, so that everybody gets an opportunity to contribute to this important Bill. We would not want to have only a few people contributing. I would like to ask my fellow Members to reduce the time to 10 minutes so that everybody has an opportunity to contribute to this Bill.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Duale, what is it?

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I think Members need to follow the procedure. This matter should have been raised at the time when the Leader of the Majority Party was moving. It was set out through a Motion. This is not a market place where you can stand up and say you want to change the rules of the game. The Motion said ordinary Members will have 15 minutes and this was not changed. So, let us continue and protect the procedure of the House.

**Hon. Speaker:** Hon. Members, all you need to do is to look at Standing Order No.97. Indeed, what Hon. Duale has said is correct and that is the procedure. As you can see, we will engage in another one hour of debate on whether we should reduce time. In any event, according to my own observations, except Hon. Otiende Amollo who took all his 15 minutes, the Leader of the Majority Party had a balance of about six minutes of the time he was allocated, the Leader of the Minority who seconded also had a balance of about 3.53 minutes. Many of you who have spoken are using about nine minutes and others 12 minutes. I remember the Member for Mathira spoke for six minutes. You do not have to spend your entire 15 minutes if you have nothing to say. You know, in our Standing Orders, it is actually out of order to be tediously repetitive and say this one was called a goat, the other one was called a sheep, the other one was called a he-goat and the other one was called a she-sheep, and things like those. So, you can always try to organise yourself, so that if you just want to say: "I support fully what was said by so and so and to that, I want to add the following." This is so that you do not have to say: "This one was called Nairobi. Nairobi is the place of cold waters. The Maasai lived in Nairobi. When they were chased out of Nairobi, they left the name Nairobi." Hon. Sankok can easily tell you that.

Hon. Members, what I am trying to say is that the point being made by Hon. Owen Baya is not a mute one, but I think it is up to us to also utilise time in a way that is adding value to the process. As it is now, the 13<sup>th</sup> Member who was on the Floor is Hon. Chris Wamalwa who has a balance of 12 minutes. Proceed. I confirm there are now 77 requests.

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD-K): Thank you, Hon. Speaker, for this great opportunity. The Bill at hand is historic. It is an extraordinary Bill and this can be demonstrated from the attendance in the House. Before 2.00 O'clock, we already had quorum in this House. This tells you how serious this Bill is. If it is possible, we can extend its debate time even up to next week, so that Members can have time to deliberate on this matter. I am sure that wherever our constituents are, they are watching this debate. They are following. A time will come when the people of Kiminini will check through the *Hansard* to see what their Member of Parliament said. The same applies to my brother from Homa Bay Town.

As I move forward, one of the critical things I want to say is to quote the famous words of the great Pan Africanist, Kwame Nkrumah. Kwame Nkrumah was the first President of Ghana and this is what he said: "First, seek ye the political kingdom and then the economic kingdom will follow." This Bill partly focuses on solving the political issues. I have no doubt that if the political

issues are sorted out, the economic issues will follow. The same Kwame Nkurumah said that the forces that unite us are intrinsic and greater than super imposed forces that keep us apart. We must unite. One of the great proposals contained in this Bill is that cabinet secretaries will be appointed from the Membership of this House. At the moment, we are experiencing the presidential system. Some of the democracies that have grown, like Singapore, have been using a parliamentary governance system. This Bill proposes a hybrid governance system. Cabinet secretaries will be appointed from the Membership of this House. I have no doubt that if some of the brains that we have here today make it back to this House next year, God willing, they will be cabinet secretaries. The Bill also provides for assistant cabinet ministers. I have no doubt that those who will not become cabinet secretaries may become assistant cabinet secretaries. This Bill will go a long way in terms of resolving the problem of inclusivity.

When it comes to the issue of representation in this House, some of us have been asking questions. It has been a big problem for cabinet secretaries to come to this House and answer parliamentary Questions raised by Members, who are the representatives of the people. As Article 1 of the Constitution says, this country's sovereign power belongs to the people. It can be exercised directly by the people or through their democratically elected leaders, who are seated here today. We have been frustrated many times. I have raised a Question on insecurity in the area I come from, but six months down the line, it has not been answered. When the time comes for it to be replied to, the cabinet secretary does not show up. The passage of this Bill will return cabinet secretaries to the House. They will be sitting with us here and we will be working together as colleagues. Some of the issues that take one month to be resolved will be resolved within even a week or a day. So, this will be a big plus for Members of Parliament.

Another important proposal contained in this Bill is to increase the allocation of sharable revenue to the counties from 15 per cent to 35 per cent. This is a big plus. Some Members have correctly argued that counties are already almost receiving 35 per cent of the sharable revenue, but that new percentage is not anchored in the supreme law. This Bill seeks to anchor 35 per cent in the Constitution. With such development, we can be assured of having development in the counties. It has been argued that resources follow functions. If you look at the Fourth Schedule of the Constitution, you will see that so many functions have been devolved to the counties, but there is a complaint that resources have not followed those functions. This Bill seeks to resolve that problem by increasing the resources that will be following the functions to the county level. So, we do not expect the issue of lack of resources in the counties to persist. The governors have to operate. We do not expect any excuse from them. It goes without saying.

This Bill is good also for the MCAs as the county executives will also be appointed from the county assemblies. It is high time we harmonised the academic qualification issue as contained in the Elections Act. Hon. Speaker, I have been sent to you by the great MCAs from my region and the matter is on your desk. Maybe, this House will decide because the Constitution is very clear that this House will determine the academic qualification that should be possessed by MCAs and Members of Parliament. We have only 14 months to the next general elections. I know there are those who are in universities. Unfortunately, because of the Corona pandemic, they may not have completed their studies. We wish them well as we move forward.

The hybrid system of governance is the best way to go. Wherever you go in this country you find that the only development that has been realised in every small villages is courtesy of the NG-CDF. The NG-CDF is the only Fund you find everywhere. You do not have to be in the Government or in line with the governor. The NG-CDF assures development for all Kenyans, but what is happening with the other funds? This is the first time the NG-CDF is being anchored in

the supreme law. We have gone through courts of law. We have suffered so much. Some judges do not know the importance of the NG-CDF. People from poor families, and some who have been orphaned, have gone to school with the support of the NG-CDF. If you go to Kiminini Constituency, you will find that I have put up some storey buildings. I have improved the education infrastructure using the NG-CDF. The NG-CDF has done wonders. Now that it is being anchored in the supreme law, the days of the busy-bodies who have been running all over trying to stop the NG-CDF are numbered. The passage of this Bill will guarantee the existence of the NG-CDF, from which people will continue to get services and assistance without having to seek favours from anybody.

Hon. Speaker, this Constitution of Kenya (Amendment) Bill is introducing further devolution with the ward as the smallest unit of devolution. Creation of the Ward Development Fund has been provided in this Bill. The MCAs, wherever they are, should know that once this Bill is approved, there will be the Ward Development Fund that will be managed by the people in each ward. If you want to build a small dispensary or fix some minor issues on a road, the Ward Development Fund will be there to assist. What else do you want, Hon. Members, if these funds are going up to the ward level? There is assurance of development. What else do you expect? Of course, the document cannot be 100 per cent perfect, but it is more than 50 per cent perfect. I urge the Members who are here today to appreciate that if we want to be assured of development, this document has all the solutions. It might not be the best, but it has the solutions.

As I move forward, I want to briefly discuss the issue of the Senate. We have had a lot of sibling rivalry with the Senate. The sibling rivalry is no more. This document demonstrates that the National Assembly is going to be the upper House because the Executive is going to sit here. This is my own interpretation. You can choose to interpret it differently. We are going to have cabinet secretaries and the prime minister sitting here, and so, it goes without saying that this will be the upper House. We are, therefore, going to have a high breed system of government. With the Executive sitting here, there is no way we can vet our own. We support that, because cabinet secretaries are going to sit in this House. Anything that needs parliamentary approval will go to the Senate. I know some of you may want to go the Senate. If you go to the Senate, God willing, you will have vetting powers.

One of the contentious issues in this Bill is the Ombudsman. The Ombudsman will be vetted by the Senate. Those of you who will go to the Senate, please, be firm, so that the independence of the Judiciary shall not be tempered with. We do not want to go back to the old days. Clause 43 of this Bill is where we have issues. The independence of the judiciary should not be compromised. Clause 43 says that they will receive complaints against the judges, investigate, discipline the judges by warning, reprimanding or suspending a judge. In our current Constitution, there is a right to be heard. A complaint is there, a tribunal will be set, then a respective judge has to appear before the respective tribunal for him to be heard. We strongly feel that it is unfair because we are not seeing an opportunity to be heard. We can have malicious people who will come up with an excuse or complaints which are not justifiable. So, maybe as time goes by, in case we operationalise this, and since I was looking at enabling legislations which will come after one year, we will be amending this, so that we are very clear on how to guard the independence of the Judiciary, so that when the Ombudsman comes in, there should not be conflict of interest or any interference with the independence of the judiciary.

The other critical issue is on constituency boundaries. We have some constituencies with eight wards and others have three wards. When it comes to the NG-CDF, we get the same amount of money. That is not equity. Equity means that you must get a rightful share. That is not equity

at all. Hon. Eseli was trying to come up with a law on this. It is very unfair. A constituency with a high population gets the same amount of the NG-CDF with another with low population. If you look at Article 89 of the Constitution it states that boundaries should be reviewed, not less than eight years and not more than 12 years. Since the 2010 Constitution, this is the right time. The BBI did the right thing to make these proposals. However, they should not have proposed where these constituencies will be domiciled. This is the Constitution. This is the work of the IEBC. It is the one responsible when it comes to matters of delimitations of boundaries. I am happy this was picked out. I represent Ford-Kenya and I presented this proposal to the secretariat. If you look at this document, you will see that FORD-Kenya has heavily been quoted and cited because as a party, we strongly feel that the IEBC is the one responsible for delimitation of boundaries. Many people have talked about Nyeri not having extra constituencies. If you go to Nyeri, there are so many protected constituencies like Othaya and Mukurweini. We do not have protected constituencies in other areas. So this is a give and take and it is an issue that we must balance. When it comes to Trans-Nzoia, we are supposed to have about three new constituencies. I thank God we have two. We will receive them, but we will demand for more when that time comes. I am humbly requesting Hon. Members today to look at the objectivity of this document.

*(Applause)*

**Hon. Speaker:** Well, that is a true and serious politician. I just want to challenge ourselves that it is just the end of last week that we saw the results of the recent census in the United States bringing their population to about 331 million. By keeping with their own Constitution, they have to do boundaries delimitation. Fortunately, in their country, the House of representatives is fixed to have only 435 Members and, therefore, boundaries delimitation includes the principle of re-districting, which means some States will have the number of electoral districts reduced and others like Texas are going to have an additional two electoral districts. It is done scientifically. I wish it was possible in this country. You just deal with what makes sense. Like Hon. Wamalwa has said, eight wards in one constituency and three for another. Even as you say that, I would want to challenge ourselves to look at the provisions in the Sixth Schedule in the current Constitution and more particularly Section 27 in regards to the instructions given to the defunct IIBRC, after the passage of the 2010 Constitution and compare it with what we are discussing. Food for thought for those of you that are excited by that particular subject. It is important.

Hon. Ochieng', you have the Floor.

**Hon. David Ochieng'** (Ugenya, MDG): Thank you very much, Hon. Speaker. I want to express my gratitude to the two Statesmen who came up with this idea that they will try the promise of our Constitution by improving it when necessary. The promoters of this Bill went out of their way, under very difficult circumstances. No one imagined that the former Prime Minister, Hon. Raila Amollo Odinga, and His Excellency the President, Hon. Uhuru Kenyatta would shake hands and agree on a single path forward. This is commendable and we congratulate them for this singular achievement.

I will speak to this Bill in three major topics, the process, the provisions of the Bill, then I will give my recommendations going forward. The Bill and the handshake had very good intentions. I was out of this Parliament when the two gentlemen shook hands, fighting my way back in. When I came back, I found a House that was so divided. A House that had been chunked into a BBI and anti-BBI. A House where Members singly and in their own opinion decided that this is a BBI proponent and this one is a BBI opponent. For about two years now, this House has

been divided that way. I am happy this whole division has finally come to an end by this Bill coming. I have witnessed the blackmail and the intimidation that Members of this House have gone through when this process was going on. Some of them have lost their leadership positions. You go to a cabinet secretary and they ask you whether you support the BBI or not. The process which we have gone through to reach here today has been in my opinion quite treacherous. That is why I am very happy that this House has a chance to speak to what is in the Bill. Kenya should not go through a similar process in future, where a process for changing the Constitution divides this country to a level where, in Parliament, a Member will look at you based on what he perceives. There is a book done by George Orwell called 1984, which says that the State can look at you like this and it will already know what you are thinking. The State can look at you and know that this one is this way. That is why when this whole process was going on, it was very difficult to be a Member of Parliament. They would look at Ochieng and say he does not support Raila, therefore, he supports Ruto, hence, he opposes the BBI. This is what we have gone through as Members of Parliament. I am happy this is coming to an end because Members cannot be asked to check their minds every time they want to talk on an issue.

So, in future, in my opinion, this kind of processes, especially for Members of Parliament, should be such that they know it will all end up here the way it has ended up here today. We have our chance to do this. We have heard Members of Parliament being arrested. This happened during a very difficult situation of the pandemic. This Parliament is seen to be insensitive because we are giving too much energy to the BBI than to other pressing matters. That is why the sooner we deal with this matter the better.

Hon. Speaker, on to the substance of the Bill, this country, since 2002, has gone through so many reforms; legal reforms and even opposition reforms. We are looking for that totem pole. We are looking for that silver bullet that will help this country move forward. If there is any country that has so many laws that are not legislated, it is Kenya. So, the BBI has been brought forward as one of those silver bullets. I do not think so, but, at least, I know it has some provisions that, if followed well through, could help this country chart a new path to prosperity. That is why I support what appears in Clause 3 about the economy and shared prosperity.

It is not hyperbole to say that in this country the reason people fight for the presidency very hard is that they think that when you are President, your region will benefit and when you are a prime minister, your region will benefit. Clause 3 talks about shared prosperity. From what is provided there, it means that the resources of this country will be shared equitably going forward. It will be shared with a view to ensuring that if somebody is hungry in Turkana, the person in Ugenya feels hungry too. If someone is hungry in Mombasa, the person in Nyeri feels hungry too. That is what is meant by shared prosperity and shared failure, so that we share our pain together, our happiness and our growth. This is important because we are talking about ensuring development in this country.

We have failed this country, as Parliament, in the last ten years with this new Constitution. We have given out our power over budget to the Executive. That is why you see us, Members of Parliament, lobbying with cabinet secretaries yet we have the power to make the budget. If you talk to Members, they will tell you the way the Cabinet Secretary for Finance and National Treasury said this, the Cabinet Secretary for Agriculture, Livestock and Fisheries said that and yet we have the power here. We have the power to ensure that this country's resources are shared across the board equitably through budgetary allocations. That way, we can ensure that we grow together as a country.

Hon. Speaker, I am going to propose an amendment after this Bill goes through to ensure that we have systems of ensuring that budgetary allocations and resource allocations are given out equitably to every region. It will be requiring that the CS for Finance and National Treasury, before he brings the budget to this Assembly, must tell us how that budget meets the requirements of Clause 3 of the Constitution. How does it promote our economy? How does it promote the idea of shared prosperity? How does it ensure that the whole country benefits so that we can grow together?

Hon. Speaker, the Bill talks about the responsibility of the citizens. If you allow me, let me use the word *uzalendo*. It means patriotism. It is the love for your country to grow and be a place that you are proud of. For the first time, we are going to have, over and above the duties of the State, the citizens bearing the responsibility to ensure that we move forward together as a country. I would use this example: I hear most of the time people say that the community from where I come, namely, Luo, have fought so hard for this country. It is said we have fought so hard for the change in this country yet at the end of the day, we are marginalised. When people are called out to go for reforms, say, in Eldoret and they are ten of them, you can be sure six of them are Luo. If ten people die in Mombasa, you can be sure six of them are Luo. We are now saying that every citizen should - I heard Members talking about ensuring that we all have a duty to protect the Constitution - know his or her role, duties and rights to ensure that in future, it is just not two or three people on whose backs the responsibility rests. It is quite important.

The two gentlemen said that, in the handshake document, they realised that for this country to grow, they have to cede some ground. They have to cede some of the things they would have loved to do. We have put the growth of this country on the backs of very few people, namely, party leaders and tribal kingpins. We want this now to be a shared responsibility for the citizens. The growth of this country is something that all of us are proud of and should participate in without problems.

Hon. Speaker, Clause 6 is about fighting corruption. It is about court cases being handled in a timely manner. This is a matter that is close to my heart. This country is bleeding. People are dying in this country and cannot get services because of corruption. Nothing else! Children cannot access schools. People cannot get medical services. People are going hungry because of corruption. For the first time, we are saying that court cases must be finished within a fixed period of time. I dare say that we may need, after this goes through, as an Assembly, to ensure that we put stricter measures.

I have always joked that I respect the law. Yes, if I became the President tomorrow, I can assure you that a couple of men will have to die. We cannot have people stealing. They are disturbing the country. They have bought the courts and everywhere. If I were the President and tomorrow someone stole money, I would send them to the airport and kill them along the way. I would not allow them to leave. We have a country where we know who is stealing from us. We know who they are, but they come on television to tell us how they are not thieves. They will not live in my regime! I can assure you. If there is a High Court judge or a Supreme Court judge who is taking money from litigants, I will kill him. If it is a Member of this Assembly, say, a committee chairperson, who gets money from ministries during oversight, I will kill him, so that we have a proper country that is clean enough. We cannot be claiming that we want to be clean and yet we are doing deals with ministries here and there. We need to deal with corruption. We cannot talk about corruption and hope it will go away. That is why this provision is very important.

I hope the judiciary that we are strengthening and giving too much money will take the cue. We cannot have a judiciary where cases take 10 to 15 years in court to be determined. We

know someone has stolen money, or you can clearly see that this hotel was bought using corruption money and the guy is still standing around town saying the way he wants to run for governor or president! This has to be dealt with! That is why I support this particular provision in the Bill.

Hon. Speaker, part of the reason why the two gentlemen came together was to ensure that we have something to deal with electoral theft. In this country, there is something that is creeping into our politics, what I would call electoral authoritarianism. This is where we do elections, but we know the results already. We are going to an election and we know that so-and-so will win and so-and-so will lose. We cannot build a democracy by spreading fear and rumours that the deep State wants so-and-so or the system wants so-and-so. We must build confidence in our institutions. We must build confidence in our electoral process. That is why the provisions in this particular Bill as relates to making sure that our elections are transparent, more inclusive and allows Kenyans to elect their leaders, are very important. We must support them, especially where they ensure that women are involved in elections without being asked to be nominated as long as they run. Centering the IEBC to ensure that it has teeth to organise more transparent elections is important.

What is most important is the mind-set of the public or the software of the public being able to understand that if you pick a bribe from a politician to elect him, you get that kind of a politician. You should listen to policies of politicians and elect them based on their manifesto. That is why we spend money in building political parties so that the parties we form are everybody's platform where parties and leaders can project their voices. Kenyans should understand why a party is good and why a candidate wants to run for, say, President, not how much money is given to them. Sometimes I listen to Kenyans and I wonder what kind of leaders they want. If someone comes to you with a good policy framework, tells you what they will do if they become this or that, if he does not have money, then you tell him no, this is not going anywhere. So, this is an area where it is not for Members or governors. It is about our citizens being able to know what is good for them. They should not be waiting for handouts and saying this one has given Kshs1,000 and so, we will elect him, and the other has given us Kshs200 only, so, we elect him. If we are going to have a good country that we all belong to and hope can become like Singapore, then we must elect good leaders. We cannot hope to grow by electing people we know are thieves, did not go school and have no ideas when it comes to offering solutions.

We talk about re-engineering our country; the rebirth of the country. How do you rebirth the country if you have a civil service that has been there for the last 40 years? It is a bureaucracy that is so rotten such that anybody who comes in knows how to capture you. It cannot grow. We cannot solve problems of the 21<sup>st</sup> Century while having a public service of the 19<sup>th</sup> Century. As we reform our electoral system, we must also reform our public service to ensure that it is in tandem with the future of the country.

Let me talk about representation. One song that has been going on for a while now in this country is that we are over-represented. We have too many representatives, Members of Parliament, Senators, MCAs and governors. That has been the song. In Luo where I come from, we say that when the mongoose touches the chicken, you chase the mongoose, but you also blame the chicken. There are very good things in this Bill. However, there are areas where we must blame the chicken as well. I do not see the rationale for increasing the membership of the National Assembly from 290 to 360. There is a provision in the Constitution that will result in endless numbers of MPs because if you do not get the gender balance, you will have to add more numbers until you reach that provision. This House is now unlimited in number. There could be 600 people in this House in the next Parliament.

Clauses 10 and 13 that talk about an additional 70 constituencies are ill-conceived and must be reconsidered. Even if they have to remain, two individuals cannot decide how many constituencies will be created. They do not have the tools and systems to do that. The IEBC has a system of ensuring that the numbers of people and the geographical requirements are met, but not the two individuals who promoted this Bill.

With the Youth Commission proposed in this Bill, the youth must ensure that it serves them. It should not be a place for employing people, but one that ensures that their issues are covered, not just at the national level, but at the ministries and the county level.

I thank you and hope that provisions on financial cases are handled to ensure that we move forward as a country. I support the Bill.

**Hon. Speaker:** Let us have the Member for Mwea.

**Hon. Josphat Kabinga** (Mwea, JP): Thank you, Hon. Speaker for giving me the chance to contribute to this very important Bill.

This is one of my happiest moments. Since I came to this House, I have been complaining about representation. I have been complaining that I have a constituency that is too large with eight wards and 237,000 people getting the same resources as constituencies with three wards. I am very happy that we are heading towards correcting that particular situation. For that reason, I support this amendment Bill.

The journey towards this particular Bill is well-known to most of us. A number of us have decided not to acknowledge where the country was when this particular thought came about. In 2017, when the current President, Uhuru Kenyatta, was elected and the Right Honourable Raila Odinga was sworn in as the people's president, that was a tempting moment for the President. He had two options. He could either let it go and think of how to come up with a solution to the same or send troops, the Kenya Defence Forces (KDF) and the police to Uhuru Park to scuttle the meeting. You can imagine what would have happened that day. The President, in his own wisdom, chose not to go the violent way.

He started a journey from there. The journey was about making use of Article 131(2)(c) to bring peace and harmony to this country. In his own wisdom, he started a journey of stretching out his hand to Right Hon. Raila Odinga to ensure that this country settled and got the peace that was much needed at that time. That was the solution provided by the President of this country. People who oppose the same - and they are here with us - have never attempted to tell us what would have been the best solution. They only criticise the same. They say it should not have happened, but have never told us what would have been the solution to bring peace to this country. As a man of peace, I thought that was the best and most welcome decision by our President then.

The journey continued and we had eminent men and women, including the late Senator Yusuf Haji, God rest his soul in peace, who spearheaded the process of coming up with this document. Some of us who were interested followed it up step by step. Some in this House decided to ignore it from the word go. They ignored it until the Bill came up. This is a great moment. I am seeing some faces that are very rarely seen in this House. I have heard voices of people whom I have never heard since I was elected. This is an indicator of how important this particular Bill is, and we should all embrace it.

I want to go straight to what I see as the Article that people are misusing and confusing our people out there. That is Article 89 that touches on constituencies. The promoters of this Bill, in their own wisdom, proposed to add 70 constituencies to this country. That was their proposal. The same promoters, in their own wisdom, decided to come up with a scientific, and not a political or

hypothetical formula, that anyone can apply to his own county and see whether he was marginalised, left out or ignored.

The promoters of this Bill looked at the Population Census of 2019. Kenya was said to have 47.6 million people. If you then take the constituencies that were added, that gives you 360 constituencies as proposed. If you take 47.6 million divided by 360, you will get a figure of about 135,000. That becomes the modal constituency population that the promoters came up with. You would then look at the population in your own county and divide it with that figure to see how many constituencies you are supposed to have. I have taken time to look at a few counties using the same formula and I have confirmed that whatever is being proposed in this Bill conforms with the scientific formula. My own county has a population of 610,411. If you divide that by 135,000, you will find that we are supposed to have 4.521 constituencies. Those that did Mathematics would round up that figure to five constituencies.

Hon. Speaker, we have four constituencies currently. It is proposed that we will have an extra constituency. Murang'a County has a population of 1,057,000. If you divide it by 135,000, you will get 7.83. That gives you eight constituencies. They have seven constituencies. One more is proposed to be added. People are complaining that Kiambu County will get more constituencies because the President comes from there. This is a misconception and confusion that is being created by people who do not want to face facts. Kiambu County has a population of 2,418,000. If you divide that by 135,000, you will get 17.91 which round up to 18 constituencies. They have 12 constituencies. It is being proposed that they will get extra six constituencies. This is a scientific method, but not political or hypothetical.

We were told in the morning that Nyeri County will not support this particular Bill because they do not have an extra constituency. Leaders who are expected to lead or give direction have chosen to mislead and incite their people, so that they can throw away a very important document.

*(Applause)*

The population of Nyeri County is 759,164. If you divide that by 135,000, you will get 5.62. If you round up that one number, you will get six constituencies. Nyeri County has six constituencies currently. This Bill then says that they cannot get any other constituency. According to their population, they are supposed to have six constituencies. That is what they have. Nyandarua County is another place where some leaders are also confusing their people deliberately. It has a population of 638,289.

**An. Hon. Member:** What about Mwea Constituency?

**Hon. Josphat Kabinga (Mwea, JP):** If you divide that by 135,000, you will get 4.7. If you round up that figure, it comes to 5 constituencies. They already have five constituencies. They cannot get another one. Leaders in this House want to mislead people. Get the population of your county and you subject it to that figure. If you are left out in these 70 constituencies, come up.

I can hear Members telling me to talk about my county. I am a nationalist. I am talking about Kenya, but not Mwea Constituency, Kirinyaga County or Murang'a County. I am talking about Kenya and how this formula was subjected to arrive at the constituencies that we have. We will go to the constituencies of those Members who are shouting here and telling me to talk about some counties. We shall tell people the truth. We shall tell them that this is scientific, but not about politics or hypothesis. We know that.

Constituencies were added in this country in 2010. We ended up with some constituencies with three wards and others with eight wards. This is what we are trying to correct. Progressively,

we will one day have model constituencies which will be equal and share resources in the right way. We acknowledge that we have the geographical area to consider. This is why some of us are great proponents of the Equalisation Fund. We can use it to ensure that those constituencies that are disadvantaged by area are also catered for in other areas.

I look at Kenya where our businessmen and women, and farmers will be taken care of in future. I look at a day when our businessmen and women who sell things to the Government will not wait for payment until they are put into pending bills. They will be paid within 60 days. That will be a great moment in this country. I look at a country where the youth will be taken care of and considered. Some Members have talked about the suffering in the country which I acknowledge. I know we are considering this Bill at a time when we have an economic downfall and the Coronavirus disease. However, we must prepare this country for tomorrow. People have talked about not having a shilling in the pocket. The leaders here have talked about the same for the last three years. They have even forgotten that there is an improvement in coffee production. We continue to have reforms in farming and in the business sectors, so that Kenya can be different tomorrow. Leaders here live as if they do not see these things.

I look at a case where the youth in Mwea Constituency will no longer wait to get information from people in Nairobi on contracts nationally and in the county. They will have incubators where they can walk in. There will be youth centres where they can walk in, get information, fill in and participate in contracting like any other Kenyan. That is empowering the youth. Our people will have the required shilling in the pocket that some Members keep on talking about every time. They talk about it and walk out. Some of them do not even wait to hear what others will say. They talk about a shilling in the pocket and then they walk out and go to look for it. They do not stay here to listen to what some of us contribute.

It is a great moment for me. I support this Bill fully and wholly. Thank you, Hon. Speaker.

*(Loud consultations)*

**Hon. Speaker:** Let me not be part of the debate. I will deal with some of those things in my ruling. Hon. (Prof.) Oduol.

**Hon. (Prof.) Jacqueline Oduol** (Nominated, ODM): Thank you, Hon Speaker for giving me the opportunity to contribute to this Bill. I would like to start by thanking the Committee, leadership and all the colleagues who have contributed to this Bill.

As it has been indicated, this is a critical moment where I am particularly honoured to be a Member of the 12<sup>th</sup> Parliament after being nominated by the Orange Democratic Movement. I was nominated under the auspices of ensuring that we get the voice of those who are perceived to be marginalised. I know I am speaking to my colleagues in Parliament. I also know that as I talk, Kenyans are listening. Yesterday, we got a chance to honour a very respected Member of this Parliament who was the Chair of the Departmental Committee on Administration and National Security.

As I make my presentation here today, I would like to draw the attention of all Members of Parliament who acknowledged and honoured a great leader, politician and parliamentarian yesterday, to the fact that he put Kenya first. He had the sense to not only respect those with different opinions, but also to work with. I start by reminding all of us that when we are here, we are mortal beings. We are here for a while and we do not get the opportunity such that we have to be Members of Parliament at a critical constitutional moment to make a difference for no reason. As I make my presentation, I would like to indicate that I do so knowing that we are here as mortal

beings for just a certain period of time and that after a while, we are going to leave and we will be remembered for two things. We will be remembered for the problems we caused or for the problems that we solved. It is for this reason that from the onset, I support the Constitution of Kenya (Amendment) Bill, 2020. The promoters of the Bill seek to address issues arising from the implementation of the Constitution of Kenya, 2010.

Hon. Speaker, I had a moment to be observer No.36 at the Bomas as we sought to hear *Wanjiku's* voice and to see how to bring a difference. I thank God that I was an observer, but now I am in Parliament. Indeed, as all Members have said, I sit here not only on my own accord, but speaking and exercising authority on behalf of the public.

Therefore, as I support this Bill, I do so because the promoters clearly want to resolve issues of divisive elections. We can talk about leadership which is influence. We can talk about politics which is how we engage in activities to determine how we choose to govern our country, world and organisations. One of the key issues that has created great problems is divisive elections. On 17<sup>th</sup> November 2017, as a result of divisive elections, politics and manners in which we were bringing voters, youth, women and others into a very difficult moment, I was caught up in a situation where we had a very difficult time. It took us hours with the Rt. Hon. Raila Amollo Odinga to move from the airport into Uhuru Park in town.

So, as I support this Bill, I am aware that as a leader, there are times when you look at the needs and listen to what those who seek transformation want to be done and then determine what you do, be it within your reach or you do not find that what is excellent or that what meets their needs.

I know that as we look at this Constitution of Kenya (Amendment) Bill, 2020, we will see that in addition to the key issue of divisive elections that we are addressing and the question on how to ensure that we have shared prosperity, we will address issues of corruption. As we talk about devolution, then we not only have a situation where this is done in words, but where functions follow funds. We will then see that we have the whole important issue of the Ward Development Fund.

One of the key issues that I would like to speak to, as I thank the Committee - and I can see on Page 66 there is a very clear indication on how this Constitution of Kenya (Amendment) Bill is seeking to cure issues arising from the implementation of the Constitution of Kenya 2020 - is the proposed amendment to cure the unconstitutionality of Parliament emanating in particular from the manner in which in the National Assembly has not been able to meet the required two-thirds gender rule in the Constitution. This is an area that I would like to contribute to because as I indicated at the beginning, I am nominated in this National Assembly as a person from the ODM, but representing women.

Today, I can see I am going to get a chance to also be 001 as I talk about issues to do with women because Hon. Sankok has tended to be 001 and has not reminded people that he is dealing with persons with disabilities (PWDs). As I look at this issue, I want to draw the attention, particularly of the public, to see as a key issue of concern that we are talking about good values and good governance. We all would like to have representation, shared prosperity and look at the manner in which this proposed amendment Bill is looking at an issue that has continued to give us challenges of ensuring that those with leadership qualities to ascend even to political leadership and not to be excluded merely on account of their gender.

The Prime Minister of New Zealand, who is publicly and globally acclaimed as truly being a leader that is responding to the needs of all her citizens, is, indeed, a woman. I support what the constitutional amendment Bill is proposing to do because it is based on a long journey of having

tried many different avenues. I know we are aware that we are at an important constitutional moment.

It is true we need to look at the legal angle and that we need to use law as a system of rules which will be the basis of governing, regulating or ordering what we do in our country to achieve the desired result. It is clear that we do not want to exclude anyone from fulfilling their interest or rights merely on any grounds of discrimination. Our Constitution prohibits discrimination on any grounds, be it gender, youth, age or ability.

When I look at this constitutional amendment Bill, I am encouraged that having looked at the manner in which there has not only been a constitutional stipulation, but also a manner in which there has been demonstrated ability of those who presented themselves to the electorate, who have come to perform their role, it is in this constitutional amendment Bill that we would want to go beyond what we had before. This amendment Bill is seeking to give us practical tools, so that in a way, we are not burdening women with guilt and shame when the only way they can be seen to be in leadership is by form of affirmative action. I do not in any way say that affirmative action is wrong. I am grateful because I am a product of affirmative action.

However, it is important that we see the spirit of this Constitution of Kenya (Amendment) Bill that seeks to ensure that we do not get young girls and women imagining that the only way they are going to get into positions of leadership is by nomination. As I say this, I seek to clarify the misinterpretation and perception out there. This Constitution of Kenya (Amendment) Bill clearly indicates that as a country that has realised that there are challenges in the elections, intimidating language is used to discourage very capable stoic politicians from rising to be elected.

I do not need to emphasise that we have very many cases as we talk about divisive politics and electoral violence. There are many women who do not rise to take up positions because they are discouraged by the kind of politics and sometimes the position others present before them.

Contrary to what has been focussed on, that we are going to have a bloated Parliament, the Constitution of Kenya (Amendment) Bill, 2020 seeks to have women brought to Parliament as top-ups. It isolates political parties as a very important route in this regard. In the morning, our colleague, Hon. Mose, indicated that we would not want to force political parties to get women to positions they are not. If we look at the statistics and pick any political party, we will find that the gender that will be represented more, if one is looking for gender, is likely to be the female gender. The only challenge is that as a result of discrimination and many other issues, they tend not to rise to run for office.

I support this Bill because as we enable political parties to ensure that they observe the one-third gender rule, we will also be addressing issues related to corruption. The cost we are talking about is going to be handled and the most important representation will be wholesome.

With those remarks, I support the Bill.

**Hon. Speaker:** Member for Ndaragwa, you have the Floor.

**Hon. Jeremiah Kioni** (Ndaragwa, JP): Thank you, Hon. Speaker. I ask for permission to remove this mask just for a few minutes.

I start by saying a big thank you to the President and the former Prime Minister for the action they took almost two years ago. When we started talking about a new Constitution, some of us were fairly young and fear was sold to us. Whenever the issue of devolution was raised, we were told that *majimbo* was being re-introduced to the country and that those who wanted *majimbo* wanted the country to be cut into pieces. It went on and mistrust was also sold. We are here because of that approach. If only we had visualised the benefits that we are getting from devolution today and agreed to embrace devolution more than 20 years ago, where would this country be today?

Today, some of our colleagues have taken the old route of selling fear to Kenyans in terms of what is contained in the BBI Bill. I encourage them to have courage as good leaders who have been elected to represent their people and sit with others to negotiate what is right for one's area. In negotiating, it does not mean that one is weaker. It actually demonstrates that one has matured in leadership. That is what has been demonstrated to us by the President and the former Prime Minister.

When we were doing part of the 2010 Constitution, I was part of a delegation that went to Murang'a. We went to visit the late Hon. John Michuki and he was against Article 1(2) of the Constitution. He kept asking if we were sure we wanted to give sovereignty to the people, which they can exercise through elected leaders or directly. Eventually, he was persuaded by the President and he agreed to support the Constitution. What we are now worried about is what he told us to be careful about then, but it has come to help us because we now have a Bill before us that has been introduced by Kenyans who chose to exercise the sovereign power that is given to them by the Constitution directly and not through their elected representatives. It is a provision we had put in the Constitution knowingly. It was really pushed hard by those who were in the civil society then and the product of it is what we have before us today.

Many of us have made contributions that can find themselves in courts of law if we do not attempt to give an alternative view to those arguments. One of them is that this is a popular initiative and it is brought to us via Article 257 of the Constitution. Parliament is empowered or given the role of enacting legislation to give effect to Article 257 of the Constitution, but that power does not allow Parliament to take over. We cannot give ourselves power that is not enshrined in the Constitution.

There is also the issue of the role of Parliament in the Bill we have today. It is true and it has happened. Typographical errors can be dealt with so long as we do not change the form of the Bill or its contents in any way. Hon. Speaker, as you pointed out to us in the morning, this Constitution (Amendment) Bill has typographical errors, but those errors do not kill this document. They can be left if we think we are going to argue for no good reason.

There is the argument that some of the amendments are unconstitutional. There is nothing unconstitutional in what we are doing. You can always make a proposal to amend the Constitution and the proposal can never be unconstitutional for as long as it has been made by people who have the sovereign power, the Wanjikus of this country. So, whatever is before us cannot be unconstitutional because the sovereign power is with Wanjiku, and not with the Judiciary or Parliament or the Executive. It is important to point out that these are issues that were argued and one can always speak up on the cases that have been there. The issue came up with Njoya and six others some while back. We can actually see the rulings that have been made that early, that Wanjiku has the sovereign power.

It is also important to point out that we can pay attention to the way this Bill has been titled. It is titled as "Bill for Act to amend the Constitution by a Popular Initiative." It is not titled as "Bill for Act of Parliament..." because this is not an Act of Parliament. This is a Bill for an Act to amend the Constitution in line with the popular initiative. It is also important to point that out. It brings out the wishes of the people directly and not the wishes of those of us seated here today.

It is also important to say that we never bring amendments to an amending Act. It is important to know that we will be trying to implement what is contained in this Bill and once it is done, we do not revoke it, but it becomes a spent document always available for us to refer to. All that is contained in this document will be superimposed on the existing Constitution.

There is the issue of the referendum. Again, there are those who have argued that we needed multiple choices. But again, in the 2010 Constitution, we used one question which was a “yes” or “no”. So, we do not need to belabour that issue for too long.

There is the question of 70 constituencies. I must agree entirely with the presentation that was made by *Mheshimiwa* Kabinga. He made it easy for Kenyans to understand. They were not created arbitrarily. There is a reason. In fact, a formula was used. The promoters picked this because it is an issue that had been nagging many of us. I will want to deal with the aspect of the mandate of the IEBC. The mandate of the IEBC is not to create constituencies. It is to deal with boundaries. The mandate to create constituencies is with Wanjiku. Wanjiku has added 70 constituencies for the reasons that she has given. The IEBC now has the work of ensuring that the boundaries are cut out. That is the mandate of the IEBC. As *Mheshimiwa* Kabinga has done, he has demonstrated to us how those 70 constituencies were arrived at.

One cannot remove the power to do that from Wanjiku. When we had the protected constituencies, and Ndaragwa is one of them. Again, it was Wanjiku who said: Yes, we now have 290 constituencies. I think 27 of them were going to be extinct. Only that Wanjiku decided the 27 constituencies remain protected for X number of years, which was expiring around this year or next. Given the formula that has been put across, we thank God and we are happy. I can tell you that the people of Ndaragwa, the people of Nyandarua and elsewhere will be supporting this because we were to be part of the people who were going to cease having a constituency! With this amendment, we now have constituencies that are protected by a clause in the Constitution. We have a right as other Kenyans to continue enjoying the same.

Hon. Speaker, I do not want to go back to that issue because I was talking about it, that Kenyans can exercise the power they have donated to us directly. That is what they have done today. I think it is important for us to seize the opportunity when it comes our way next time so that we can propose some of these changes ahead of time.

It is important to know that the IEBC has no powers to create new constituencies. This is something that is contained in the Report that we have read. It has powers to determine where the boundaries will be only that it cannot create new constituencies as some people say. It is only Kenyans who can add new constituencies. They can align boundaries, but not create new constituencies. It is also important for Members to know that it is very difficult for the IEBC to align boundaries outside a county. So this has come to help us deal with an issue that was going to be a major problem to us as a country, namely: When does a population within a county meet the expected threshold? Now this helps us to deal with that aspect that was going to be problematic. I say this because we had sat with the IEBC and they had raised that as an issue that required the intervention of this House. Again, Wanjiku has decided to do that directly.

On the issue of the judiciary ombudsman, I think there is confusion. This office will not impede judicial independence. The ombudsman reports to the Judicial Service Commission (JSC). His findings will go to the JSC. He will not be seen to be implementing them directly. However, it is important that Kenyans have a way of interacting with the judiciary through that office that has been given power. It is also important to know that this office was created by Chief Justice, Willy Mutunga. All that we are doing is to cloth it with some constitutional protection. The former Chief Justice downgraded it. Perhaps, we may be seeing some of the repercussions of Chief Justice Maraga degrading that office. I will leave that issue of the judges. Let me just skip that one.

It is important we note that the vetting of CSs has been removed from Parliament for the reason that they will be from here, in this House. If we think that we should bring it back, you can always do so. As it is, vetting by Members has been removed. It is because they will also be sitting

here. They will have been elected like we will have been elected. I think it is only fair that we also align that fact.

There is another inclusion that people have fought about. It is the issue of professional fees being charged. That is harmonising the same. Again, it is the sovereignty of the people to determine any Article in the Constitution that is supreme. It is not unprofessional to harmonise the fees, that is, the national Government and the county governments to charge the same.

As I conclude, let me jump to issues that have been canvassed by some of our colleagues here.

**Hon. Speaker:** Member for Kwale County.

**Hon. (Ms.) Zuleikha Hassan** (Kwale CWR, ODM): Asante sana, Mhe. Spika, kwa kunipatia nafasi hii ili na mimi nichangie katika huu Mswada muhimu sana katika historia ya nchi yetu.

Nilikuwa nimepanga hapo awali kuchangia Mswada huu kwa lugha ya Kingereza kwa sababu nilikuwa mmoja wa Wanachama katika Kamati. Tuliangazia masuala mengi ambayo yana utata na ambayo yametajwa ndani ya Bunge. Lakini kwa sababu kuna Waheshimiwa wenzangu waliokuja hapo awali kuzungumza mambo ambayo mengine yalikuwa si ya kweli, nimeona ni muhimu kuzungumza na kutoa mchango wangu kwa lugha ya Kiswahili. Hii ni kuhakikisha Wapwani, watakapoamua kupigia kura Mswada huu katika kura ya maoni, basi watapigia kura wakijua ukweli halisi wa mambo.

Nataka kusema kutoka mwanzo kuwa naunga Mswada huu mkono, kisha naunga sana. Nami pia nataka kutoa shukrani kwa Mheshimiwa Raila Amollo Odinga ambaye ni kinara wa chama changu na aliyekuwa Waziri Mkuu wa nchi hii. Pia namshukuru Rais Uhuru Kenyatta mwanzo kwa Handshake na kuibua hii sheria ya BBI. Kwa kweli, imeleta mambo mazuri sana ambayo yatusaidia kupunguza kutengwa kwa sehemu nyingi za nchi hii.

Ningependa pia kujulisha Bunge hili jambo. Kama nilivyosema awali, nilikuwa Mwanachama katika Kamati ya JLAC iliyojadili na kuleta Ripoti hii. Ningependa kushukuru kila mmoja aliyechangia Ripoti hii hadi ikawa nzuri ilivyo. Kamati hii ilipoongozwa na Wenyekiti wetu wawili wa Bunge la Taifa na Seneti, iliangalia masuala tofauti tofauti kwa upana na urefu.

Mimi ni mmoja ya Wanakamati waliotia sahihi ile Ripoti ndogo iliyoangazia masuala ya kuwa na maeneo Bunge 70 mapya. Nimesema toka hapo awali katika Kamati yangu, tulikubaliana kuwa kipengele chochote katika Mswada ambacho kinapinga Katiba kikipitishwa katika kura ya maoni, kipengele hicho kinakuwa halali kwa Katiba. Kwa hivyo, sikukubaliana na wenzangu katika Kamati waliosema kuwa Sehemu ya Pili sio ya kikatiba. Kama Kamati, tulikubaliana kuwa kipengele chochote ambacho ni kinyume na Katiba kikipitishwa na wananchi kinakuwa Katiba. Hivi sasa sikubaliani kuwa sehemu ya Mswada yenye kuorodhesha maeneo bunge 70 ni kinyume cha Katiba. Sehemu 257 ya Katiba yetu inatoa ruhusa kwa Mkenya yeyote kuleta kipengele kubadilisha Katiba. Kama ilivyoashiriwa jana na Kiongozi wa Walio Wachache, mwananchi yeyote anaweza kuleta kipengele cha kuondoa Bunge au Mahakama humu nchini au kupendekeza mfumo tofauti kabisa na ule ambao tunao. Iwapo Katiba inamruhusu mtu yeyote kuleta kipengele hicho, kwa nini isiwe kipengele cha kuongeza maeneo bunge? Kuna baadhi ambao walitaka kuja Bungeni kusema tuibadilisha sehemu hii ya Mswada. Kama Kamati tumezungumza na naona kuwa umekubali kuwa hatuwezi kubadilisha sehemu yeyote ya Mswada huu. Kuna njia mbili tu ya kubadilisha Katiba ya sasa: Kupitia Bunge na kupitia Wakenya. Katika Mswada huu, tumesahau zaidi ya watu milioni tatu waliotia sahihi na nina uhakika kuwa waliunga mkono kwa sababu ya orodha ya maeneo 70 na tutakuwa tunakiuka haki zao za kikatiba kuwaambia kuwa Mswada huu hauwezi kuwa kwenye Katiba.

Kuna watu wanaouangalia Mswada huu kama umeletwa na aliyekuwa Waziri Mkuu, Mheshimiwa Raila Odinga na Mhe. Uhuru Kenyatta lakini kama nilivyosema hapo awali kuna njia mbili tu ya kubadilisha Katiba. Hao pia wana haki kama Mkenya mwingine kubadilisha Katiba iwapo wanataka hivyo kwa sababu ni Wakenya na wanapiga kura. Mhe. Millie Odhiambo alikuuliza jana maoni yako kama Spika; je katika haki za hii nchi, kuna Mkenya ambaye ana haki zaidi kuliko mwenzake? Nina uhakika utatambia kuwa kila Mkenya ana haki sawa, ikiwa ni Mkenya wa kawaida au Rais wa nchi hii.

Nikiongeza maoni mengine, Sehemu 50 ya Mswada huu inasema kuwa kaunti zetu zitaongezewa fedha kutoka asilimia 15 mpaka 35. Hili ni jambo nzuri kwa sababu kutoka mwaka 2013 tulipoanza ugatuzi, kaunti zimekuwa tu na asilimia 15. Wananchi wengi wameona faida na tofauti ya uongozi wa ugatuzi na uongozi wa Serikali ya juu. Iwapo mabadiliko yamekuja licha ya changamoto tofauti tofauti na asilimia 15, je asimilia 35 itaweza kuleta mabadiliko ya aina gani katika hii nchi? Kuna wale ambao wana propaganda na wanataka kuupinga Mswada huu kwa sababu zao na wanatatiza wananchi kwa kuwaambia iwapo Serikali inashindwa kutuma asilimia 15 kwa kaunti, je itaweza kutuma asilimia 35? Hii ni hesabu rahisi sana na inaweza hata kufunzwa kwa shule ya chekechea. Inafananishwa na kibakuli chako cha senti. Ukiangalia kikapu cha nchi cha pesa, zile pesa zinazopatikana na nchi kwa mwaka huu, asilimia 15 hivi sasa zinaenda kwa serikali za kaunti, kwa hivyo iwapo Serikali itapata bilioni moja, trilioni au shilingi mia, lazima asilimia 15 iende kwa serikali za kaunti. Kwa hivyo kusema asilimia 35 ni kusema kuwa ule mfuko wa kila mwaka ndio utagawanywa na asilimia 35 lazima ziende mashinani. Serikali za Kaunti zinalalamika kuwa pesa zao zinacheleweshwa lakini mwisho wa siku zinafika kwa sababu ya Kipengele hiki kwenye Katiba. Siku nyingi tumelalamika kuwa pesa zinakaa Nairobi au zinashughulikia watu katika sehemu zingine za nchi lakini sasa pesa zitaongezwa mashinani ili wananchi wafaidike na serikali yao iliyo karibu.

Mimi hushangaa na wananchi katika mitandao na sehemu za mazungumzo wanaopinga Mswada huu ijapokuwa si wengi. Kama nilivyosema awali, Mswada huu utaleta manufaa mashinani.

Mhe. Spika, kitu kingine ni kuwa maeneo bunge sabini mapya yameongezwa. Ni muhimu kwa Wapwani kujua kuwa bila BBI, kuna maeneo bunge kumi ambayo hayatakuwa tena baada ya mwaka 2022 tukienda kupiga kura kwa sababu ya Katiba ya sasa. Wananchi katika maeneo hayo hawatoshelezi kwa hivyo ni lazima IEBC iweze kufuta maeneo hayo kumi. Maeneo hayo kumi yako Lamu, Tana River, Taita Taveta na Matuga kule Kwale. Kwa hivyo, BBI itasaidia maeneo hayo Pwani yasifutwe na kutuongezea mengine kumi. Sio tu kwa upendeleo bali ni haki yetu ya miaka mingi kulingana na idadi ya watu. Maeneo manne yataenda Kilifi, tatu yaende Mombasa, na tatu yatapewa Kwale ninakotoka. Nataka kuwasihia Wapwani kwa hilo waunge BBI mkono iwapo kura ya maoni itakuja mashinani. Ningependa kumwambia Mbunge wa Malindi aliyepinga Mswada huu abadilishe maoni yake na kurudi nyuma na kuunga mkono kwa sababu Kaunti yake ya Kilifi itapata maeneo bunge manne ambayo itawapa wananchi uwakilishi mwingi zaidi, CDF, basari, ujenzi wa barabara, masuala ya kujenga mashule na kuhakikisha kuwa shule zetu zina vifaa vya sayansi ambavyo hivi sasa hazina.

Ningependa pia kuangazia masuala ya jinsia. Kwa mara ya kwanza huenda kama Wakenya tukawa viongozi ulimwengu mzima kwa kusawazisha masuala ya jinsia. Baada ya kushindwa kuleta usawa hapa Bungeni, BBI italeta usawa ya sheria ya theluthi mbili ya jinsia katika Bunge letu la kitaifa.

Hapo awali, Katiba ilikuwa imetengeneza sheria kusaidia Seneti na pia ilisaidia serikali za kaunti kutimiza masharti ya theluthi mbili. Lakini wale waliotunga Katiba mwaka wa 2010

walisahau kutuwekea kipengele cha kusawazisha jinsia hapa Bunge la Taifa. *The Building Bridges Initiative* (BBI) inaleta hicho kipengele na hiyo shida itaisha. Tutakuwa nusu kwa nusu kijinsia katika Seneti. Wananchi katika kila kaunti watachagua maseneta wawili, mmoja wa kike na mmoja wa kiume. Hili ni jambo kubwa sana duniani. Hata nchi zinazoongoza kidemokrasia wameshindwa kufikia kiwango hiki.

Jambo lingine ni katika viti vya gavana na naibu gavana. Italazimu kama gavana ni mwanaume, mdogo wake atakuwa mwanamke; kama gavana ni mwanamke, mdogo wake atakuwa mwanaume. Hiyo pia italeta nusu kwa nusu ya uwakilishi wa kijinsia. Haya ni mambo muhimu sana ya maendeleo. Wengi huuliza kwa nini ni vizuri kuwe na usawa wa kijinsia. Nikiwa Kwale napenda kuelezea wananchi hivi: ni mfano wa shughuli za nyumbani kama harusi au mazishi. Je, katika familia unaweza kufanya harusi, shughuli ndogo tu, ifaulu na wanawake peke yao au na wanaume peke yao? Jibu mara nyingi ni kuwa haiwezekani ama ikifanyika shughuli haitafana. Huo ndio umuhimu wake.

Wengine wamesema kwamba kuwa na Wabunge zaidi utakuwa mzigo kwa taifa. Huo sio ukweli. Mzigo mkubwa Kenya yetu ni ufisadi ambao unakula theluthi mbili za pesa zetu za bajeti ya mwaka nzima. Bunge linatumia asilimia moja peke yake ya bajeti ya taifa kila mwaka. Hata ikiongezeka, haitakuwa nyingi sana.

Mwisho, kuna watu wanasema kuna nakala tofauti za Mswada huu wa BBI. Hamna. Kosa lilikuwa kwa nambari moja ambayo hata haiko kwenye Katiba.

Kwa hayo, nasema shukran. Naunga Mswada huu mkono na nawaomba Wabunge wenzangu wauunge mkono na Wakenya kwa jumla wauunge mkono ukifika kwenye kura ya maoni. Asanteni.

**Hon. Speaker:** Let us have Hon. Mbarire.

**Hon. Cecily Mbarire** (Nominated, JP): Thank you, Hon. Speaker. I want to also participate in this very important moment by contributing to this Bill that is before us. Let me begin by saying that, indeed, I feel privileged that this is the second time that I happen to be a Member of Parliament when we are amending the Constitution. I was actively involved prior to the passage of the current Constitution in the clamour for a new Constitution. Many lives were lost. I will never forget the number of times we went to the streets of this city and many other towns in this country trying to push for a new Constitution. One of the biggest things that drove us to do that was to make sure that we had a Constitution that treated all Kenyans equally, gave freedoms and rights to the people of Kenya and ensured that Kenya belonged to everybody. I consider any effort to review the Constitution as a very important and sacred process. It is a process that should not be seen as taking away any gains that we fought for and included in the Constitution. If it does so, even in the smallest way, it becomes a real threat to the future of this nation.

The Independence Constitution was amended well over 29 times and each single amendment took away from the people and gave more power to the Executive. It became such a distorted document until the final document could not compare with the first document. As a Member of this House, I would hate to be one of those that played a role in changing the Constitution and taking away whatever gains citizens of Kenya had got. I am listening to some very good things being said about this Bill. There are some very good things in it, but I want to tell this House that there are some very dangerous amendments in this Bill that will become a real issue many years down the line. We had hoped that we had created a Constitution that would pass the test of time. We had hoped that we would not have people wanting to do what those others had

done to the Independence Constitution by giving themselves power at the expense of Kenyans. One of the things I am asking myself is: How important are these amendments?

First of all, it is a time when Kenyans expect that we should be more sensitive to the real issues affecting them, one of them being the COVID-19 Pandemic and the impact it has had on the citizenry. Many Kenyans have lost their jobs. Many Kenyans do not even know where to earn a living. Many Kenyans cannot access the COVID-19 vaccines. All of us in this House have been vaccinated. So, I worry about that. But let me move on to speak about the real issue.

**Hon. Amos Kimunya** (Kipipiri, JP): On a point of order, Hon. Speaker.

**Hon. Cecily Mbarire** (Nominated, JP): Hon. Speaker, can the Leader of the Majority Party let me contribute without interruption?

**Hon. Speaker:** There is a point of order by the Leader of the Majority Party.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Speaker, I did not intend to interrupt any Member. Of course, this is a constitutional moment. The nominated Member, Hon. Cecily Mbarire, has just made a very serious allegation that there are some dangerous provisions contained in this Bill. But she does not go ahead to tell us the dangerous provisions and proceeds to tell us about COVID-19, which is not included in this Bill. Is she in order to mislead this House and Kenyans that there are some dangerous provisions within this BBI Bill without mentioning those provisions and then going ahead to a totally irrelevant matter of the pandemic which is not the subject matter of this Bill?

**Hon. Cecily Mbarire** (Nominated, JP): Hon. Speaker, with all due respect to the Leader of the Majority Party, if you had accepted to sit right where you are and gave me time, I was going to mention those dangerous clauses. So, please, do not disrupt me. Allow me to speak.

When we were making the current Constitution, because the Constitution is about all Kenyans, the then Government allowed people, including ministers, to give their views. I remember the then Minister for Agriculture, Hon. William Ruto, and the then Minister for Special Programmes, Hon. Naomi Shaban, were in the 'No' camp, but nobody intimidated them. So, do not think you will come here and intimidate me.

*(Applause)*

**Hon. Speaker:** Please, Hon. Members, allow me to also listen to the proceedings.

**Hon. Cecily Mbarire** (Nominated, JP): Sorry, Hon. Speaker. Allow me to proceed. One of the things that we fought for when we were fighting for the current Constitution was the independence of institutions of Government. The big gain we made was ensuring that the three arms of the Government were truly independent. Some of you who probably never had a chance to face the wrath of the dictatorial regime that was there may not appreciate those gains. Those that followed what was going on then will appreciate that one of the major gains we achieved was the independence of the three arms of the Government. The minute we allow the Executive to have control over Parliament and the Judiciary, it will be the beginning of the end of our democracy.

Hon. Speaker, allow me to mention some things that I feel are not good for this nation. Hon. Raila Odinga, whom I respect very much, fought very hard for the new Constitution that we now have. If there is a man whom I know went out of his way and sacrificed for the Constitution of Kenya, 2010, it is Hon. Raila Odinga. It is sad that we are, again, taking away those gains and he happens to be supporting the process.

Hon. Speaker, allow me to begin with the issue of the Judiciary. The Judiciary is very important. If the Judiciary is not fully independent, any of us seated here can become a victim. If the Judiciary was not independent, T.J. Kajwang' would now be behind bars because of treason.

Article 47 says that the Judicial Service Commission, on top of all the functions that are already stipulated in the current Constitution, will receive complaints against judges, investigate, discipline them by warning, reprimanding or suspending. This Constitution of Kenya (Amendment) Bill is amending this provision by providing that the JSC will investigate, come up with their findings and take them to the President, who will then form a tribunal. This particular amendment exposes judges, going forward. The security tenure of judges is under threat. Where will we get justice? If a judge knows that there is a chance that he or she could lose his or her job...

**Hon. Junet Nuh** (Suna East, ODM):*(Off-record)*

**Hon. Speaker:** That is a point of argument.

**Hon. Cecily Mbarire** (Nominated, JP): Yes, that is my opinion. Hon. Junet, you will have your chance.

**Hon. Speaker:** Somebody else will get an opportunity to come and say what they want to say. I will give you back your two minutes. Somebody else is at liberty to say whether they are exposed to the President or they are not when they are being dealt with by... This is one side of the argument. You can argue the opposite side. You will have time.

**Hon. Cecily Mbarire** (Nominated, JP): That worries me because judges, going forward, will no longer have the independence that they now enjoy. We have then gone further to say that we are establishing an office of a judicial ombudsman who, again, will be appointed by the President. Where is the independence of the Judiciary? Please, someone tell me?

Hon. Speaker, I want to talk about the National Police Service Commission (NPSC). The NPSC had clear functions under the Constitution of Kenya, 2010. However, along the way, somebody got uncomfortable with the fact that the NPSC was doing its job. A few people were uncomfortable that they are not able to control the running of that Commission. As a result, we have taken away key functions of the NPSC and given them to an individual called the Inspector-General (IG).

*(Applause)*

This is a person who can receive a phone call any time and be given instructions, and he can do anything. I am losing my eyesight. I am growing older.

The Bill proposes in Clause 2 that we should delete Paragraph (b) and substitute therefore the following new paragraph "The IG shall exercise independent command over the Service, determine promotions and transfers within the Service, exercise discipline through control and suspension of officers in the Service and perform any other functions prescribed by legislation." We are moving away from an institution called commission and giving powers to an individual called the IG. Are we taking away the gains made or helping the NPSC? What happened to those officers who, during the Moi era, served for so many years without being promoted? You are a corporal for 40 years and you will never be promoted because you do not belong to the right community. What happens to such officers? We are better off with a commission than with an individual. We must never create a law with an individual in mind. We create laws for posterity. That is what we were fighting for in 2010.

We have a very important commission called the Salaries and Remuneration Commission (SRC). The stakeholders will be affected by the decisions of the SRC. The stakeholders are represented in the SRC. The SRC has a representative of the Parliamentary Service Commission (PSC), NPSC, JSC, TSC, the Defense Council, COTU and many others. In this Bill, SRC will be formed by commissioners who will come from wherever. They will be professionals with their skills and appointed by the Executive. Who will protect the workers?

*(An. Hon. Member spoke off-record)*

You do not know workers because you do not care. That is what has happened to this House. We have become selfish and self-driven. It is all about us and we do not care about the *wananchi*. Today, we should be talking about vaccination of the people. I know this Bill will go through anyway because the *wananchi* are the writers of this Constitution of Kenya (Amendment) Bill. Our role, as Parliament, seems to be very minimal. However, I pray that it does not go through because it is taking away the gains that we fought for with our lives, sweat and blood. I pray that it does not go through because one day, we will have a President who will be worse than the previous dictators we have had. Members will then come here and make noise about what will be going wrong yet they are the ones responsible.

**Hon. Speaker:** Member for Seme.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Speaker for giving me this opportunity.

The importance of the Bill before us today is not so much in the contents as it has been in the history and background of this day. We must go back. How did this Bill come to be? We have had terrible issues of violence after every election. What I saw when I was the Director of Medical Services; how people were dying, many of the Members here did not see. What I saw in Naivasha, Londiani, and Burnt Forest! Hon. Speaker I saw people burning others' houses using a helicopter. In 2017/2018, which we come through, people have indicated here the violence that we had. On one day only in this country, 30 young people died between the airport and Uhuru Park. It is because all of us believed at that time that the only way you can have access to services and welfare is if your person is at the helm of governance. If the President had not been magnanimous, when we went for the swearing-in at Uhuru Park, this country would have seen bloodshed. However, the two leaders decided that there must be a way forward. Therefore, they had a handshake that stopped the violence. The country had literally stopped. Nairobi was ungovernable.

However, it is not only stopping the violence that was important. What was also important to ask was: why does this keep happening year in, year out? Moreover, why are Kenyans going for each other's necks? The handshake brought the Building Bridges Initiative. In my view this initiative is to try and identify one thing: what are the problems that have beset the country since 1963 and have stopped this country from progressing in the way our forefathers imagined? That initiative looked at those issues, including issue of our ethos.

Why is it that in this country corruption has become something acceptable? Maybe people our age may see corruption as something wrong. However, our children are seeing it as normal; a way of life. Can we live like that? Hon. Speaker, why is it that people always talk of 'our rights'. However, nobody talks about 'our responsibility.' Can we have a country where everybody is extracting their rights but nobody is exerting their responsibility? Hon. Speaker, these are the problems. Why do we have ethnic division and ethnic antagonism? On every issue, even here in the House, our politics is driven by that. This is because we do not believe we are one nation. We

are a state by law, but are we a nation at heart? The other issue is exclusivity. Why do some people believe that they are not part of the system? That if your man is not at the top then you are not part of the country, you will not get services, and you will not get appointments. Hon. Speaker, those are the problems. Why is it that people who are corrupt- obviously and sometimes openly corrupt- are actually the ones who claim to run the system?

Hon. Speaker, they also noticed the 9 agenda which includes the issue of devolution. Therefore, to me the BBI initiative was trying to seek how we can go back on the path that we lost from 1963 and take this country back to where we wanted it. There are some of us here who may not believe that in the 1970s public hospitals were better than private hospitals. I can tell you Hon. Speaker, in 1976/1977, when I was a medical student, we were transferring from Agha Khan to Kenyatta Hospital because it was a better hospital. As an intern, I was transferring children from Agha Khan Hospital in Kisumu to the provincial hospital, which is now Jaramogi Hospital because there were better services there. The public schools were better than the private schools. Many of us here of my age went to public schools. They were the standard. How has it come that now it is public things that actually serve the majority of Kenyans that are actually second grade? Now that public schools do better people are wondering whether that is real. However, in reality that is how it should be. That is where the majority of our people are served. That is what led to the solutions that we are seeking through this amendment. We are seeking to see if this amendment can take us back to where we wanted to be.

Hon. Speaker, I accept that some of the amendments will actually take us there. I therefore support this Bill. For example we are going to have the Leader of Official Opposition in Parliament. Obviously, if you have an election and the Leader of Opposition fits comfortably in Parliament, we shall not run in the streets. Therefore, that will definitely solve the problem. Look at the proposed structure of the Executive. Under Clause 28, which is amending Article 151, there is establishment of the office of the Prime Minister and the office of the Deputy Prime Minister. These will go a long way in stabilising the system. Some people have argued that this will be expensive. Is the establishment of those offices more expensive than the losses we incur every time after elections? It cannot be. Therefore, when we establish those offices and there is stability that is okay. Moreover, when the office of the Prime Minister is established we will actually appoint the Prime Minister from this House. In fact, it is giving the House more power in the Executive than we probably have now. We shall have Ministers in the House. We have been trying to get Ministers here!

The only thing I may comment about is that removal of the mandate of this House to vet the Ministers. That is something we may look at. The amendments you can actually see in this are about what the responsibilities of a citizen are. That is extremely important. People can say that these are our rights. However, people must know that these are the responsibilities that we have. *Haki yetu* must actually be accompanied by *Jukumu letu*. We cannot just have *haki, haki, haki, haki*. What is our responsibility to the nation? Therefore, that Clause 4 that amends Article 8 is important.

Hon. Speaker we have had the issue of gender parity, which actually threatened our dissolution by a decision of the court. These amendments are actually bringing that by restructuring the Senate so that we have equal members, male and female in the Senate without any problem. Therefore, that solves a problem we have been unable to solve for 5 years. Hon. Duale actually brought a number of amendments on that matter. I think they were four Duale Bills? None of them passed. This amendment has solved it at once.

In the National Assembly we have adopted what is in Article 177. We appoint people, after the elections, to meet the gender requirement. Some people were saying that it will be a big House and that it will be expensive. However, inclusivity, leaving half your team out, can never be expensive. Let us bring all the people in. We can do that and in any case this is something that with time it will actually solve itself.

Therefore, Hon. Speaker, I think there are very progressive amendments in this Bill. Look at devolution. Every year we have a big problem with the Division of Revenue. Every year, we have division of money in the counties. Some places have opened up in the counties, but some counties have never operated efficiently because of the amount of money that we give them. So, we stuck to 15 per cent. We sit here in this Assembly looking at only 15 per cent for the counties while for the national Government, at the position of the Budget Policy Statement (BPS), we have all the details of what every department and State department needs. We do not look at what the county needs. We just say, at least, 15 per cent. That is not the way to do any division. Therefore, scaling this up to 35 per cent takes us along way, but that is something we will have to look at. We have to look at the role of the Intergovernmental Budget and Economic Council (IBEC) in the division of revenue. I think we have a problem there, but at least this amendment solves that temporarily.

Hon. Speaker, our county assemblies have been held at ransom by governors. They cannot run or do anything. Whatever must be done has to be granted by the governor. This amendment is creating the Ward Development Fund so that it is run the way we run the Parliamentary Service Commission. If we were to go to the Executive every time to ask for money on daily basis to run the National Assembly or the Senate, it definitely would not work. So, freeing our assemblies so that they can oversee governors is extremely important. A Member was saying that next year, we will have to look at the qualification of the MCAs. That is a law that was passed and was just postponed. Corruption will finally go. When you get people of that level who are well funded and independent, we will be strengthening the counties and that is what we wanted so that issues of people coming to the centre to beg for money are not there.

Hon. Speaker, the NG-CDF has helped us to realise that money works better if it is devolved to the grass root level. So, creating the Ward Development Fund and if appropriate laws are put in place, will be as effective as the NG-CDF in implementing the devolved functions. I can tell you in my own county, there are things we would want to do, but we have to go to the county. You want to even improve fisheries and simple horticulture or women just want to borrow small money for trade. If the money was available, we would go a long way in supporting our people. Putting the NG-CDF in the Constitution is a good move forward. We are tired of the fighting every year. Although it is now the NG-CDF, putting it in the Constitution is a permanent solution. All of us know that if you go to schools in many constituencies, there is no difference between schools in town and those in the rural areas. Why should our children in the rural areas go to poorer schools and they pay taxes like everybody else? So, including the NG-CDF in the Constitution is very important.

Corruption is another thing. I have always believed that there are only two things if they can be removed in this country, we will fly, namely, negative ethnicity/tribalism and corruption. So, the laws that are put for speedy resolution of corruption cases are important. The establishment of the Youth Fund is important. There are issues of judiciary ombudsman or the SRC, and these are things we can look at. I end by saying that if we proceed with this process properly, we may create a nation out of the State called Kenya.

I thank you, Hon. Speaker.

**Hon. Speaker:** Let us have Hon. Ole Sankok.

**Hon. David ole Sankok** (Nominated, JP): Thank you, Hon. Speaker, for giving me this opportunity.

**Hon. Speaker:** Hon. Member, hold on your time, but please, Hon. Members, just to give everybody comfort, up to now, I have 77 requests. As I was told there are Members who came here at 1:30 p.m. and some of you who came at 2:15 p.m., which is quite early. That is why some of you are telling me that you came at 2:00 p.m., but I was told there were Members who were here at 1:30 p.m. So, what do I do?

Take this assurance from me that this Constitution of Kenya (Amendment) Bill, I will ensure that as many voices are heard. At least, not less than the majority of the Members of this House will have to speak to the Bill. It does not matter how long it takes us because this is a serious business. It is the future of the country and I think we need to hear as many voices as possible.

So, do not bother coming to check. I have no way of knowing who came at 1:30 p.m. I can at least remember the faces that I saw when I first sat here, but you were so many even at that time you were more than 70. So, it is very complex. Hon. Sankok has been sitting there for a long time. I have sympathy with the Member for Endebess, I know he was here in the morning, the grandfather of the House has quite unusually been physically present here since yesterday and he has not spoken. You can see him trotting around, having difficulties walking but he has to wait. That is the spirit. This is the spirit of doing a Constitution.

So, I encourage Hon. Jimmy Angwenyi to continue, sit with the grandchildren, listen to them and then you will give them fatherly advice next week.

Hon. Sankok, proceed.

**Hon. David ole Sankok** (Nominated, JP): Once again, thank you, Hon. Speaker for giving me this opportunity especially on this very important day in the calendar of this country; a constitutional moment. You are right because at 1:30 p.m., we already had enough quorum. At the outset, I support this Bill. It is important so that we can move forward together as a country.

Hon. Speaker, we do have a few issues with it, but, of course, no document will ever be perfect. One of them is on the issue of inclusivity. Here, we are tending to create around three more positions making it five. The problem that is bedeviling this country is ethnic negativity. If we go that way, we will only include five tribes and exclude 37 other tribes. That may be equated to exclusivity and not inclusivity.

So, in future, if we have to amend this Constitution, we will think of inclusivity in terms of probably having the President being a man, the deputy being a woman, the prime minister being a person living with disability, the deputy prime minister being a youth, so that we can bring the real issue of inclusivity. However, if we bring inclusivity in terms of tribes, it will end up being exclusivity. We have more than 42 tribes in this country and we cannot have all of them in the apex of leadership.

Hon. Speaker, why am I talking of the Prime Minister position? I may vie in 2032 as a crawling mate to Moses Kuria. You know I will not run faster than him.

Hon. Speaker, on this issue of the winner takes it all...

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

**Hon. Speaker:** What is your point of order, Hon. Millie Odhiambo?

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Hon. Speaker, I do not want to interfere with Hon. Sankok because he is speaking very well about inclusivity, but he has just forgotten to include the intersex. Having said this, I want to seek your direction based on the guidance you have given.

As a matter of fact, I did not come in the morning and I have not put a request today. I was just interested in listening to Members because I am under the impression that when you are dealing with a constitutional matter, so long as there is still interest, every Member will speak but your pronouncement seems to suggest otherwise. Just so that I know, even if I do not have a chance to speak, at least, I go on record that I did not get time.

I come from a human rights background and it is important to note that if I do not get an opportunity to speak, it is because there was no time. Also, if the Suba people ask me why I did not speak, it is because I did not have time. Perhaps, if you can just give us indication that... I have not spoken. Yesterday, I was on a point of order and I did not speak substantively to the issues. I also do not want to interfere with Members because I came late today.

**Hon. Speaker:** What is your point so that we do not take too much of his time.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): The Leader of the Majority Party keeps on interfering with me and so, I am not very clear on what I am saying. Hon. Speaker, I would like to know because ordinarily, when we are discussing a constitutional matter, so long as Members show interest... I would like to know if we will continue next week because we will not finish today.

**Hon. Speaker:** Hon. Millie Odhiambo, I know you could be having some problems because your background is human rights and not arithmetic. It is almost 5.00 p.m. and with every Member speaking for 15 minutes, I have 76 requests pending and I have indicated it is my desire to see as many of you who desire to speak to this Bill get a chance to speak. I think that should suffice. Maybe, Hon. Millie, you have a problem with your mask. I can see you are shaking your head. We will continue.

**Hon. David ole Sankok** (Nominated, JP): Thank you, Hon. Speaker. I think you will add me time.

**Hon. Speaker:** Yes, I will add you three minutes.

**Hon. David ole Sankok** (Nominated, JP): Thank you, Hon. Speaker. Even yesterday, I was forced to speak in my mother tongue, *Kimasai* in this House because we are now outsiders in the Government we struggled to form, courtesy of the Orange Democratic Movement (ODM). The professional ODM hecklers cannot heckle us in this House. They should give us enough time to speak.

I was speaking before I was rudely interrupted on the issue of the winner takes it all. When it comes to this, an election is a competitive process. In any competition, there is always a winner and loser. This will not be democracy. In democracy, the majority will have their way and the minority their say. This is the spirit of democracy and there must be a winner and loser. We cannot have an election process that does not have a winner and a loser. At times, the winner has 40 per cent and the losers combined have 60 per cent. When you look at the losers, you find we cannot solve this issue of the winner takes everything...

**Hon. Junet Nuh** (Suna East, ODM): On a point of order, Hon. Speaker.

**Hon. Speaker:** Hon. Junet, what is your point of order.

**Hon. Junet Nuh** (Suna East, ODM): Hon. Speaker, a member was speaking to you as Hon. Sankok was speaking. This is the National Assembly of the Republic of Kenya and we are not somewhere else outside there. Some of the statements Hon. Sankok is making here cannot be parliamentary. They are derogatory. He is calling other Members hecklers, people who have come to heckle like ODM Members who are professional hecklers. This man has decided to go rogue.

**Hon. David ole Sankok** (Nominated, JP): Hon. Speaker, I withdraw and apologise. You know there was a time Hon. Junet called himself a cow, I did not call him so. This was also not

parliamentary. I have talked about the winner takes it all. Again, this Bill will cure the issue of post-election violence because Kenyans are very peaceful. Before and after elections, we live in peace, intermarry, borrow sugar from one another, farm and work together and do everything together, including our ceremonies. It only happens that we have violence just after the announcement of the elections results.

We have to be genuine to ourselves in as much as we know this Bill will cure this issue. We need to know who the single denominator of violence in this country is. He was in the 1982 coup and his name also appeared in 1997, 2007, 2013 and 2017? This is because we can cure our post-election violence if we become genuine and true to ourselves. Whose name was missing in 2002 when we had a change of regime and it was very peaceful without violence? Which is this common and single denominator of this violence period in Kenyan history?

I can say without any fear of contradiction that you do not have to look far for this single denominator of violence because he went to Kibaki, shook hands and there was peace. It means that there is denominator of violence. Again, after shaking hands with Uhuru, we have maintained peace. There is a single denominator of violence.

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

**Hon. Speaker:** Hon. Mbadi, what is your point of order? What has happened? Give him the microphone.

**Hon. John Mbadi** (Suba South, ODM): Hon. Speaker, I think we need to ensure decorum in this House, and realise and understand that this is the august House. The way Hon. Sankok is progressing with his contribution, he is stirring emotions for nothing. He is bringing issues this country is trying to forget and insinuate that Raila Odinga is the cause of violence and problems in this country; by saying he went to Kibaki and shook hands and now he has gone to Uhuru and shaken hands.

Hon. Sankok is a beneficiary of consideration of persons with disability courtesy of Raila Odinga. The way he is behaving is causing shame to the team he is representing in this country and is a disgrace. I wonder why he believes that any time he attacks Raila Odinga, he raises his profile. This is a cheap way of trying to cut an image in this House. Some of us are where we are because of constructive, meaningful, professional and intelligent contributions. For someone who claims to have gone to the University of Nairobi and studied medicine, he should do much better than this.

I want to urge Hon. Sankok to get back to the debate of the BBI Bill and contribute on behalf of the people he represents. Since he started speaking, I have not heard him say anything regarding persons living with disabilities. You were not nominated to this House to be a flower girl. You are supposed to represent the constituency for which you were nominated.

**Hon. Speaker:** You know the problem he is having is too many people consulting me. I am not able to follow.

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Speaker. Just to bring you to speed, I said that Kenya had violence in 1982. I was four years old at that time and there was somebody who was mentioned at that time. There was violence in 1997, 2007, 2013 and 2017. I said we cannot wait for hands to shake. For us to be peaceful as a country, we need to instill... Kalonzo Musyoka shook hands with Uhuru Kenyatta. Kalonzo Musyoka did shake hands with Kibaki. So, I do not know why the guilty ones are feeling bad. You know, if you are guilty, you are guilty as charged.

On the issue of representation, we also need in this country...

(Loud consultations)

**Hon. Speaker:** Order, Hon. Members!

**Hon. David ole Sankok** (Nominated, JP): Hon. Speaker, I think Hon. Mbadi did not hear when I said that the position of the Prime Minister should be left for a person with disability. I am, again, saying that we should have an electoral college to elect persons with disability. I had even proposed to the task force that we have an electoral college like the one in Uganda so that persons with disabilities come to this House as leaders who have been elected by persons with disabilities to represent them. This is so that the loyalty of a Member of Parliament does not only lie on the party, but also in those who he represents. This is because, currently, through nomination, you are just loyal to the party that nominated you but if we have an electoral college like what happens in Uganda, you are elected by those whom you represent.

This Bill is very good on the issue of patriotism. We should actually be patriotic to our country and our patriotism should come from within us. Since we are fronting the aspect of patriotism in this BBI Bill, I would not have expected us to do so using reggae music but, rather, songs like *Tuishangilie Kenya Taifa letu tukufu*. There was a time when we were actually supposed to have a national dress. Even in that one, I think it is very important for us to be patriotic. This Bill addresses those issues and I really support it in this regard.

I have analysed this Bill. I have read it from the first page to the last page, but I have not seen anywhere that will require a referendum. So, I urge the Members of this House that we pass this Bill. I urge the President to assent to it for it to become law. Instead of us going to a referendum, we can deal with it and just start implementing it straightaway so that we benefit from the 70 extra constituencies as persons with disabilities get the position of Prime Minister and Deputy Prime Minister and we move forward to cure our post-election violence issues and any other form of violence that we normally experience as a country.

With those remarks, I support the Bill.

**Hon. Speaker:** Member for Rangwe.

**Hon. (Dr.) Lilian Gogo** (Rangwe, ODM): Thank you very much, Hon. Speaker. Kindly, allow me to indulge in this matter without my mask. I thank God for allowing me to participate in this august House in this constitutional moment. It is really a privilege for the people of Rangwe to participate in the Bill that seeks to amend the Constitution of Kenya. I appreciate the process that this particular Bill has gone through for it to come to this end. One of the eminent persons who participated in the process of putting together this Bill before it came to the House is one of my constituents, Dr. Collins Odote, who is a real scholar. By virtue of that alone, I really appreciate the content of this particular document. That is a member of Rangwe Constituency, which I represent. I really have faith in this document.

From where I stand, my party position is that I support this particular Bill in its entirety. I am not going to do it just because I have been advised by my party. Before my party gave that advice, we have been educated on the matter of this Bill and I have come here to speak from a point of authority on information I have regarding this Bill.

Hon. Speaker, allow me to look at certain questions that are pertinent to what has come in this Bill. Sometime in 2007, we had a situation in this country. Some parts of this country were on fire. We had a situation where people were being cut with *panga* in Naivasha as they travelled to western Kenya. We had people who were dislodged from what they had known to be their homes for very many years in the Rift Valley, and they found themselves homeless. We even had people who were burnt in our local churches. That is what informed the particular debate that we have

right now. So, we really need to interrogate this matter with a lot of humility. We do not need populist ideas in looking at what is in this Bill. The persons who have spoken before me have elucidated the constitutionality of this Bill. So, there is nothing that is not constitutional about this Bill. It is anchored in our current Constitution. We are making amendments to the Constitution with the clear mind that we are moving from a certain point, as a country, to a better point. It is said that if we do not embrace change, change will change us. We are speaking on this matter as Members of this august House to embrace change for posterity – change that is going to make Kenya a better place to live in. We are amending certain Articles in our Constitution for the betterment of our country.

I know I am on record in this country. Even before Hon. Uhuru Muigai Kenyatta, who is the President of the Republic of Kenya, and my party leader Raila Amollo Odinga, shook hands I was on *Nation TV* pleading with the two “generals” that they should speak to each other, meet at some point and put Kenya together in peace. That is what happened later on. I did not know it was actually going to happen. It is an appeal that I made to our two very eminent Kenyans, and they listened and talked to each other. They put their partisan interests aside and put the interest of this nation ahead of everything.

So, I thank Hon. Uhuru Muigai Kenyatta and Hon. Raila Amollo Odinga, who has been on the forefront of bringing change in this country, for putting their issues and interests aside and listening to Kenyans. Suppose when Raila Amollo Odinga was being sworn-in as the People’s President of this country, Uhuru Muigai Kenyatta decided to go and clear everybody in the interest of the law? What would have happened to this country? However, he took a back stand.

I want to appreciate His Excellency the President of the Republic of Kenya and the people who advised him at that particular critical moment, to take a back stand and put this country in order. We are not talking about anything populist at this particular moment of our nation. We are interrogating matters that are going to bring peace in Kenya. It is give and take. We may not get everything in this particular discussion. There are people who may have lost and others may have gained but what benefits Kenya most is what is of interest to us.

I want to look at the various places that I think I have been educated on. On behalf of the great people of Rangwe Constituency, if I talk about these matters, I think it is going to benefit the progression of this particular Bill so that when we take it to the people through the referendum, and since it is a people’s Bill, they are going to vote yes or no. The role we are doing as Parliament is to let it pass through us and then we give our ideas on it, not necessarily to change it because this Bill has been looked into.

There are gains that have been made in this country especially on matters governance. This particular Bill has worked very well especially when it comes to matters gender. The Bill is good on matters gender and recently when the country was looking for a Chief Justice, there was a proposition by the Judicial Service Commission (JSC) that the Chief Justice be a woman. It is not in the woman that we are looking at the Chief Justice. We are looking at the qualifications of a person, a Kenyan. Kenyans went ahead to give a list of senior persons who are in the Judiciary. Very many women appeared in that list. I am also envisaging a situation where a time may come when, through an electoral process, we are going to have more women than men in Parliament. When it comes to a matter of two-thirds gender rule, it is not a matter of favouring women to come to Parliament. It is a matter of having a system in place that would guard against domination of a particular gender in a particular arm of Parliament, be it the Executive, Judiciary or Legislature. This has been covered very well in this particular proposal in the amendment of the Constitution.

When it comes to the issue of national ethos, this is where I really want to dwell on. The problem that we have as a nation, among others, and the biggest of them all is that Kenyans do not look at what we are able to do for our country. We only look at what *Serikali* can do for us - *Serikali saidia*. When it comes to matters that are public, do we take care of public utilities? When it comes to matters of ethos, the morality of Kenyans to take care of Kenya, to put the interest of Kenya at heart, you will find that today somebody is elected to be an MP from a poor background. Everybody knows what a Member of Parliament earns. It is just common practice and regular thinking that for the amount of money one earns, one has a possibility of committing it to a loan for his or her own development. At the same time, allow me to say this: You will find politicians having a lot of money to flash around. Where does this money come from if it is not from public coffers? I appreciate people who are having side hustles to get extra money. However, for the ones who do not have side hustles, are they not stealing from Kenyans? This is the dialogue that we should have at this particular point. Do we have moral principles as elected leaders in this country to help in mitigating corruption among ourselves as elected leaders in this country? You find that someone is elected from very poor backgrounds and in about three years, they are having several storey buildings at the expense of the people whom they represent. As much as we are talking about very amorphous things, I want us to reduce it to simplicity. Do we have a system where Kenyans are responsible for the poor in their backgrounds? When it comes to economic equality, does the leadership consider that particular person who is very poor in their neighbourhood? This is the dialogue we should be having right now. That is the proposition of the amendment to Article 11(a) on the economy and shared prosperity that is being amended. This is being anchored with the aspirations of the new economic model that would provide equitable opportunities for all the people. We want equitable opportunity for all people and for our young people. Over 65 per cent of Kenyans is made up of young people. When it comes to economic growth, the BBI and specifically the amendment that has been proposed is going to address this issue. In so doing, I believe we are going to move forward as a country.

When it comes to economic models that provide equitable opportunities, when we give equitable opportunities, in the long run, it is going to create jobs in this country and it will address joblessness that has been created by this pandemic.

I also want to look at the issue of application of science and technology in the production system. Science has been relegated to some kind of corner. As much as we have innovations in science, how much do we add in our national budget to do scientific investigations? So, there are many items that are in this Bill that are good for this country and even as I finish up, one of my colleagues had spoken to removing powers from a commission to an individual. The office is as good as the individual who serves in it. We are not removing power from a commission to an individual. We are removing powers from a commission to an office. For the work of that office to function, it requires the integrity of an individual. It is matters of integrity that we are addressing as an issue in this country at this moment. I am supporting this particular Bill and I know it is for this country and it is in my party...

**Hon. Speaker:** Member for Bamachoge Borabu.

**Hon. (Prof.) Zadoc Ogutu** (Bomachoge Borabu, Independent): Thank you, Hon. Speaker. It has been a long day waiting to be given this opportunity to speak, but I want to say it has also been a very good opportunity for me to listen to the many Members contribute to the amendment Bill with diverse views.

I want to begin by saying that I am so happy for this particular occasion and, as a nation, we have come together through the initiative of the leadership of this country to begin engaging in

a process where we can look back and say: “Here we have gone wrong and here we have done well and, therefore, we can proceed.”

Hon. Speaker, the Bill before us has been constituted through a process that has engaged more or less the whole of Kenyan community. I know that there has been a good purpose for this Bill. Many of us are already aware of the situation that we find ourselves in as a country after every election. The Bill that is to be amended goes beyond the point of election. It talks about what else has happened between elections that has drawn this country to a state of hopelessness. It has been a good opportunity for the leadership of this country to provide this particular narrative for Kenyans to begin engaging, for Kenyans to begin probing themselves with the kind of differences that I am seeing in the House, which opportunity can then help to reshape this country?

The change Kenya is looking for cannot come from one thinking. It can come from the diverse viewpoints as we are witnessing in this august House. As much as others may look like they are opposing the Bill, all they need to understand is that there are various pathways to bring about the change that Kenya is looking for. This is one of the pathways. There is no single pathway that can have a smooth flow. There will always be bumps. There will always be hurdles. As a nation, the fact that we have begun to engage on our differences is a good opportunity. We may not repackage all the challenges that we have but it is a good opportunity. As we move forward, we expect that as we unveil one opportunity, there are challenges which can be addressed.

Hon. Speaker, the Bill before us, for amendment, addresses a number of critical issues that many of us have gone through in our lives. When you look at the distribution of resources in this country, my big question has been: Why do we tend to ignore the numbers that need to be supported by the resources? This Bill has addressed that through the creation of constituencies. Many people are wondering whether this is going to create a huge wage bill. The amendment comes with a package of other measures that will enable this country to grow its wealth.

We have a number of proposals under the economic models that if implemented, will see this country prosper. We also have a number of opportunities that have been opened up for the youth, for instance. Those opportunities are supposed to contribute to the wealth of this country. So, as much as we may be looking at the wage bill that comes from this new amendment, let us also look at the service that the amendment is going to create in this nation. The clause on public corruption in itself, if well implemented and works out well, I am sure this country will recover a lot of resources that have been lost before and between the election periods.

Finally, Hon. Speaker, the damages, the costs, the inconveniences and the economic delays that come after post-election, if this Bill, as it has already been presented, opens a space for leadership, the number of recoveries will be enormous. This Bill also brings to this country a window of opportunity at the grassroots level, not only in engagement but also in bringing in more resources at the ward level. This, indeed, is an opportunity for distributing the Kenyan nation’s resources. For that reason, I wholeheartedly support this Bill.

I encourage my colleagues to look forward and see this as one window that can enable this country to move a step forward. Change cannot be expected to come at once. Change is a process. We are in a process of bringing about change in Kenya. We must move even when there are hurdles. I support this Bill.

I thank you.

**Hon. Speaker:** Member for Tongaren.

**Hon. (Dr.) Eseli Simiyu** (Tongaren, FORD-K): Thank you, Hon. Speaker. I had thought that I was way behind. So, I had kind of lost track. Thank you for giving me this chance to contribute to this very important Bill.

As one speaker said, I was privileged to be in this House during the making of the 2010 Constitution. A constitutional moment is very important and people need to be very collected and think seriously about everything that they say. Maybe, a little bit into history, Africa is a very interesting place in the sense that when left on our own, we had little nations. Each of our tribe was a nation with its ideals, traditions and things. Then in came the colonialists who put us all together, stirred up the waters, exterminated certain tribes and messed up with others, and then lumped us all together and called us countries. That is where our trouble started.

These multi-ethnic tribes put together into a country had to find a way of surviving together. It is a miracle that we have survived, as countries, up to this moment. In fact, I think when the colonialist exited he did not imagine that we would survive up to now. So, we are faced with a problem that we need to sort out that we are together and we have to live together. We have to continue to live together and to thrive together and make our future together as a country with those other several nations like the Luhya nation, the Kikuyu nation, the Kalenjin nation, among others. All those nationalities are lumped together into one country. Some of those nationalities have their own traditions, they have their own ways of doing their things but, somehow, we have to live together and survive together.

Hon. Speaker, at independence, three terrible things were fertilised and have germinated into maturity as I speak. That is tribalism, corruption and impunity. The three feed on each other. These three have grown and they have now matured and they are eating us up. Because of that, we have to find a way of surviving together. All those communities that I have spoken about did not run necessarily democratic processes. That was left to us by the colonialists. Somehow, it might not be the best method of governance, but it is the best that we have. We have to taillight to be fit for purpose of ourselves. So, this foreign ideology called democracy comes with a constitution.

The first Constitution we got at independence, we mutilated it effectively. By the time we came to the second constitutional moment, the other one was in tatters. So, now we have to make another constitution. I dare tell my colleagues, do not tire because we are dealing with a foreign ideology that we are trying to craft together to put our diverse nationalities together as a country. Yes, we are amending the Constitution now. We amended it in 2010. Perhaps, we will have to amend it again to make it fit for a purpose. So, people should not be so resistant to the idea of changing the Constitution so long as we are sure that we are changing the Constitution for the good of the people, not for individual gain of certain people. In this situation, this particular Bill was long overdue.

I listened to the Nominated Member when she said that she was part of the 2010 constitution-making process. She did not want some of the changes that came up. I would have liked to ask her, when we went around the country creating the Bomas Draft and majority of Kenyans vouched for a parliamentary system, where did they get that presidential system that came out as part of the 2010 Constitution? That was the biggest crime they committed against this country. With our multi-ethnic society, a pure presidential system is totally unsuitable. I remember that when they came up with that, it was a shock to Parliament. We had not expected that. We had expected a parliamentary or hybrid system. Since she was part of that team, she has questions to answer to Kenyans. Where did they get the presidential system? We did not recommend it. They came with it and we passed it. We have tried it now for two terms and it has given us a bad feeling.

In the pure presidential system, we thought that the separation of powers, namely, the Legislature, the Executive and the Judiciary, would be helpful. It has not been as helpful as we expected. With our multi-ethnic society, a parliamentary or a *quasi*-parliamentary system like what is proposed in this Bill would be most suitable. It would be more suitable for us because we can

now start talking about inclusivity, such that whichever political party wins an election might be compelled or convinced to include more people in their governance. They might be compelled to include more communities in their system. That way, we will have more inclusivity than we have had before. It is very important, especially in this Bill.

I find the devolution of 35 per cent of the resources most encouraging. I find that most encouraging because the constituency I come from in Tongaren did not have a single kilometre of tarmacked road. The only tarmacked road in Tongaren Constituency was done by the county government through devolution. If they had 35 per cent of the resources, they probably would have done a better job. That is what I have. When we say that we should allocate 35 per cent of the resources to the counties, I understand how those who want to hold money at the centre feel. It is a very welcome improvement in the sense that the county government will be empowered enough to construct tarmacked roads where the national Government has failed.

On the part of constituencies, for the last five years, Bungoma County has lost over Kshs2 billion that would have come as the National Government-Constituencies Development Fund (NG-CDF) because the boundaries review after the promulgation of the 2010 Constitution definitely gave Bungoma a raw deal. While the populations of Bungoma, Kakamega and Kiambu only differed by about 50,000, Kiambu and Kakamega got 12 constituencies while Bungoma got nine. We lost four constituencies. Since we amended the NG-CDF Act in this House to ensure that NG-CDF is shared equally, if we had those four constituencies, we would have had an additional Kshs2.6 billion. That unfair distribution of constituencies has led to Bungoma losing Kshs2.6 billion.

However, when you look at the records at the Kenya National Bureau of Statistics (KNBS), you will find that Bungoma is one of the counties with the highest poverty indices in this country and yet, we were losing money every year. Currently, we have lost Kshs2.6 billion. The creation of constituencies is righting a wrong that was done to my county. In fact, giving Bungoma three constituencies is inadequate. We should have been given four constituencies so that we fully recover what we have lost.

I heard that the formula used was based on the populations in the counties. However, I think they forgot something. They should also have looked at the fact that there are some counties that are benefitting from protected constituencies. They should have been made to pay for holding those protected constituencies, so that some of them go elsewhere. For instance, in Bungoma, I still demand one more to make four constituencies.

When you look at the issue of the hybrid system, it has some dangers in the sense that some people are now positioning themselves as tribal kings to come and occupy those positions. I would like to warn them that those positions are not being created for tribal kings. Those positions are being created for men and women who can serve this country with dedication. Anybody positioning themselves as a tribal king to take those positions should forget about it. We are not creating those positions for tribal kings. We are creating those positions for men and women of goodwill who will come and serve this country with dedication. For those who want tribal kingdoms, they should come up with a popular initiative amendment Bill, so that we convert the Senate into a house of elders where they can sit, but not here. They need to know that.

I must say that this is not the last time we are amending the Constitution. We might have to amend it again. As I said from the beginning, we are a country of many nations. We call them tribes but they are actually nations. Those nations have to live together. We have to craft a system for them to live together. A human being is basically a selfish person. They will do things for themselves and then for their nation. You keep on hearing people talk about patriotism. I can assure

you that all of us here are very patriotic to our nations. Our nations are our tribes. We are very patriotic to them. Sometimes we need laws that will make us look at the nation as a whole. This kind of tinkering with the Constitution will have to go on.

The only thing we need to be alive to is this: We should not tinker with the Constitution to benefit certain individuals. We should only tinker with it to benefit the country and make our lives better. This is a good beginning. People should not tire. Those who will be in the next Parliament can also look at what might not be right and try and correct it. As I said, democracy is a foreign concept to us. It is the white people who came here, disrupted our lives, lumped us together in one country and called us Kenya. We have to find a way to live together. The only way we can do that is by having laws and constitutions in place that will make it possible for us to live together.

Where I come from, if I wanted to marry a wife, I must have some cows. My father would probably be called upon to pay that dowry for me. I know some other communities where for a young man to get a wife, he has to go and steal cattle to pay for the wife. That is very normal for them. For me, it would be abnormal. We are different nationalities and we need to accept that. We need to put in laws that help us live, work and develop the country together and have a common destiny for our country.

All this will wear off in future. Culture changes! Culture is dynamic. In future, I am sure as we continue interacting with each other, eventually our culture will materialise. Our culture will become one and we will be one community. As of now, we need those laws. In the next Parliament, I hope that those who will come here will look at the laws of Singapore and Mauritius and see how those countries have managed to handle their tribalism, so that they have job quotas for each community in those countries. We need to do that here so that in the public service, every community is represented.

I support the Bill and pray that all Kenyans support it, so that we continue with the journey of building Kenya.

**Hon. Speaker:** Very well. Hon. Members, I have to re-adjust the order of business slightly, so as to allow us to go back to Order No. 5. For the convenience of the House and the country, I should issue this warning to the National Treasury. The Constitution is very clear in Article 221. It says that at least two months before the end of each financial Year, the Cabinet Secretary responsible for finance shall submit to the National Assembly estimates of revenue and expenditure of the National Government for the next financial year. They are to be tabled in the National Assembly. They have waited until 29<sup>th</sup> April to do this. The division of revenue is in Article 218 of the Constitution. It is very wrong for people to wait until the last day to submit Budget Estimates. For all we care, we could have adjourned this Sitting at 3.00 p.m. If this is the time that the National Treasury is bringing the Budget Estimates, it speaks volumes about their level of competence.

*(Hon. Kimani Ichung'wah spoke off-record)*

This is very wrong. Nevertheless, for the benefit of the country, we will re-arrange the Order Paper so as to go to Order No. 5 and allow the Leader of the Majority Party to make his pronouncement.

#### PAPERS LAID

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

---

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

The 2021/2022 Financial Year and Medium-Term Budget Estimates for the National Government which include:

- The 2021/2022 Financial Year Programme-Based Budget;
- The 2021/2022 Financial Year Estimates of Recurrent Expenditure;
- The 2021/2022 Financial Year Estimates of Development Expenditure;
- The 2021/2022 Financial Year List of Projects; and,
- The Budget Summary for 2021/2022 Fiscal Year.

Hon. Speaker, allow me to explain the delay of the submission of Budget Estimates which were ready. It was based on the court ruling which said that the Budget Estimates could not be introduced before the Division of Revenue Bill is passed. Hence, the National Treasury was waiting for its passage in this House to submit the Budget Estimates, so that it could not contravene that court ruling. That was the whole essence. We are still within the two months because we have the whole of May and June. The Senate made amendments which were not communicated in this House. Hence, it would have been done earlier, if it was not for that hitch. Luckily, we are still within time. When we process the Division of Revenue Bill faster next year, we will see who will be the delaying factor between the two Houses of Parliament and the National Treasury. That was the confusion or rationale for the delayed submission. It is not because Budget Estimates were not ready. They could not bring them until this House approved the Division of Revenue Bill.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): On a point of order, Hon. Speaker.

**Hon. Speaker:** What is your point of order, Hon. Ichung'wah?

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Speaker, without doubting the Leader of the Majority Party, he has said that the delay by the National Treasury in tabling the Estimates is a result of a court ruling. If I remember well, the courts advised on the passage of the Appropriation Bill but not necessarily the tabling of the Budget Estimates. I do not find anything that stops the National Treasury from tabling the Budget Estimates. Your reprimand to the National Treasury was very well placed. They hold this House with a lot of contempt.

I want to advise the Leader of the Majority Party. I know that he worked at the National Treasury as a Cabinet Secretary. However, he must now realise that he has a new role as the Leader of the Majority Party in the National Assembly. He should leave behind his hangovers of the past in the National Treasury. He should see that he is being an apologist for the National Treasury on this Floor of the House.

*(Laughter)*

When the National Treasury errs, we must be bold enough to tell them. I am certain that the Budget and Appropriations Committee and Parliamentary Budget Office will take their work seriously and go through these Estimates. By a glimpse of those Estimates just like last year, we are not cognisant of the current circumstances that Kenyans are living under. Probably, part of the reason these Estimates have been brought late is because the National Treasury wants to take this House with contempt and by surprise so that we do not have adequate time to critically scrutinise them to ensure that they address the current needs of Kenyans. We will get to that when the Estimates will be analysed in our committees.

I want to advise the Leader of the Majority Party to see that he is being an apologist for the National Treasury. They take us with a lot of contempt. This is seen in the disbursement of NG-CDF. The county governments are crying because they have not been given over Kshs80 billion. They table documents late. Let us stand our position. I want to associate myself with your

sentiments to reprimand the National Treasury. We, as a House, should do that. You spoke for us. I want to completely disassociate myself with the apologist remarks of the Leader of the Majority Party.

*(Resumption of Debate)*

**Hon. Speaker:** We will go back to the Bill. Member for Endeless.

**Hon. (Dr.) Robert Pukose** (Endeless, JP): Thank you, Hon. Speaker. Allow me to remove my mask. I have sat in this House since morning. At the outset, allow me to join my colleagues in the medical profession. Today, we lost one of the obstetricians/gynecologists, Dr. Stephen Karanja, due to the COVID-19 disease. This pandemic is really serious. You have seen what has happened in other countries like in India and Brazil. Things are not good. I urge the public not to relax the guidelines from the Ministry of Health. Let us observe them and ensure that we, as a country, remain safe and healthy.

Hon. Speaker, I have looked at the Reports of both the Senate and National Assembly Committees on the Constitution of Kenya (Amendment) Bill, 2020. I went through some observations of the Committees on the implications of the various court cases. I am aware that Nandi County, Kericho County, the Governor of Makueni County, the National Assembly, the Senate and the Office of the Attorney-General which are interested parties sought an advisory opinion from the Supreme Court. It was declined because there were eight petitions which were pending in the High Court. They are waiting for the High Court to consider them, so that there can be no confusion.

I am also aware that the High Court gave conservatory orders in the consolidated petitions which are before the High Court. There is Petition E282 of 2020, which restrains the Independent Electoral and Boundaries Commission (IEBC) from facilitating and subjecting the Constitution of Kenya (Amendment) Bill, 2020 to a referendum or taking any further action to advance the Bill pending the hearing and determination of the consolidated petitions. This order remains in force until the judgment is delivered. If the House passes this Bill, it will be unable to subject it to a referendum.

There is also a consolidated order in the petitions which bars His Excellency the President from assenting to the Constitution of Kenya (Amendment) Bill, 2020, if it is approved by the two Houses of Parliament. The order further provides that should the President assent to the Bill, the amendment shall not come into force until the determination of the petitions challenging the process are made. So, going through this, the Constitution of Kenya (Amendment) Bill, 2020 went through several processes which were initiated by the President and the former Prime Minister. They took it through the BBI through the public.

Hon. Speaker, several presentations were made. We had presentations from the Sabaot community who unfortunately have no county of their own. They are divided into two counties; Trans Nzoia and Bungoma where, in the two counties, they have been marginalised. The Sabaot sought to be consolidated into one county. The Rt. Hon. Raila Amollo Odinga on several occasions mentioned the need for the Sabaots, Tesos and Kurias, when they raised these objectives to be considered. When you look at this document, it does not address those issues. This Bill totally ignored those sentiments. You cannot marginalise a community and put them in two different counties where they become minorities in both sides. It is unfair. It is historical injustice to the Sabaots, Tesos and Kuria.

---

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

Therefore, I hope that whatever the outcome of this House, this Bill will wait for the determination of the High Court. There are sections that we feel that, as much as my county of Trans Nzoia is gaining two constituencies - which is okay and I have no objection to that - but marginalising a community into two counties that they cannot have a governor of their own and benefit from devolution, where we are talking of devolving 35 per cent of the monies to the counties where those people still remain marginalised, is not acceptable. For me, that is the main basis for which I oppose this Bill.

Hon. Speaker, looking at other areas in terms of this Bill, I know there were nine points which were raised by the Rt. Hon. Raila Odinga together with the President on their handshake, but I have not seen in this Bill where such matters are addressed. For example, when we talk of fighting corruption, we already have institutions like the Ethics and Anti-Corruption Commission (EACC) and the Directorate of Criminal Investigations (DCI). We had orders given by the President that within 21 days, we should have had people being prosecuted in court for the Kenya Medical Supplies Authority (KEMSA) scandal. Several months down the line, we have to wait for the Secretary of State of the United States of America, Mr. Blinken to talk about visiting Kenya and raise the issue about the theft in KEMSA and the President now rushes to make changes at the KEMSA Board.

Making those changes is cosmetic to me because it does not address the real issues. What happened to those who looted KEMSA? Those who inflated the prices? What happened to the 21 days given by the President where he needed a report in his office and to see people being prosecuted by the EACC and the DCI? What happened? Do we have to wait for the USA to start sanctioning us? To tell us that the Antiretroviral drugs (ARVs) at the Port cannot be distributed through KEMSA because they no longer trust KEMSA to me that is very sad. The KEMSA board does not run KEMSA. It is a board of directors which maybe sits once quarterly, but the real rot in KEMSA is, do we have people who have been prosecuted? What happened with the ultimatum that the President gave of 21 days? Has it been addressed?

The main issue that was raised by the people from Central and Mount Kenya was the one-man-one-shilling. Is that reflected in this Bill? Even when you look at the constituencies, you find that Mount Kenya is only getting eight constituencies out of the 70. Is it beneficial to them? Is it addressing the one-man-one-shilling?

Hon. Speaker, moving to the issue about amending Article 89, when you amend this Article on the delimitation functions of the IEBC, and in the Schedule you give it to the IEBC to decide which constituencies are to be created, that to me is unconstitutional. It is interfering with the Commission's work. You can only amend to say that there shall be, let us, say from 290 constituencies to 390. Then, the IEBC has to use the guidelines which they are given by the Constitution to delimit. However, this matter being before the court, I do not think I can make more comments about it. We leave it to the court to determine but, I am happy that, once this process is over from this House, it cannot proceed beyond just us passing or rejecting it.

But on my position, I reject. Thank you, Hon. Temporary Deputy Speaker. I oppose it.

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

*[The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya) took the Chair]*

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): The Hon. (Ms.) Gladys Boss Shollei.

**Hon. (Ms.) Gladys Boss Shollei** (Uasin Gishu CWR, JP): Thank you, Hon. Temporary Deputy Speaker. Upon reading this particular constitutional amendment Bill, also known as the BBI Bill, I am extremely disturbed. It is very clear and apparent that a vast majority of the proposals do not need a constitutional amendment to be affected. The bottom-line is mostly about creating political positions. This Bill will go down in history as one of the biggest frauds in Kenya's legislative making process.

As I oppose this Bill, I would like to point out a few examples of the reasons why it is a fraud and it is not necessary for us to have a constitutional amendment.

For example, there is Clause 2 which proposes to make regional integration and cohesion as a way of Kenya achieving its economic goals. Actually, it is very absurd for Kenya to put that requirement in its own Constitution and yet our neighbours have not done the same. Basically, it is akin to making a constitutional change in order to achieve regional integration. It is like passing a law that I must make a friend of my neighbour. That does not require constitutional change. Usually, that can be done through treaties and other bilateral agreements, but not through constitutional change.

Another example is Clause 3 which says that we need to have a new economic model called shared prosperity. However, a deeper reading of this Bill shows that it is nothing but an empty buzzword. Shared prosperity is a good thing. Pay inequality, income inequality and wealth inequality cannot be cured by a constitutional amendment. It can only be achieved through competent budget planning and execution. It has to be a deliberate effort through careful and prudent economic stewardship of a country, and not a constitutional change amendment.

Clause 4 deals with citizens' responsibilities. Again, this is probably one of the most absurd clauses we have in this Bill. It requires that we must deliberately promote and protect the wellbeing of families, including the respect for parents and elders. That is not something that is achieved by having it in a constitution. It can only be achieved either through upbringing or encouragement through school curriculum and education. It cannot be achieved through a declaration in our Constitution. In fact, this is a very good example of what is bad law. Had it been put in any other legislation, it would still be considered the most absurd law that cannot be implemented.

Let me put my attention to Clause 5. It proposes to amend Article 31 of our Constitution to incorporate the right to protection of personal data. Again, this is another superfluous and unnecessary amendment to the Constitution. Already, the current Constitution states that every person has a right to privacy. This includes the right to their property and information not to be infringed upon. Therefore, it is highly unnecessary to again create a new constitutional amendment that purportedly provides for protection of personal data which is something that already exists in our current Constitution. Again, this tells us that the proponents of the BBI Bill were simply throwing in amendments here and there so as to justify the creation of an expanded Executive and an expanded Parliament.

On Clause 6 of the Bill, Kenyans have been misled that corruption will be cured by this amendment. I would like Kenyans to know very well and I plead with the House to look at it. Clause 6, which purports to fight corruption, does not. All it says is that Parliament shall enact legislation for expeditious disposal of corruption cases. It does not give us any cure for corruption whatsoever. In any case, corruption does not exist in Kenya because of lack of laws. In fact, we have not less than 11 pieces of legislation that deal with corruption. Therefore, putting another provision in the Constitution indicating that Parliament shall enact a law does not guarantee us any fight against corruption. In fact, we know that many times the Constitution has said that Parliament shall enact a law and we know that this Parliament is guilty of declining to enact laws.

Clause 7 is legislation on elections. This has been touted by the proponents of the BBI as being able to cure post-election violence or post-election disagreements, but it does not. A close reading of it simply says that Parliament shall enact legislation to impose sanctions on parties that do not implement the two-thirds gender rule. Again, this is another counter-productive unnecessary amendment that can be done through amendments to the Political Parties Act. We do not need to have a constitutional change in order to achieve it.

The proponents of the BBI have gone on to say that Clause 8 of the Bill, which deals with electoral disputes, is going to solve any disagreements after elections. Truth be told, it does not cure post-election violence. It simply broadens the mode of service when one wants to file an election petition. Historically, this comes from a situation where in 1992 and in 1997, when one required personal service, it was difficult to serve your opponent. So, it has not cured any post-election violence whatsoever. In fact, it introduces a very dangerous system of serving persons electronically. The security of that method can be infringed upon and can also be abused and even used to perpetrate fraud. The service we have, which is either through direct or through newspaper adverts, is sufficient enough. There is no mischief whatsoever that this superficial and superfluous amendment could possibly do to change some of the challenges that we have with disagreements after the electoral process.

In the interest of time and to give other people opportunity, I will point out one more. Clause 10 deals with delimitation of electoral units where apparently there is a second Schedule in the Bill that creates extra constituencies. Again, this is the most unconstitutional part of this particular Bill. I am confident that the courts will throw it out. The BBI Taskforce has no powers whatsoever in any part of law to create constituencies. They can only propose that the IEBC should speed up the review of boundaries and constituencies or set a number, but not to allocate them to various counties and various electoral units. In any case, the manner in which it has been done is extremely pedestrian. The reason IEBC goes to the ground and talks to the locals before it undertakes delimitation of boundaries is because it starts the boundaries review at the polling station level and ward level before they go to the constituency level. The unconstitutionality of this particular clause goes on to purport to direct IEBC on how to undertake the work it is constitutionally mandated to do under Article 89 of the Constitution.

Lastly, I would like to point out again as part of the fraud that is being perpetrated by this BBI Bill, when they tell counties they will get 35 per cent remember, 35 per cent of zero is zero. If they want to increase resources to counties, they must increase the revenue base. If the revenue base increases and ends up in a situation where we say 10 per cent, it will still be 10 per cent of a substantial amount. They could get 50 per cent of an insignificant or non-existent amount. Again, this is a very convoluted manner in which you can lie to people that you will increase the amount that is going to counties.

With those few remarks, Hon. Temporary Deputy Speaker, I beg to strongly oppose this charade and fraud that is being used to con and fool Kenyans.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): The Hon. Member for Isiolo North, Hon. Hulufu.

**Hon. Hassan Hulufu** (Isiolo North, KPP): Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity to contribute to this historic Bill.

The proposed amendments to our Constitution are going to be probably the first amendment that may go through. Sovereignty belongs to the people of Kenya and as per our Constitution, it can be exercised either directly by the people or through elected representatives.

We have His Excellency, our beloved President, Uhuru Muigai Kenyatta and the Rt. Hon. Prime Minister, Raila Amollo Odinga leading the way.

We all know what happened after the disputed presidential election of 2017. Following the repeat presidential election where His Excellency Uhuru Kenyatta was declared the winner, we found ourselves in a very difficult situation as a country. We, for the first time, encountered a situation where we had a constitutionally elected President who was running the country and another where a people's President was sworn in. We found ourselves with two Presidents: The President who was sworn in as per the Constitution and one who was sworn in using the same Constitution but who carried the title of the people's president. We all know how much it cost us as a result of the prevailing conflict then and the clashes between the police and the demonstrators.

Therefore, as we discuss and debate this proposed amendment, it is important for us, as Members of Parliament, to appreciate the realities which informed the initiation of this amendment. As it is currently constituted, it can fit the bill of being an amendment through popular initiative. We appreciate that, during the disputed presidential election, our President garnered 8.2 million votes and the Rt. Hon. Raila Amollo Odinga garnered 6.8 million votes. These are two individuals, or two principals in this country, who were supported by millions of voters. Therefore, they used that as an opportunity and came together to do the "Handshake" and initiate a process which they thought was going to address the underlying causes of post-election violence.

When the BBI taskforce was formed and they went round the country to collect views of Kenyans on what they felt needed to be amended in the current Constitution, different interest groups in different counties presented their memoranda verbally and also in written form. It is also true to state that not all suggestions found themselves into the final product, which is the Bill we are discussing today. I come from a pastoral county. I can confirm that there are many issues we raised. There are many issues which we presented which, unfortunately, have not been captured. Others have been captured. We also appreciate that no interested party will have everything that he or she desires incorporated into a constitution or into a proposed constitutional amendment during a constitution-making process.

There are a few areas which we are not comfortable with. Various experts appeared before the Joint Committee of the National Assembly and the Senate to give their views on whether the National Assembly, which is the law-making body of this country, is allowed to open up this Bill and subject it to further amendments. After going through the Report, I realise that a majority of those who gave their views were of the opinion that the National Assembly cannot only serve as a conveyer belt, and that we can use our powers of law-making, the powers donated to us by the Kenyans who voted for us, to open up this Bill and try to see what we can amend. Unfortunately, looking at the conclusions of the Committee Report, that is not reflected. If you look at their Report, it is only the Kenya Law Reform Commission (KLRC) which indicated that it cannot be opened up for further debate. Individuals who presented their views like the President of the Law Society of Kenya (LSK), the representative of the International Commission of Jurists (ICJ) and also lawyer Kibe Mungai, indicated that seeing ourselves merely as a conveyer belt was not in order. Having noted that, I would like now to look at some clauses of the proposed amendment Bill.

The first one is the insertion of a new clause under Article 10. We know that, as per our current Constitution, Article 10 relates to national values and principles of governance. Inclusion of regional integration and cohesion is something I see as very important. We are part of the African continent and we are also part of the East African federation. Having a clause that will

enable us integrates better with our African brothers and sisters is something that is quite in order. We can actually bring this to effect through further legislation.

In terms of proposed insertion under the Article on economy and shared prosperity, as a representative of a pastoralist constituency, I can say this is of interest to us. It should be noted that it took almost 40 years of Independence for the Kenya Government to recognise pastoralism as a viable form of livelihood and pastoralists as people who can positively contribute to our wellbeing as a nation. We remember Sessional Paper No. 10 of 1965 on African Socialism and its implication on development. It created lopsided development. It treated all the marginal areas as areas unworthy of Government investment. It also assumed that investment in high potential areas would serve our interests as people in marginal areas through a trickle-down effect. It did not work. Therefore, we ended up lagging behind our brothers and sisters from high potential areas. It took the Grand Coalition Government to make a proper recognition and come up with policies that recognised pastoralism as a viable form of livelihood through a Sessional Paper which was formulated in 2012. Therefore, if we have this Article in the Constitution, as pastoralists and also as people from Arid and Semi-Arid Land (ASAL) areas, we feel that we are now part of this nation. More so, if you look at Sub-article 2(c) where livelihood sources are mentioned, pastoralism is one of the sources of livelihood which the State is encouraged to promote if this proposed amendment goes through.

Hon. Temporary Deputy Speaker, let me come to the responsibilities of citizens. We know that our current Constitution is one of the most progressive in the Continent. It gives us a wide range of economic, political, social and cultural rights, although, probably, not proper facilitation has been done for all Kenyans irrespective of their ethnic, religious and the geographical areas that they occupy. Having those rights in the Constitution is the first step to making sure that we have a claim to them. In as much as we citizens try to put pressure on the duty bearers to help us enjoy our rights, it is also necessary that we as right holders also become responsible citizens. Therefore, I find this to be very important because, if you look at, for example, the rights of children, in as much as the Government is supposed to ensure that children enjoy those rights, their parents have responsibilities. Having this in the Constitution is good.

If you look at corruption, we most of the time condemn public officers who engage in corruption but those officers can only engage in corruption if we have willing citizens to entice them with corruption. If we have a clause in the Constitution which requires us to combat corruption, I think it is a good thing.

Hon. Temporary Deputy Speaker, coming to right and fundamental freedoms especially the article on the right to privacy, having your personal data protected is very important. I feel the addition of paragraph (e) to ensure personal data is not infringed is very important. As things are now, using some lame excuses, security organs or other Government agencies can invade your privacy and infringe on your right to personal data.

As far as service of petition is concerned, we know the difficulties lawyers face when they are try to serve people in higher offices. It is not easy to access them and it is important to come up with legislation as proposed in this amendment Bill to ensure that electronic form of serving is permitted.

Hon. Temporary Deputy Speaker, the clause on the formula for sharing nomination seats among the political parties is very interesting. Our current Constitution allows sharing of seats proportionately on the basis of seats won. However, there are political parties that garner substantial votes that unfortunately do not translate to seats. This form of sharing will enable

parties that are not able to garner seats but have acquired substantial votes to get a share in nominations to the county assemblies and the National Assembly.

There is an amendment that I am very comfortable with. Through a caucus, we were able to raise our concerns with the Principals in Naivasha. In my view, doing away with 47 women seats is a big mistake because those seats help us to realise gender parity. If we retain those 47 seats and do a top up after elections, then realising gender parity will be easier. The new proposed articles to be introduced in the Constitution to ensure that no gender has more than two-thirds in Parliament may force us to have a very bloated National Assembly. The Senate one is resolved because it is going to be on a 50-50 sharing. When we made our presentation to the BBI Taskforce and met the Principals, we requested that this Article should not be touched but, unfortunately, it has been done away with. My county is losing because it has only two seats and it was seeing the woman representative seat as the third one. But I will leave it to the people of Isiolo to decide whether or not they will support the Bill when it will be subjected to a referendum. As far as the Senate is concerned, the 50-50 sharing is okay.

Hon. Temporary Deputy Speaker, Article 203 on increasing funding to counties from 15 to 35 per cent is a good thing, but the new paragraph (n) being introduced is something that we are not comfortable with as the people from ASAL area.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Members, please, allow me to say something to allay your anxieties. We are shortly running out of time but please note that the debate is not ending. From my list, we have very many Members who are interested in contributing and there is no intention of cutting out anyone who wants to speak to this matter of huge national interest. This is just to allay your anxieties that there will be more time to debate on this.

Hon. Murugara Gitonga.

**Hon. George Gitonga** (Tharaka, DP): Thank you, Hon. Temporary Deputy Speaker. As you have observed, we have been here since 9.30 a.m. I have been patiently sitting and I am happy that I have been reached to weigh in on this debate. This is momentous on a historical occasion of constitution-making. I want to request you to allow me to speak as a Member of the Departmental Committee on Justice and Legal Affairs. We sat and came up with a Report that is supposed to guide Members in discussing this Bill. I wish to set the record straight that as a Member of that Committee, I am conversant with the Report to the letter. As an advocate and a lawyer, allow me to point out salient issues that touch on the legality of the Bill that has been brought to us for processing for onward transmission to the public through a referendum.

Hon. Temporary Deputy Speaker, as the Joint Committee of the National Assembly Departmental Committee on Justice and Legal Affairs and the Senate Standing Committee on Justice, Legal Affairs and Human Rights, we pondered over the nature of this Bill when it came to the question of the promoters. This Bill is by an entity called BBI and we were not able to establish its legal status, whether it is *sui juris* or an entity that can bring such a Bill. We eventually established that the two gazetted entities were the taskforce and the Implementation Committee. The names, including that of Hon. Junet Mohamed, do not feature anywhere in as far as this Bill is concerned. Therefore, he should not be telling us about collecting 4 million signatures because he is not the one who did that.

We also pondered over the popular initiative with the question of the role of Parliament and in as much as we resolved that the role of Parliament is not ceremonial, in my view, the role of Parliament in this is just ceremonial. There is very little that Parliament can do in view of the provisions of Article 257 of the Constitution.

Hon. Temporary Deputy Speaker, we want to say that this Bill raises several issues that require consideration in law, including the errors that are apparent in the Bill. We concluded that they were typographical errors, including the errors contained in 34 Bills that were sent to county assemblies and as usual, they were not able to detect those errors.

We also dealt with the issue of Judiciary ombudsman which raises several questions in the legal perspective, including whether it interferes with the independence of the Judiciary. In my estimation, it does so. We talked about the functions of the Judicial Service Commission (JSC) which are being extended. In my view, the extension of those functions is clawing and fettering into the independence of the Judiciary and these clauses might be undesirable.

Hon. Temporary Deputy Speaker, we went on to discuss the change of Government, bringing the Executive into Parliament and creating the Office of the Official Opposition Leader in Parliament. Most Kenyans have not realised that the positions of the Official Opposition Leader and the Prime Minister, a new creation of this constitutional amendment, are protected. However, no one is asking what will happen if the largest party made a coalition with the second largest party. In this case, you will actually end up with the Official Opposition Leader without any party to protect him here. These are the issues that this Bill is raising, including the bloating of Parliament that Kenyans are not quite happy with. We are moving from 290 constituencies to 360 constitutionally, with the option of nominating especially the other gender so that we top up to achieve the two-thirds gender rule. The net effect is that we are staring at the National Assembly bloating to not less than 600 Members. Is this desirable? Kenyans must ask themselves. As we used to say, upon the advent of multi-partism led by one Kenneth Njindo Matiba, let the people decide. Kenyans will decide on this.

As a representative of the people of Tharaka, I must feverishly speak for them. They are not satisfied with the provisions of this Constitution (Amendment) Bill, especially when it comes to the creation of the 70 extra constituencies. The Constitution is clear. It is only this House that can alter Article 89(1) of the Constitution and create additional constituencies. Therefore, the BBI Bill is correct, and we have noted that in our report, to propose that we create additional 70 constituencies. What does not satisfy me and the people of Tharaka is the fact that the Bill has gone ahead to distribute the additional constituencies to the counties. This is not consistent with what the people of Tharaka advanced when they made their public participation representations. We said that based on the expansiveness of the constituency, Tharaka is entitled to an extra constituency. Under Article 89(5) of the Constitution, there are other considerations than population which IEBC, which is the only mandated entity under the Constitution to delimit and adjust boundaries of constituencies, has to work with. Had we gone to IEBC, I am 100 per cent sure I would have made our case and out of the 70 constituencies, one would have been allocated to Tharaka. That has not happened and, therefore, the people of Tharaka are not satisfied with the Bill as it is.

Another issue I need to tackle is shared prosperity. This Bill has a provision on shared prosperity, but it does not emphasise equality and equity when it comes to this. While there would be little problem with one man-one vote-one shilling, we must admit that in this country, there are marginalised areas - areas that were left behind by the colonialists and that have remained behind since Independence. Tharaka is one of them. I would have loved to see a lot more regarding this BBI Bill to do with marginalisation, electricity supply, roads, water, good schools and every other aspect that improves the lives of marginalised people, including my people of Tharaka. That is not captured in the Bill. That is why I will advise my people of Tharaka to decide as they wish when this Bill is put to a vote at the referendum. But, today, I actually oppose this Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Member for Kiharu.

**Hon. Ndindi Nyoro** (Kiharu, JP): Thank you very much, Hon. Temporary Deputy Speaker, for giving me this chance. Indeed we have been here for many hours.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Gikaria, what is out of order?

**Hon. David Gikaria** (Nakuru East, JP): Hon. Temporary Deputy Speaker, I am sorry to interrupt my younger brother. I just have a request and, maybe, an assurance from your office. In the morning session, Members who had queued were allowed to continue in the afternoon. I am pleading with you that if we do not get a chance to speak, queued Members be given the first opportunity on Tuesday. We have been here since 10.00 a.m. I am pleading with you that what happened in the morning be done on Tuesday. Today, I logged in and then Hon. Mawathe pulled out my card.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Okay, Hon. Gikaria. To reiterate what I said, we will have more time. I do not know what you are saying happened in the morning. We will go back to the record and by the time we resume debate on this matter, we will address the issue. I just want to tell Members that we will have a lot of time for this. I hear other Members saying we should have a night shift. How do you want to sneak a night shift into the Order Paper right now? The Leader of the Majority Party and members of the House Business Committee are here. They can see how much interest Members have in this. We must accommodate views of all Members.

Hon. Ndindi.

**Hon. Ndindi Nyoro** (Kiharu, JP): Thank you, Hon. Temporary Deputy Speaker. I hope you have taken cognisance of the fact that some minutes have been taken away by the point of order.

I rise up first as a Kenyan, second as a person from the Mount Kenya region and third, as a youth. I wish to raise my issues especially away from this national Parliament and to address some of the issues that are being peddled in our region in so far as this document is concerned. For the avoidance of doubt, I have gone through the Bill and I rise to oppose with reasons.

One, the kind of debate we have been having is of monumental proportions. I hope through the same comparison, even the freedom of having this debate will be commensurate with the same size so that we take as many divergent opinions and with respect. I have a big problem from the outset!

We were recalled from recess to come and discuss this BBI Bill and yet, our country is going through huge challenges, some of which are of humanitarian nature. I would have wished, as the Member for Kiharu, to be recalled from recess to come and discuss how we are going to roll out the vaccination programme to all Kenyans across the country. That is more important than this Bill before us today. As we talk about the COVID-19 scourge, it is important for all Members of Parliament to know that most of the people we represent, especially those in sectors like retail and hospitality, constitute the majority of people in the informal sector in our economy. That category constitutes around 64 per cent of all informal jobs in our economy. In aggregate, over 8.6 million Kenyans are employed in those sectors that are hardly hit by the lockdown that was instituted and placed by our President. Therefore, I find it very insensitive that we come to discuss such a Bill when Kenyans are going through untold challenges at such a time.

One of the major issues that I would have wished we were recalled to discuss is the economy of our country. The Jubilee regime has actually over-borrowed beyond the limit that has been put by this Parliament.

Hon. Temporary Deputy Speaker, if you add the same to the debt that is guaranteed by the Government of Kenya to the counties and other State-Owned Enterprises(SOEs) of around Kshs3.4 trillion, the entire debt adds to beyond Kshs11 trillion. This is over 110 per cent of our GDP, which is estimated at around Kshs10 trillion. In my opinion, there are other issues that we would have been recalled to discuss other than BBI. They are more of a priority and pressing.

I have gone through the document. I will also make some other remarks as I finalise to demystify some issues that are being used to sell BBI to Kenyans, and especially going back to my cocoon of Mount Kenya region.

When the promoters and their surrogates came to our region, they were peddling a carrot of something they are calling additional constituencies. I want to be forthright, after going through the Bill, out of the 70 constituencies that are being promised by this Bill, Mount Kenya is benefiting by getting only 17 constituencies. Even in proportion to our population, the number of constituencies that we are getting is less than what we deserve.

Nyeri County, with a population of close to 800,000 residents, is not getting any additional constituency. Kajiado County, with a much lower population of 687,000 based on the 2019 Census, is getting an additional three constituencies. Murang'a County, where I come from and with a population of in excess of one million residents, is getting only one constituency. Compare the same with Kwale County that is getting five additional constituencies with a population of around 866,000 residents. Nyandarua County, with a population of over 650,000 residents, is getting none while another county of a much lower population, like Narok County, is getting three additional constituencies. The famous Tharaka Nithi County that always count their votes last, with a population of over 400,000 residents, is getting zero additional constituencies while we see other counties with much smaller populations getting additional constituencies. Therefore, this BBI is skewed against Mount Kenya region. Partly, that is the reason as a region we are saying "No."

There is another carrot about devolution and the fact that they are misguiding our people that there is something in this Bill in as far as the one man, one vote, one shilling clarion call is concerned. The current formula that shares money amongst the counties is more favourable to the counties of Mount Kenya than the formula contained in the Bill presented before us.

As we all know, the Ward Development Fund is something we can create without spending taxpayers' money through a referendum.

I want to talk about a few national issues. One is on the 35 per cent that we purport we will be taking to the counties. I want to point to this administration and even ask our President and the entire Government of Kenya what is restricting them from giving the counties 15, 35 or even 50 per cent of the sharable revenue. There is nothing restricting the current administration from giving the counties additional money.

Two, as we purport that we would be adding more money to our counties, with the current threshold, our MCAs and county staff have not been paid for the last four months. What is in BBI that beholds the distribution is producing more funds to be channelled to the counties?

The issue of inclusivity is far-fetched. Creating five top positions and giving them to some political elites – those who would be peddling and hawking their communities – will bring about inclusivity.

Kenya is an ethno-linguistically fragmented nation. We have many nations like Kenya, including Switzerland and Indonesia which, instead of going through such a process, they bit the bullet and did what is required to build a cohesive nation within a state.

As economists, history is our laboratory. Judging by history and studying other countries that are like Kenya in so far as having many ethnicities is concerned, a country becomes cohesive when it starts focusing on identities other than the rigid and toxic ones like the negative ethnicity and religion. We do that through industrialisation. When you industrialise, people move from villages in the rural areas and settle in towns. When they do so, they establish other identities based on their professions, skills and work which are much better identities to deal with than the toxic ones like ethnicity and negative peddling of religion. We, therefore, have to stop being lazy. The reason why Kenyans fight, which is number one and the most prime, is a scramble for resources and recognition. That is where identity comes in. For us to build a cohesive Kenya, we have to focus on production that brings about industrialisation that brings people to urban areas and, therefore, the frontlines of negative ethnicity continue to diminish.

I want to speak on the issue of corruption. It is being purported that BBI is coming with a cure for corruption. My proposal is that we go back to the country we call Kenya from 1963.

I am a descendant of a *Mau Mau* freedom fighter. We have to ask ourselves critical questions. How come the collaborators, the people who were fighting us as freedom fighters, and especially our forefathers, came to own over half of our country in terms of land mass? How come few families own traditional factors of production? Where did they buy these factors of production from? They keep telling us that they acquired the land through willing seller, willing buyer transactions. Can we be called to Uhuru Park and those people come with receipts to show us where they bought all the land and the factors of production from? I fear that even with the new knowledge and technology, the same people own the same factors of production. I want Safaricom PLC to one day tell Kenyans the people they have agreements with in this nation in as far as *Fuliza* and other feted borrowings are concerned. If we continue doing the same, the issue of shared prosperity is a sham. I say “No” to hypocrisy, lies, deception, conmanship and BBI.

Mr. President, you promised our youth one million jobs, 500,000 houses per year, 100 per cent electrification by the Year 2020 and not BBI! But that has not been done.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Kiai, Member for Mukurweini.

**Hon. Anthony Kiai** (Mukurweini, JP): Thank you, Hon. Temporary Deputy Speaker. At the outset, I support the BBI Bill before this honourable House. This is a historical moment because we have the privilege of being present in this House to amend the Constitution of Kenya, 2010 for the first time through a popular initiative. I am a member of the Departmental Committee on Justice and Legal Affairs. I was involved in the deliberations that took place at Windsor for an entire week. Therefore, I have been part and parcel of constitution-making if this Bill is to pass in the referendum and crystallise into our Constitution. I need to start by quoting Abraham Lincoln who said, “This country, with its institutions, belongs to the people who inhabit it. Whenever they shall grow weary of the existing government, they can exercise their constitutional right of amending it...” This is exactly what we are doing.

The people of this country are exercising their right to amend the Constitution and the BBI is grounded on the handshake between President Uhuru Kenyatta and the former Prime Minister, Raila Amollo Odinga. The many times when we have had general elections, violence always ensued after the declaration of the presidential winner and, of course, the parliamentary winners. Furthermore, the purpose of this was to ensure that we remove this cyclical violence that ensues immediately after every election. The handshake is a peace maker. I come from Nyeri. It has been said before by others that Nyeri never benefited from this BBI. Nothing could be further from the truth than that statement. Nyeri has three protected constituencies, that is, Mukurweini, Tetu and

Othaya. The fact that BBI confirms the continuation of those three constituencies is a confirmation that, indeed, Nyeri as a county immensely benefited from the BBI. That is why I will be mobilising my people of Mukurweini to support the referendum and this Bill.

Hon. Temporary Deputy Speaker, elections are supposed to bring unity in this country. They are supposed to bring the people of this country together. However, after every other election where we exercise our sovereign power through the ballot, what happens is violence that basically threatens to tear the fabric of this country down the middle. Every time we talk about politics, there is violence. Everywhere around the world, politics will always shape the economic policies. In fact, any other factor of production will have to revolve around the politics of a good country. As Mzee Moi said: “*Siasa mbaya, maisha mbaya.*” Therefore, good politics will ensure that the country prospers not only economically, but also in other aspects that make up the country.

Unfortunately, what has happened is that for the longest time, we have been practising bad politics and this is where BBI comes in. It comes in to try and cure that. It is trying to stabilise this country by ensuring that when there is a good and calm political climate in the country, then all those other factors, including the economy and the social fabric of this country, will be intact. This is why I am saying BBI is the best thing to have ever happened in this country since Independence.

After that was realised, a taskforce was set up. A steering committee was set up. They went all round the country collecting views of all Kenyans who decided to go forth and give their views. It was there in Murang’a, Nyeri and every other county. Any person who was interested in giving out their views had a chance to do so.

Hon. Temporary Deputy Speaker, as set out in Article 1(1), all the sovereign power belongs to the people and that sovereign power can be exercised through duly elected representatives or by the people themselves. I am not lost to the fact that Article 93 of the Constitution also sets up Parliament and one of its functions is to make laws. Remember Article 1 gives the constituent power to the people of this country. This is where the popular initiative which is christened as BBI comes in. When I look at the intended Bill, I realise that besides saving a constituency like Mukurweini, there are also other good things that come with this Bill. One is setting the minimum sharable revenue between the two sets of Government. At 35 per cent, it means the minimum the county governments can get is 35 per cent. Nothing prevents the Government currently from giving out much more. However, here we are talking about the minimum. Previously, it was 15 per cent but, under the current budget, it will go as high as 28 per cent. Therefore, at the minimum of 35 per cent, we are devolving more money to the grassroots to ensure that those projects that are stalled or starved of funds by the national Government, we now have an opportunity to ensure that there is development at the grassroots.

Hon. Temporary Deputy Speaker, there is also the issue of the Ward Fund which will be given to the Members of the County Assemblies (MCAs). It is an equivalent of the NG-CDF that is given to the MPs. That ensures that every ward in this country has some minimum budget that will be used in accordance with the whims and aspirations of the people.

Another good point of the BBI is the fact the NG-CDF has been anchored in the Constitution. You realise if you go throughout this country, most of the projects that have been a game changer in terms of development have been done by the NG-CDF. Therefore, when we have a country that has Ward Fund and the NG-CDF, it means much more money is devolved to the counties, grassroots and the citizenry. The NG-CDF has been a subject of so many law suits. Time and again it has been declared illegal. It has been said to be duplicating the devolution as set out by the Constitution. By anchoring this in the Constitution, it means that all those cases filed

questioning the legality of the NG-CDF will be solved and so Kenyans can continue enjoying the fruits of NG-CDF.

Another issue that is of great importance is ensuring that the Cabinet Secretaries (CSs) will come from Parliament. Nothing is as hard as a Member of Parliament sitting in a CS's lobby, trying to lobby for a project or for some funds to actualise some development in his constituency. The fact that Members of the Cabinet will be got from this Parliament means that the process of answering questions that relate and touches on MPs will be faster. It will be much more transparent because it will be done on the Floor of the House. It also ensures that all the answers that are given are captured in the *Hansard* and, therefore, they are out there for the public to ensure that they can read their answers.

Hon. Ichung'wah is telling me that I am running out of time.

**The Temporary Deputy Speaker** (Hon (Ms.) Soipan Tuya): Hon. Nduati, what is out of order?

**Hon. Joseph Nduati** (Gatanga, JP): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): What is your point of order?

**Hon. Joseph Nduati** (Gatanga, JP): Thank you very much, Hon. Temporary Deputy Speaker. I have been here since 10.00 a.m. As a mathematician, I have tried to calculate. When you allow every Member to contribute for 15 minutes, it means only four members can contribute within one hour. If we are to run from 10.00 a.m. to 1.00 p.m. and 2.30 p.m. to 7.00 p.m., it means only 30 members will contribute. Since this is a very critical Bill, I am proposing that, as the House leadership, you find a way of allocating us, as individual Members, specific times when we can come to speak. That way, one can come here, say, at 8.30 a.m., and contribute to specific debate instead of sitting here the whole day without being able to contribute. I am not opposing BBI. I am a great supporter of BBI.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): You have now diverted the debate and eaten up one minute of Hon. Kiai's time. Hon. Kiai, you cannot continue now. We have to transfer you to the next session when this matter appears on the Order Paper. The Leader of Majority Party is here. He represents the House Business Committee. This debate will continue next week.

Hon. Members, you realise that even 15 minutes, because of the immense public interest in the matter at hand, are not enough for Members. Nevertheless, we have had a good moment for debating this Bill. Really, 15 minutes is good time for a Member to bring out all the issues that he or she may be having. This is a momentous time. It is a constitutional moment during which we are participating in a matter that has never been prosecuted in this House before. Therefore, we are doing well. Leader of Majority Party, I am sure you will take up the matter.

Member for Mukurweini, you will have your balance of three minutes when this matter comes up for debate next time.

## ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Members, the time being 7.02 p.m., the House stands adjourned until Tuesday, 4<sup>th</sup> May, 2021 at 2.30 p.m., when we shall resume our normal sittings from our recess.

The House rose at 7.02 p.m.