

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 6<sup>th</sup> June 2017

The House met at 2.30 p.m.

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

PRAYERS

QUORUM

**Hon. Speaker:** Ring the Quorum Bell.

*(The Quorum Bell was rung)*

We can start business. There will be a communication from the Chair later.

### PAPERS LAID

**Hon. A.B. Duale:** Hon. Speaker, I beg to lay the following Papers on the Table of the House:

The Office of the Controller of Budget Half Year National Government Budget Implementation Review Report for the Financial Year 2016/2017 (pursuant to Article 228(6) of the Constitution)

The Mining (Licence and Permit) Regulations, 2017 and the Explanatory Memorandum.

The Mining (Dealings in Minerals) Regulations, 2017 and the Explanatory Memorandum.

The Movable Property Security Rights (General) Regulations, 2017 and the Explanatory Memorandum.

The Beijing Treaty on Audiovisual Performances adopted by the Diplomatic Conference on 24<sup>th</sup> June 2012 and the Explanatory Memorandum.

Thank you, Hon. Speaker.

**Hon. Speaker:** The Office of the Controller of Budget Half Year National Government Budget Implementation Review Report for the Financial Year 2016/2017 (pursuant to Article 228(6) of the Constitution) is referred to the Budget and Appropriations Committee. The second, third and fourth items are referred to the Committee on Delegated Legislation. The fifth Report is referred to the Departmental Committee on Energy, Communication and Information.

Chair of the Budget and Appropriations Committee.

**Hon. Musyimi:** Hon. Speaker, I beg to lay the following Paper on the Table of the House:

The Budget and Appropriations Committee Report on the Second Supplementary Estimates for the Financial Year 2016/2017.

Thank you, Hon. Speaker.

**Hon. Speaker:** Chair of the Departmental Committee on Lands.

**Hon. Kihagi:** Hon. Speaker, I beg to lay the following Paper on the Table of the House: Report of the Departmental Committee on Lands on its consideration of a Petition by Hon. Sabina Chege, MP on behalf of shareholders of Nanga Kihoto (Naivasha) Limited on attempted land transfer and fraudulent funds transfer from the company's account.

Thank you, Hon. Speaker.

**Hon. Speaker:** Vice-Chairman of the Departmental Committee on Health.

**Hon. (Dr.) Pukose:** Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Reports of the Departmental Committee on Health on:

- (i) the quality of care in public hospitals;
- (ii) the matter of irregular specialist recognition of Dr. Samira Soni;
- (iii) the Cancer Prevention and Control (Amendment) Bill, 2016 (Senate Bill No.3 of 2015); and,
- (iv) status of implementation of the Managed Equipment Services (MES) Programme.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Kihagi, I had approved a report dealing with the petition filed by Hon. Francis Mwangangi, Hon. Cyprian Kubai Iringo and the residents of Pungwe area, Lunga Lunga.

**Hon. Kihagi:** Hon. Speaker, the said Papers have not been brought to my notice by the Clerk but I will follow up, so that I can lay them tomorrow in the morning.

**Hon. Speaker:** Next Order.

## NOTICE OF MOTION

### SECOND SUPPLEMENTARY ESTIMATES FOR FINANCIAL YEAR 2016/2017

**Hon. Musyimi:** Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Budget and Appropriations Committee Report on the Second Supplementary Estimates for the Financial Year 2016\2017, laid on the Table of the House today, Tuesday, 6<sup>th</sup> June 2017.

I thank you, Hon. Speaker.

**Hon. Speaker:** Next Order.

## MOTION

### ROAD DESIGNS AND CONSTRUCTION TO INCORPORATE RUN-OFF WATER HARVESTING AND MANAGEMENT MECHANISMS

THAT, aware that Article 43 of the Constitution provides that every person has the right to clean and safe water in adequate quantities; further aware that water harvesting is an important practice for water management; cognisant of the fact that earth-dams and water-pans would play a key role in water harvesting especially in arid and semi-arid areas; noting that a large quantity of run-off water

goes to waste in most parts of the country; further noting that this run-off water if properly harvested and managed would be useful for domestic, livestock and irrigation purposes; appreciating that increased infrastructural development especially in roads has led to the mobilisation of machineries and human resources in most areas; further appreciating that these civil engineering machineries and personnel can be useful in the construction of earth-dams and water-pans; this House resolves that the Government through the Ministry of Transport, Infrastructure, Housing and Urban Development ensures that all road designs and constructions incorporate run-off water harvesting and management mechanisms.

*(Hon. M'uthari on 31.5.2017)*

*(Debate concluded on 31.5.2017- Morning Sitting)*

**Hon. Speaker:** Hon. Members, debate on this Private Member's Motion was concluded on Wednesday last week in the Morning Sitting. What remained was to put the Question. Having confirmed that there is quorum in the House, I proceed to put the Question.

*(Question put and agreed to)*

**Hon. Speaker:** Next Order.

## BILLS

### *Third Reading*

#### THE KENYA NATIONAL EXAMINATIONS COUNCIL (AMENDMENT) BILL

**Hon. Speaker:** Order, Members. Again, debate on this Bill was concluded. It is by private Member, Hon. Alfred Agoi. What remained is for the Question to be put on agreement.

*(Question put and agreed to)*

Let us have the Mover, Hon. Agoi.

*(Hon. Maanzo stood up in his place)*

Do you have his permission?

**Hon. Maanzo:** Yes, Hon. Speaker.

On behalf of Hon. Agoi, I beg to move that the Kenya National Examinations Council (Amendment) Bill (National Assembly Bill No. 42 of 2016) be now read a Third Time.

I also request Hon. Wamalwa to second.

*(Hon. Wakhungu bowed)*

**Hon. Speaker:** Hon. Wamalwa, are you in a position to second?

**Hon. Wakhungu:** I second.

**Hon. Speaker:** Hon. Members, that is seconding.

It is good for those who are observing the proceedings to understand and appreciate that even rising in his place and bowing is an acceptable way of seconding.

*(Question proposed)*

**Hon. (Dr.) Pukose:** *(Off-record)*

**Hon. Speaker:** From Hon. Pukose, the desire is that I put the Question. There being no contrary view, I proceed to put the Question as I confirm that the House quorates.

*(Question put and agreed to)*

*(The Bill was accordingly read the Third Time and passed)*

**Hon. Speaker:** Before we proceed to the next Order, allow me to recognise the presence, in the Speaker's Gallery and in the Public Gallery, of students from the following institutions: Limuru Girls High School, Limuru Constituency, Kiambu County; State House's Pupils Reward Scheme Mentorship Programme (PURES) from various counties; Katangi Secondary School, Yatta Constituency, Machakos County; St. Mary's Primary School, Westlands Constituency, Nairobi County; Lake Naivasha Girls High School, Naivasha Constituency, Nakuru County; Bridge International Academy from Westlands Constituency, Nairobi County, and Nyaga Secondary School, Githunguri Constituency, Kiambu County. They are all welcome to observe proceedings in the National Assembly this afternoon.

Next Order.

### *First Readings*

THE BUILDING SURVEYORS (AMENDMENT) BILL

THE ELECTION OFFENCES (AMENDMENT) BILL

*(Orders for First Readings read - Read the First Time and ordered to be referred to the relevant Departmental Committees)*

**Hon. Maanzo:** On a point of order, Hon. Speaker.

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

### **POINT OF ORDER**

STATUS OF NOMINATION OF MEMBERS TO EALA

**Hon. Maanzo:** I rise to seek guidance from you, Hon. Speaker, in relation to the matter of the East African Legislative Assembly (EALA). After the last time we convened in the House

and passed the Motion, there is no update as to what we do next. The matter is very urgent for purposes of the country.

**Hon. Speaker:** You know it is only fair that the Member for Makueni has always reminded Kenyans: “As a trained lawyer...” Just look at the East African Legislative Assembly Regulations, immediately after Regulation 6, the processes that follow. But, because you sought information, I can tell you that there was a notice which was put and given to the Leader of the Majority Party... It is to the Leader of the Minority Party in the National Assembly and the Leader of the Minority Party in the Senate. They were supposed to comply with the Communication in the letters from the two Clerks. They were supposed to submit - the Coalition for Reforms and Democracy (CORD) was supposed to submit - the additional names by the fall of the date today; by close of business today. For that reason, the Clerk of the Senate and the Senior Deputy Clerk (SDC) of the National Assembly are holed up at the County Hall waiting for those names.

We can only proceed after close of business today. Perhaps, you will be given more information in the House Business Committee. Thereafter, the other processes provided for will take place. So, nothing is lost. That is the latest information. As of now, that bit is being handled by the two Clerks.

**Hon. A.B. Duale:** Both Houses have adopted the report of the committee. But, there were regulations and timelines which were gazetted by the two presiding officers. They had serious timelines on when to do the nomination, when to do the elections, and when the committee was to do the vetting. So, I remember the last day for the election was 25<sup>th</sup> May 2017 and the nomination has passed. I am wondering what the two presiding officers are doing in County Hall. It is an illegal activity because until and unless a new gazette is done with new regulations, I do not see what the two presiding officers are receiving. They cannot receive nomination from different people now. So, we need guidance.

Second, as per the gazetted regulations, 2<sup>nd</sup> June 2017 was the last day when you and your colleague the Speaker of the Senate were supposed to submit the names to the EALA. That did not happen. Today is the 6<sup>th</sup> of June. I need your guidance. Our two presiding officers, if at all they are at County Hall receiving nominations, are doing what is called electoral fraud, an illegality. That is an election fraud because there are Kenyans who presented nomination papers. If there are Kenyans whose papers are coming now, I am sure there should be a gazette notice.

I need that guidance because 2<sup>nd</sup> of June, as per that regulation which is gazetted and I have it, was the last day. It is now the 6<sup>th</sup> of June. If parties want to comply with the report of the committee, I have no problem but, I think the two presiding officers need to consult the House and do a new timetable for this process to take place. They cannot just do kangaroo nominations somewhere. This is a country where we want to do things in a right way.

**Hon. Speaker:** Well. The report of the.... Hon. Opiyo, you have something in addition to say for every opportunity.

**Hon. Wandayi:** Thank you very much, Hon. Speaker. I do not want to debate at all.

I have one comment to make. Even though this House, just like the Senate, passed that report of the Joint Select Committee, the report's import, in my very respectful view, is to amend, through the back door, the Statute, Treaty and Regulations or the Rules of the East African Legislative Assembly.

Hon. Speaker, as a coalition, I am aware that we do not intend to add any single name on top of the four or five we had submitted.

*(Applause)*

So, I want to agree with him, for the first time, that their sitting there is in vain; those two officers.

**Hon. Speaker:** You are agreeing with him for the first time?

**Hon. Wandayi:** Yes, that the sitting of those two officers in County Hall is in vain because the coalition of the National Super Alliance (NASA) or CORD will not add a single name to the ones we had submitted.

So, we actually need to agree on the best way forward on this matter because we cannot amend the Regulations of the East African Legislative Assembly or the Treaty itself through the backdoor. If the intention was to amend the Regulation or the Treaty, there is a process through which it shall be done. It is not through a report of a Joint Select Committee of a few people.

Hon. Speaker, thank you very much.

**Hon. Speaker:** Honestly, Hon. Members, have we forgotten what the report recommended?

**Hon. (Dr.) Pukose** *(Off-record)*

**Hon. Speaker:** Yeah. It is because you, as a House, passed that report. If you can trace your memory back, the amendment which was withdrawn which was proposed to be moved by Hon. Mwadeghu had the effect of deleting three or four of the recommendations. Just look at those recommendations so that you debate from a position of knowledge. It is not my business to debate. It is your business to debate those recommendations. As it is, the proposed amendment was withdrawn and, that is the information I have. Therefore, the report was passed without amendments, just like it had been passed in the Senate.

If, on the other hand, anything that comes from the administrative processes that presiding officers are undertaking is, in the opinion of both myself and the Speaker of the Senate, unconstitutional or irregular, allow us to apply ourselves to those recommendations in the face of the Regulations – not the Treaty or the Regulations dealing with election of Members to the EALA. So, if anything coming through the administrative exercise that is being done by the two presiding officers is un-procedural, then we will obviously communicate that to this House and the House will be at liberty to take whatever decision it proposes to take thereafter.

But, before they have come to us, remember you adopted that report on Wednesday afternoon. The next day was Thursday 1<sup>st</sup> June 2017 which was not a sitting day. The presiding officers had to do whatever they thought was necessary administratively, but they will report. It is not the presiding officers who will see the report first. It is the joint committee which will first receive their report, then they will bring whatever report they have and we will make of what you choose. There is no matter of co-principals in this one. This language is becoming very fashionable that the Member for Endebess is suggesting that there could be some principals. There is none. Let us just wait for the two Clerks to finish the administrative exercise that they are doing and they will report to the joint committee which I am informed is scheduled to meet on Friday this week. It is after they have met and deliberated on what it is that they will have received from the presiding officers, that then we can make a decision either to deal with the matter or not. But if you recall, in that report, there was a deadline of 4<sup>th</sup> June 2017 which was indicated there. What the Leader of the Majority Party is saying about the deadlines is true. The joint committee will need to address that issue. I cannot do it now because taking action at this point will be premature. The best thing will be to wait for the joint committee to bring us a report and I am sure the House will be able to express itself. I can see the Member for Ugunja is

quite happy about having to deal with the matter as he best understands. Let us proceed. Whatever comes out I am sure you will be up to the task and you will be able to sort it out.

I cannot express myself on the number of names to be brought because it is not within my purview. I do not have the power to bring any name.

Let us move to the next Order which we were on. The Leader of Majority, you were interrupted while moving business appearing as Order No. 12 today.

*Second Reading*

THE COMPANIES (AMENDMENT) BILL

*(Hon. A. B. Duale on 31.5.2017)*

*(Resumption of Debate interrupted on 31.5.2017 – Afternoon Sitting)*

**Hon. Speaker:** Debate had already commenced. How far had it gone? The Leader of the Majority Party, you were interrupted by Hon. Odanga who claimed that there was no quorum in the House.

**Hon. A.B. Duale:** Hon. Speaker, I beg to move that the Companies Bill be now read a Second Time.

The Companies (Amendment) Bill seeks to amend the Companies Act 2015 in order to improve the operationalisation of that Act. Kenya is part of the global market and in order to attract investments, it is imperative that the laws relating to companies be in line with the global trends and best practices. The Companies (Amendment) Bill, 2017 is not only meant to improve the provisions of the extent of directors' liabilities, directors' disclosure and having remedies for shareholders in case of a dispute to further protect investors. These amendments will try to see whether they can ensure the ease of doing business in our country is fast-tracked, whether we can use this law to protect minority investors and above all, these amendments want to clear the ambiguities and errors that are found in the law that we passed in 2015 which was one of the landmark pieces of legislation that the 11<sup>th</sup> Parliament can be proud of.

I will directly go to the highlights of these amendments. Members can remember that that Bill was heavy. If you pick Clause 7 of the Bill, it is proposing to amend that Act by completely repealing and replacing Section 90 of the principal Act. It provides for the requirements, conversion or how you convert a public company into an unlimited company. Clause 7 is just dealing with the conversion.

Clause 8 of the Bill proposes to amend Section 93 of the principal Act. It is at the back of the Bill. The amendment to Section 93 of the Act wants to expand the application in terms of the ownership of a company. It wants to expand the application to include information relating to the beneficial owners of the company. This clause also tries to propose to amend Section 9 by excluding public quoted companies from launching a copy of any amendment made within a period of 14 days after any changes are made to the registrar. The registrar or the register can change daily. So, it is giving a timeframe for public quoted companies. They cannot launch a copy of any amendment unless it is done within 14 days.

Clause 10 of the Bill proposes to amend Section 123 of the principal Act. This is to expand the definitions of the members of the director's family to include a brother, sister, grandchild or a spouse of the director. All this is done within the reading of transparency and

accountability in the management of both public and private companies in our country. This is as a result of what happens when big banks like Chase and Imperial collapse. The reason why those companies or those banks collapse is because the relatives and the family members of those banks did not make full disclosure to the Registrar of Companies on their shareholding in those companies. So, there is a lot of insider trading that goes on both in the private and in the public companies. Clause 10 is trying to cure that.

Clause 11 proposes to amend Section 135(1) of the principal Act. This is going to make a disclosure. It requires a director of a company to make a disclosure on any other company directorship that the director holds. This in simple language means that if you are a director with Barclays Bank and the same time you are a director with Bamburi Cement, then you must disclose fully all the companies where you sit as a director. Before, people could hide the various boards where they sat whether private or public. This will also help the taxman to collect the necessary revenue by being in those positions.

Clause 12 proposes to amend Section 146 of the Act. This is to expand the instances where a director is to avoid a conflict of interest when dealing with the matters of a company and to keep clear mandate on who can give authorisation. If you are a director of a company, you must declare your interest. You cannot do business with that company. This is to make sure that we create a very good corporate governance structure for the running of both the public and the private companies in our country. Within the reading of Clause 12, the amendment further provides for penalties if one contravenes that section in terms of not declaring their conflict of interest.

Clause 13 proposes to amend Section 147 of the Act. This is to prevent a director from accepting benefit from a third party, if the duty imposed does not give rise to a conflict of interest. By the mere fact that you are a director of a company, you cannot receive a benefit from a third party. That amounts to conflict of interest.

Clause 14 proposes to amend Section 151 of the Act to ensure that any person who is a director of any company must declare his interest and to factor in 10 per cent of the value of the assets of that company. One, you declare your interest. Secondly, you must factor in 10 per cent of the value of the assets of that company.

Clause 16 proposes to amend Section 162 of the Act. This amendment deletes subsections (6) and (7) of that 162, which give the directors an excuse to avoid liability except when they show that they were unaware that the transactions were invalid. This is a very serious matter. The subsections being deleted were the ones that many directors were using to avoid liability for a crime they committed. For example, a bank goes down and the directors blame the Central Bank. They go down with all the resources of the depositors. Therefore, those sections are deleted so that no director of any company can have an excuse or escape liability for whatever will happen to the shareholders.

Clause 19 proposes to amend Section 246(1) of the Act. This is just to define what a company secretary is. Clause 21 of the Bill proposes to amend Section 308 of the principal Act by inserting a new subsection that requires every director or directors to organise the annual general meetings which permit the holders of any class of shares to vote as a group on any variations on the rights of the class to give the holders of that class shareholding rights, for example, there are many different shareholders in Kenya Airways (KQ). This amendment says, regardless of the shareholding of various shareholders, by the percentage they hold, they have a right to be consulted when a serious matter is being made during the company's annual general meeting.



Clause 25 of the Bill proposes to amend Section 392(2) of the Act. This is to provide that the variation of the rights attached to any class of shares held by an investor in a company with share capital can only be implemented, if the holders of the shares of that class give consent to the variation being done. Therefore, a board of directors cannot do a variation in terms of the shareholding without prior consultation with the shareholders themselves.

All these amendments are to align the new Act that we passed in 2015 to a very good corporate governance system that will ultimately make the ease of doing business in our country more efficiently.

Clause 39 of the Bill proposes to amend Section 626 of the Act. This is to refer to companies within the East African Community and to include a company and its subsidiaries that carries on cooperative society activities, microfinance activities, trade insurance market, banking in relation to companies excluded from the small companies regime. This amendment just wants to open the field for the medium and small size companies to do business and to have subsidiaries within the framework of the EAC.

Clauses 52, 53, 54 and 55 of the Bill propose to amend Sections 974, 975(4), 975(5), 978 and the Sixth Schedule of the Act, respectively, by just deleting the words “certificate of registration” wherever they appear in those sections. So it is more of a clean-up.

Clause 42 of the Bill proposes to amend Section 705 of the Act to provide that a company’s annual returns shall be signed by either the director or the secretary of the company to ensure transparency.

This is a very important amendment. The Companies Act we passed in 2015 was a landmark piece of legislation. The House makes the shoes, but those who use it, implement, foresee it and go through the operationalisation of the Act have realised that some sections need to be amended so that the shoes and the suit can fit well.

With those many remarks, I ask Hon. (Dr.) Pukose, one of the very few surgeons in this House, to second.

**Hon. Speaker:** Hon. Pukose.

**Hon. (Dr.) Pukose:** Thank you, Hon. Speaker. I wanted to let the Leader of the Majority Party know that I am the only surgeon in Parliament, both the Senate and the National Assembly. The others are neonatologists and others. Dr. Nyikal is a neonatologist. He is smiling across.

I want to second this very important Bill.

Hon. Speaker, this Bill seeks to amend the Companies Act, 2015 that this House passed in 2015. It was a landmark Bill. It was such a huge document and many of us had difficulties reading and understanding it. The amendment Bill has been brought timeously by the Leader of the Majority Party. It seeks to create an enabling environment for our investors, business people and our citizens who would want to form companies and invest in this country.

Hon. Speaker, the Bill ensures that directors take responsibility and even liability in the running of companies. It is a wake-up call because we have had cases where companies are formed, but after a short span of time they collapse. There are many insurance companies, for example the Kenya National Assurance Company Ltd, which were started, but were run down and so they collapsed.

Another example is the Health Maintenance Organizations (HMOs) which collapsed with people’s investments. We have had banks where small investors like the *mama mboga* invest their money, but those banks have collapsed with people’s money. So, this is an important clean up exercise we are engaged in now. It is in line with what the President said recently. We have legislated on laws that will create a very good working environment for investors in this country.

This is the way to go as a country. These are some of the things that all of us, whether in the Opposition or Government, must unite and support.

Indeed, this is landmark for this House. We should support this Bill because it has a lot of ramifications. It actually is seeking to clean up the Companies Act, 2015. It is only two years since we passed the Companies Act and for me this means that it is a very dynamic law. People are looking at it and saying, "This is the kind of improvement that we need to do".

It is in the same breath that we should look at our Constitution which has been rated as one of the most progressive constitutions in the world. Let us look at it as we go to the elections, after and beyond the elections. We need to ask ourselves whether there are areas that we feel need to be improved. So, whether we are in Government or the Opposition, we should strive to have in place a good country that we all love. Let us make laws that will draw investors in our country.

I second.

*(Question proposed)*

**Hon. Speaker:** Hon. Members, earlier on I had indicated that I had some message to deliver.

### MESSAGE

#### APPOINTMENT OF DIRECTOR-GENERAL OF FINANCIAL REPORTING CENTRE

**Hon. Speaker:** Hon. Members Pursuant to the provisions of Section 25 (2) of the Proceeds of Crime and Anti-Money Laundering Act, 2009 as amended by Section 5 of the Proceeds of Crime and Anti-Money Laundering (Amendment) Act, 2017, and Section 5(1) of the Public Appointments (Parliamentary Approval) Act, 2011, I wish to convey to the House that I have received a request from the Cabinet Secretary (CS) for the National Treasury asking the House to approve the appointment of Mr. Saitoti Kimerei Maika as the Director-General of the Financial Reporting Centre.

Hon. Members, the principal Act requires the Anti-Money Laundering Advisory Board to forward to the CS for the National Treasury a name of a selected candidate recruited competitively for appointment. Thereafter, the CS is required to forward the name of the candidate to the National Assembly for approval. Further, Section 25(2) of the Proceeds of Crime and Anti-Money Laundering Act, 2009 requires the nominee for appointment as the Director-General to be vetted and approved by the National Assembly before appointment.

In forwarding the name, the CS has also forwarded the following documentation:

- (i) The advertisement for the position of Director-General, Financial Reporting Centre;
- (ii) a write-up on the recruitment process;
- (iii) interview results for the position of Director-General; and,
- (iv) the Curriculum Vitae of Mr. Saitoti Kimerei Maika

Hon. Members, in this regard, I hereby refer the name of the nominee (Mr. Saitoti Kimerei Maika), including the above-mentioned documentation to the Departmental Committee on Finance, Planning and Trade to undertake the necessary approval hearings. Thereafter, the House shall consider the nominee in accordance with the provisions of the Public Appointments (Parliamentary Approval) Act, 2011.

Hon. Members, Section 8(1) of the Public Appointments (Parliamentary Approval) Act, 2011, requires the National Assembly to either approve or reject the nominee within 14 days from the date on which the notification of nomination was given.

However, given that the House is expected to proceed for a *sine die* adjournment on Thursday, 15<sup>th</sup> June 2017, I wish to guide the Committee and the House as follows:

- (i) That the Committee should notify the nominee and the general public of the time and place for holding the approval hearings, in good time. The notification should, therefore, be made immediately; and,
- (ii) that the Committee may thereafter commence the necessary approval hearings and submit its report to this House on or before Wednesday, 14<sup>th</sup> June 2017 during the morning sitting.

I thank you.

Let us have Hon. (Dr.) Nyikal.

*(Resumption of Debate)*

**Hon. (Dr.) Nyikal:** Thank you, Hon. Speaker for giving me the opportunity to contribute to this Bill. The Companies Bill, 2015, as others have said, was such a huge document that one needed a basket to carry it to the House. However, it was an extremely important document. The amendments proposed here seek to refine what was an extremely important document. The whole purpose is to make the business environment in the country easier and to make business competitive so that we can attract investors both locally and from foreign destinations. Business is the essence of all nations. All the revenues and resources that countries have majorly come from businesses. It is, therefore, important that the business environment is supportive and this is what this Bill is proposing to do.

Hon. Speaker, the Bill addresses areas that have been of concern in this country as far as business is concerned. For example, starting business in this country can sometimes be difficult. We are aware that companies have tried to start businesses here and have had to move away because of impediments. The amendments proposed here will make things much easier.

This Bill makes clearer the responsibilities and liabilities of the directors. It has been a practice in this country to form companies to do specific businesses, get awarded Government tenders or handle certain transactions. Immediately the work is done, these businesses are dissolved and their directors do not own any liabilities. If we go through the process of lifting the veil on these directors, it is extremely lengthy. This Bill makes it easy for us to unveil the directors and, in fact, their liabilities are now in law.

I also realise that it also tends to protect them, but the pretence that the directors do not know the consequences of their action in advance can no longer be accepted as a reason for not taking liability because Clause 16 of this Bill addresses that. It would be a travesty of justice if the directors said they undertook a certain transaction without knowing what the consequences would be and, therefore, making people to suffer. It would be against the known doctrine that ignorance is not a defence.

Shareholders are the mainstay of many big companies and the main way people benefit. Therefore, this Bill clearly states how disputes arising from shareholding can be resolved. Otherwise, people will not invest and, therefore, companies will not grow and even if they do, those who invest will not get their rightful shares from the proceeds of these companies. These remedies are needed and this Bill addresses those issues. It is important to protect the

shareholders and particularly the small ones. Again, this has been done in this Bill. When companies fall, the small shareholders usually lose out. Similarly, the minority shareholders suffer in the same way and they are protected in this Bill.

If you look at this Bill, there are clauses which are important and we cannot go through all of them. Clause 11 requires a director to disclose any other company directorship he or she holds. This has been a big loophole in this country whereby people trade with themselves whether they are running public or State owned companies. They usually form companies on the side and transact business with themselves. You can recall a time in this country when we decided that some State assets should be disposed of. The same directors in the parastatals formed companies and acquired those assets at throwaway prices. Clause 11, in this case, would have protected this country in that area.

Clause 12 indicates that there has to be clear declaration to avoid conflict of interest when dealing with matters of the company. Again, this is something which has been a major problem. The principle of conflict of interest has been abused and ignored to the extent that in some places it looks like there is nothing like conflict of interest. Therefore, bringing it in law is something which is necessary. If you look at the class of shareholders prior to this law coming into effect and now being amended in this Bill, the directors had the power to vary the holdings and values of the class of shareholders without their approval. In Clause 25, this is now dealt with and their approval has to be sought.

As you know, in the life of this Parliament at this time, the focus to a large extent has moved to the area of survival of the Members of this House. Maybe we have not read all the details but in general this is a good Bill and the clauses I have mentioned are extremely important.

Therefore, I support the Companies (Amendment) Bill.

**Hon. Speaker:** Hon. Mwaura.

**Hon. Mwaura:** Thank you, Hon. Speaker. I rise to support the Companies (Amendment) Bill. Indeed, it is very timely in relation to the various concerns raised such as holding companies more accountable. I have looked at some of the proposals which are very important like the definition of who is an associate to companies like the spouse, children an associated body corporate or other legal entities. This is important because a situation may arise and you have to look at the particulars of a company so that you can know whether there have been proceeds of crime or malfeasance. You might lose the details because that company is owned by another company and sometimes you cannot get to the bottom of it. This Amendment Bill will ensure that we have a cleaner and elaborate way of following through issues.

Another thing which stands out is the fact that it recognises the new role of electronic data in terms of companies' electronic addresses, copies and forms. This is very important because many transactions are nowadays being done online. It will help in the terms of tracking data, funds and issues of eligibility and transfer so that they do not operate in an opaque environment.

I have also noted another amendment which is critical regarding the transparency of running of companies by the fact that members of a company have to be listed including the shareholding they have. This is important because looking traditionally at how companies are registered you may find that there are a few directors and there may be third party engagements entered by individuals. Shareholders therefore suffer as a result of the actions of a few individuals who have been recorded as the true directors of that company. This is going to be important especially when looking at issues such as land transactions and other properties

thereof, so that when it comes to issues which may go before a court of law, there is full disclosure. If the registers are not updated then there can be some form of recourse or deregistration. Therefore, it is important to note that the issue of holding companies has been addressed in this Amendment Bill. I had alluded earlier on how to deal with the issue of subsidiaries and companies being owned by others because it is a very important aspect.

Another issue which is very well addressed in this Amendment Bill is intellectual property. This is a grey area. Is an intellectual property owned by an innovator who happens to be a director of that particular company or is it owned by the company because it employed a certain individual to pursue some sort of improvement or research? A clear definition will help in issues of jurisdiction, determination of any dispute and whatever area that has been covered, if such issues arise. This is also very important because I am on record as having brought a Motion to the Floor of this House about youth and innovation. One of the great challenges where our youth have been taken advantage of is in the issue of intellectual property rights. That definition has to include trademarks, registered designs and copyrights. It will really help in terms of how we can administer such issues within the ambit of a registered company.

It would be important to also highlight that the simplification of the process of ownership of a company where a single individual may own a company is very timely. This is because within the preferential procurement system of 30 per cent for marginalised groups, youth, women and persons with disabilities, it helps entrepreneurs within our population to get an opportunity to carry out business without being bogged down by having to create directors who are dormant. I want to imagine that if that provision is properly enhanced by the various amendments that I have seen, we will have a situation where we spur the productivity and growth of our economy. This by itself will lead to a greater increase in terms of the job opportunities for young people.

Taking advantage of the great development record that the Jubilee administration has had, it is important to ensure that the regime by the companies encourages such an endeavour. Our young people who are made of fine clay have what it takes to spur the economy and bring our development forward, just as has been the case of the Standard Gauge Railway in relation to ensuring that we industrialise our economy. With such support, combined with the very great effort of the Government through the National Research Fund, in such initiatives with greater speed where you can transport goods and services with the idea that we have a greater road network and improved healthcare, it would then mean that such companies that would want to establish themselves within our country. This would ensure that we increase that productivity and give an opportunity to our people to enterprise and grow wealth which would lead to the greater prosperity of our country.

As I conclude, this is a very timely Bill. It is important that it has come only two years after we passed a very humongous piece of legislation. We believe that as legislators of the 11<sup>th</sup> Parliament, we have done our best to ensure that we create an enabling environment for business.

I support the Bill.

**Hon. Speaker:** Let us have Hon. Michael Onyura.

**Hon. Onyura:** Thank you, Hon. Speaker. I also rise to support this Bill. I want to thank those who went through the Bill...

**Hon. Irea:** On a point of order, Hon. Speaker.

**Hon. Speaker:** Let us have the Member for Central Imenti.

**Hon. Irea:** Thank you, Hon. Speaker. It is important for school children who are visiting Parliament to be advised by their teachers that when they are about to end their school term, they

should not be absent. They are looking at Parliament and asking why there are no parliamentarians and we are about to end the 11<sup>th</sup> Parliament. It is important for teachers to put students on notice.

**Hon. Speaker:** Proceed, Hon. Onyura.

**Hon. Onyura:** Hon. Speaker, that is interesting. Members are never absent. They are doing other useful activities for this nation.

I support this Bill and thank those who have taken their time to go through the principal Bill which, as many of us saw when it was tabled, was really voluminous with several pages. I am not surprised that maybe as part of cleaning up, we have quite a number of pages that are amending the same. It is a good thing. It is timely.

Looking at it, I have noted that it is mainly cleaning up areas that had typos, repetitions, overlaps and more importantly, issues of definition. We know that ambiguities can bring a lot of problems and misunderstanding. I have been following the arguments about the East African Legislative Assembly (EALA). Some of the problems are related to interpretation. It is important that whenever such are seen, the shortest time is taken to clarify and even minimise those ambiguities.

This is a Bill that is very important to the economic activities, commerce and trade in our country. In the preamble or explanatory notes, there is an endeavour to ensure that the Bill conforms to all the laws, the Constitution, global trends and best practices and as I have said, removal of ambiguities.

I have also noted that the Bill seeks to improve certain provisions regarding director's liabilities for example, disclosures that are required to be made by the various parties, remedies to shareholders and the net effect. What is important is that it eases doing business in this country and creates a better environment. With all this cleaning up, it ends up being a much better and user-friendly document than what it was.

I noted a clause that provides and makes it easier for conversion of companies for example, converting from public to private and *vice versa* and from limited to unlimited and *vice versa*. All this will make it much easier for those who are running companies. Definitions are being made clearer. The definitions of a company secretary and of companies limited by guarantee have been improved. I can also see emphasis in this Bill with regard to improvement of transparency through the disclosures of accountability. I also note that there is requirement on the way records should be kept and the manner they should be kept, including even the length. I have noted there is an amendment to require that company minutes be kept for at least seven years so that it conforms to other related regulations and policies.

Hon. Speaker, I hope it will also help in minimising the kind of mischief that is committed at times through companies where people with con tendencies set up a company quickly to perform an illegal activity and quickly either dissolve or discard it. I hope this will be checked or taken care of. We have had many cases where a company is involved in shady or questionable deals and when the Press tries to find out those who are behind such companies, we hear that files cannot be found and that they are lost. I hope in these amendments and cleaning up, these kinds of anomalies will be properly checked.

It is encouraging to see that the issue of conflict of interest, be it from family members, both close and extended, is being addressed just to minimise it and also to ensure transparency and objectivity, and of course to protect the shareholders. The fact that there is provision for fairly strong penalties for cases or any breach of the provisions of this Act, is also a good thing

that makes me feel quite happy to support the Bill. There is provision of ways of communicating with members of the companies for purposes of improving it.

Another important thing here is that as we continue to empower our people, particularly those disadvantaged like the youth, women and persons living with disabilities; it should be made easier for such groups to set up companies and use them to compete for tenders or related business activities as our part of empowering them.

I strongly support the Companies (Amendment) Bill. Thank you for the opportunity.

**Hon. Speaker:** Member for Cherangany.

**Hon. Korir:** Thank you, Hon. Speaker for giving me a chance to support this Bill. What this Bill does shows what this country needs to do. I agree with Members that when the Companies Act was introduced in 2015, it was a very big document that most people did not go through. What we see here is impossibility in implementing what we passed in this House. It gives us a second option to amend it so that it can be implemented to the fullest. What is happening here is a good show that not any law we have in this country can be implemented and amended.

I like what is being amended, like Clause 11. We have learnt from the mistakes we have made as a country, especially in the companies. Right now, we have very many people opening a thousand companies. You find one person is a director owning up to five companies. You find that when they apply for tenders, it is the same person applying for the same jobs using different companies. So, by amending and making sure that directors disclose all the companies in which they are directors gives the Registrar of Companies a chance to know how many companies each person owns. Otherwise, we will end up giving the different jobs to the same person, and we will not be dispersing the resources we have as a country.

One thing that has been of concern to me is the protection of local companies from infringement or empowerment from foreign companies. I was looking at this Bill to see if there is anywhere it talks about foreign companies. When I came to the National Assembly, I brought an amendment on the shareholding of a foreign company before they work in this country. I do not know how much of it has been implemented so that we protect our young men. No matter how much we try to do this, if we have foreign companies coming and taking jobs from local companies, we will not be doing any favour to our young men.

Another issue that we have noticed is that, as a House, we passed the 30 per cent rule. This is where for tenders given, 30 per cent should be given to women, people living with disabilities and the youth. As a leader, I have noticed that the people who apply for the reserved 30 per cent are not youth. Some people use their children or young people. You get the same person using the identity of their children or wife to open different companies then apply for tenders. You find that if it is a Kenya Rural Roads Authority (KeRRA) job that is being given, it is given to a company that is thought to qualify as youth or women, but you find it is the same person that has been applying and he is a big person. Shareholders of companies have come up with tricks to bypass the system so that they can keep benefitting while the people we intended to benefit when we passed that Bill do not. The youth have come together to form companies and apply for jobs, but they are not getting them. This is because the big people who have always got the jobs have known procurement tricks. They are still taking the tenders reserved for the youth using different tactics. If we can find ways of preventing that, it will help our country grow bigger.

One other thing I like in this Bill is that every director should include their next of kin. I like this provision because it will prevent the issues I have mentioned. You should include the

names of your wives, children and all other family members so that people do not open other companies using the names of their children and wives to get what is meant for the youths and others.

I also like the idea of transparency. This improves transparency so that people do not benefit from third parties if they are shareholders.

This is a good Bill. As a House, we should pass it. This shows that, as a country, we have been going through a lot of problems because of the Companies Bill that we passed in 2015. The implementers of that Act have discovered that they cannot implement everything. Therefore, they have brought it back to us to help them amend it so that it can be implementable. It is about time we started thinking about how to amend our Constitution. Some things are impossible to be implemented and it is our duty as leaders and people of this country to tell Kenyans the truth on what is implementable and what is not. On what is not implementable, we need to tell them what we can do as a country and as leaders of this country to address it. If a referendum is needed to change those parts so that it can be implemented to the fullest, let us do it. I am speaking in reference to what is about to come to this House. There is one part of the Constitution that has become very difficult for us to implement and I think, as a House, we need to understand that we cannot implement everything. If that part is un-implementable, we need to take it back to Kenyans and tell them: "This is not implementable. What can we do?" We need to bring a referendum to change that part so that the Constitution can be implemented. This is an example of big documents that we passed but when you try to implement them, they are un-implementable.

Thank you, Hon. Speaker, for giving me a chance.

**Hon. Speaker:** Member for Ndhiwa.

**Hon. Oyugi:** Thank you, Hon. Speaker. It is nice speaking after the Member for Cherangany who thinks that there is a problem with having documents at Parliament. I really think that parliamentarians are supposed to read to make law so that you do not pass things you do not understand.

I would like to support this particular amendment. I think the Companies Act by its own sense was one that was radically changing the sphere of registration of companies in Kenya. I really think it is one of those very good pieces of legislation that we worked on. Like the Leader of the Majority Party said when he was moving this Bill, it is not always when you pass law that you know where the problems are. You need to let the law work its course so that we know what sections of it need to be tweaked a bit so that, at least, it becomes efficient. To that extent, I think the person who did propose this particular amendment has done a fairly good job. However, even with this particular proposal, there are things that will really still need a lot more work. If you look at Clause 2(d) in terms of what it is saying in the definition of "holding company," you will see that it says:

"holding company" in relation to another company, means a company that-  
(d) is a holding company of a company that is that other company's holding company."

That in itself is mouthful. Whatever you want to mean in that particular sentence, I think it is one that needs to be refined. This is because what we are trying to define in this particular section is a holding company. The words "holding company" appear three times in that particular clause. I think it confuses things a little bit.

I think Clause 4, which seeks to amend Section 58 of the principal Act, is a good thing yet fairly very dangerous. This is because it brings to finality what the director is supposed to do. It gives the director latitude in terms of the companies which do not want to comply. The



Registrar has 14 days within which to deregister the company. I think that Clause 4 needs to give those companies a remedy. Whereas it is true that the Registrar, out of his own volition, within 14 days can deregister companies, I think that it is only fair that you also give the companies a chance for recourse, which would be some sort of administrative action.

In my view, Clause 8 is useful because it seeks to show what personal interest would manifest and that if every company is going to keep a register of its members, which will include information relating to beneficial owners of the company, it is going to cure part of the problems we have been having as a country where one person registers 100 companies and you do not know that you are dealing with the same person. In various business deals or even when it comes to bids, you end up with the same company bidding several things without really the openness that the various companies ought to show. So, I think that having people who are beneficiaries enlisted will easily help institutions that work on integrity or institutions that want to do business. It will also help with procurement issues with regard to proper bidding and I think it is going to give rise to fair competition.

Clause 12(2)(d) is a good provision. It seeks to define what a personal interest of a director is. It is difficult to define the words “personal interest” because whatever is personal can fairly be very convoluted. However, I think that in trying to narrow down what personal interest is with regard to being a party to the transaction or material financial interest in the transaction--- I think distilling what personal interest in that manner is makes the Companies Act fairly very tidy and I think it is very useful.

In my view, Clause 23(1)(b) is good. It reads:

“The directors of a company may exercise a power of the company-

(b) to grant rights to subscribe for or to convert any security into shares in the company, only if they are authorised to do so by the company’s articles or by resolution of the company.”

I would propose a further amendment to that particular clause because there are moments when Articles of Interest of companies are always tinkered by various directors and if at all you let the company’s articles dictate whether directors can allot shares, I think that will be a fairly tricky scenario. I think we only give directors powers to deal or allot shares of the company only by resolution of the company as opposed to letting that to be a content of the company’s Articles of Association.

Clause 28 is a very interesting one. It talks about the issues of good faith. It says that the company’s principal purpose in terms of giving out money, if it is a holding company, will only be giving out money where the assistance is in good faith or in the interest of the company. The issues of good faith are very relative. It is sometimes very difficult to distinguish what is good faith and what is not. I think that if at all you want to restrict the space and sphere of holding companies in terms of giving money, that particular thing needs to be properly defined. I think we need to disclose what powers the holding companies ought to have each time they are going to be giving out money. I think that needs to be properly and clearly defined.

I think Clause 33 of this Bill is averagely very important. It just shows how important the use of English words sometimes can be. It requests or directs that we change the word “may” that is in Section 511 of this particular Act. That particular change or substitution of the word “may” with the word “shall” radically changes what was otherwise an oversight in terms of making this legislation. This is because a private company that is limited by shares or guarantee shall not offer public securities of the company. If at all we let the word “may” stay as it was, it is opening companies limited by guarantee or shares to be public companies, which then again

was beating the purpose why we have classified companies in that particular manner. I think that was a really interesting amendment. I think it is a fairly important amendment in Clause 33.

I have a particular interest in Clause 37, which chooses to define the word “spouse” as husband or wife. I also thought that they should have stretched the meaning of the word “spouse” to mean “partner” given the sort and nature of relationships that we have in the world moving forward so that at least you do not want to restrict the word “spouse” to only mean husband or wife. In my view, I think the word “partner”---

*(Hon. A.B. Duale laughed)*

I do not know what is exciting Hon. Duale in the word “partner”. I will be proposing that amendment and I hope the Leader of the Majority Party can agree with me on that particular one.

I am looking at Clause 51 of the Act. I am wondering why you would want to delete Clause 51 of the Act. I am happy to be schooled. If at all you delete Clause 51 of the Act, my understanding of that particular section is that it was supposed to be a transitional clause. There were previous companies registered under the previous regimes so that if at all you are deleting that particular section, then you are deleting all the companies that were previously registered under different regimes. If you want to delete that particular provision, we need to provide for a transitional clause for companies that were hitherto registered under a different regime.

Hon. Speaker, my time is up and I would like to thank the Leader of the Majority Party for scrolling through the big book which scares most Members of Parliament and trying to find very useful amendments to propose. I do support and thank you, Hon. Speaker.

**Hon. Speaker:** Member for Kibra.

**Hon. Okoth:** Thank you, Hon. Speaker. As Hon. Aghostinho has said, the Companies Act was a big book and as was noted by the Member for Cherangany, it demands that legislators work hard, following through on the work ahead and maybe engage strongly with the support staff from Parliament as well as the staff they hire for themselves - people who have the skills to help them to do their work.

My comments will be on this issue of companies in Kenya. We need to ensure that on the implementation side, companies that are registered by youth and people with disabilities are clearly known and that they are given the advantages and empowerment to really participate in Government tenders and sector business, service provision and such like. That will bring a lot more young people out of poverty and give them an opportunity.

The second one that I will be looking to speak about with the Leader of the Majority Party is that once we put a good system for the private sector to do their business, we will realise a lot of goals that we have in Vision 2030 and in the Government manifesto. When we talk about issues such as education where we are saying that in the next few months, the reality of free secondary education will be important, this is something I am going to beg the Leader of the Majority Party to ensure it happens, maybe miraculously or through serious legislative gymnastics. Let us make sure that we do not leave this House without having passed a law or an amendment to the Basic Education Act, clarifying the procedures in which we will spend the funding for free secondary education. The fact of the matter is that free secondary education is something we all agree on but Government schools in Kenya provide only half of the capacity. Half of the children in Kenya, whether they are in Nairobi, Kisumu or Garissa counties, are going to schools that do not belong to the Government and if we want to give them free secondary education, we will have to engage in public-private partnerships. I think in the sector

of education, we must make an amendment to the Basic Education Act that covers up to Form Four and ensure that people who own schools in Garissa that are not Government schools, when it comes to a time for implementing free secondary education, there will be a legal framework for the Government to engage them. This is because the Government in the next few months, whether it will be January or September, will not have in place all the schools it needs to ensure that children get free secondary education. If we pre-emptively put a legal framework or amendment to allow for those private-public partnerships in the education sector, it will really help us and give the Government freehand to do things legally and finance public-private providers of secondary education.

With those few remarks, I beg to support. I thank you.

**Hon. Speaker:** Well, it looks like there are no other contributors because the Member for Seme and Member for Ndhiwa have already contributed. Leader of the Majority Party, it is only fair that the Mover be called upon to reply.

**Hon. A.B. Duale:** Hon. Speaker, at the outset, I want to thank my colleagues for their immense contribution. These are just few amendments to help improve on the operationalisation of the Companies Act 2015 just to make sure that we tie the knots and create strong corporate governance to show how both public and private companies and those listed in the Stock Exchange are managed.

Secondly, as I said earlier, Kenya being part of the global market and being a country under the leadership of President Uhuru Kenyatta, a country that wants to attract investment, it is imperative that all the laws relating to companies must be in line with the global trends and global best practices. These amendments are basically geared towards that, where we expect directors to make full disclosure and shareholders have remedies in the event a company collapses or where a director can cause a liability to that company.

I totally agree with Hon. Neto, my very good friend from the last Parliament, on the definition of a spouse. There are many definitions and there are many ways you can describe your other half. I am ready to accommodate his other definition whether you call them partner or *mpango wa kando*.

On Clause 51, Hon. Neto, from the time we passed this law in 2015, there was enough grace period for companies to regularise their systems and registration under the new Act. So, the transitional clause that we provided then, in one-and-a-half years has served all the companies that existed before the coming into effect of this law. That is why this is a clean-up exercise where we do not want to have a transitional clause to infinity. I am happy and I am sure that Members have made their contributions for the last one-and-a-half hours.

I beg to second.

**Hon. Speaker:** Are you seconding or moving?

**Hon. A.B. Duale:** I beg to move. You know because of *Ramadhan*, my sugar level and everything else is going down. Excuse me but I beg to move.

**Hon. Speaker:** Very well, Leader of the Majority Party. Of course for reasons well known to the Members, we defer putting the Question and move to the next Order.

*(Putting of the Question deferred)*

*Second Reading*

THE CONSTITUTION OF KENYA (AMENDMENT)(NO. 6) BILL

*(Hon. Katoo on 24.5.2017)*

*(Resumption of Debate interrupted on 24.5.2017)*

**Hon. Speaker:** This is resumption of debate. Leader of Majority Party, this Bill is known by your name. You had not contributed?

**Hon. A.B. Duale:** Thank you, Hon. Speaker. I did not contribute. My colleague Hon. Katoo ole Metito and Members contributed but now it is my opportunity to contribute to the Constitution of Kenya (Amendment) (No.6) Bill 2015, which is known as the “Duale II”.

The object of this Bill is to amend the Constitution to give effect to Article 81(b) of the Constitution. Article 81(b) stipulates that not more than two-thirds of members of elective public bodies shall be of the same gender. This Bill therefore ensures that Members of the National Assembly and the Senate conform to the two-thirds gender principle as anticipated in the implementation of Article 81(b) of the Constitution. This Bill is similar to the Bill published by the late Mutula Kilonzo senior, a man I respected so much when he was the Minister for Justice and Constitutional Affairs. It is similar, save for the provisions that set out a sunset clause. So the difference between the late Mutula Kilonzo’s Bill on gender principle and this one is that this Bill has a sunset clause; a certain period is provided for. After that period, then natural issues of elections on gender take effect.

This Bill imports the provisions in Article 177 that ensures that a county assembly always has at least one-third of either gender. So it is borrowing from Article 177 which is predominantly dealing with the county assemblies in as far as gender equity is concerned.

When I read this Bill, which is under my signature, Clauses 1 and 2 provide for the application of the Bill. This Bill is before this House because we tried thrice, we faced a lot of challenges but leadership is part of the challenge. Every leader must have a solution to the problems and challenges that face any nation. So we will try. Respecting the independence of the Judiciary is what has made us to bring back this Bill, so that at least the House can walk on the high moral ground that we are an institution that respects the rule of law and the Judiciary.

Clause 3 of this Bill intends to amend Article 90 of the Constitution to reflect the amendments proposed in 97 and 98. It further provides that any person who is elected to any House of Parliament or any legislative assembly by way of nomination shall enjoy such nomination to a maximum of two terms. It means, just like the President, if you are nominated twice then you will not be eligible for a third nomination.

This Bill also seeks to amend Article 97(1) of the Constitution on the composition of the National Assembly by introducing a new paragraph called (ca) in order to ensure that the National Assembly complies with the requirement that not more than two-thirds of its members are of the same gender. I have read a lot and I have looked at a number of Parliaments, including the House of Commons. I think 28 per cent of the membership of the House of Commons is of the female gender. That is the best the UK Parliament achieved in many years.

The only time they surpassed that ratio was when the Prime Minister at that time, I cannot remember his name but he was the party leader of the Labour Party, used proportional party representation in which he said constituency “X” is for the male gender, constituency “B” is for the female gender. That Prime Minister and party leader did not survive the next election.

Now they are at 28 per cent. Tomorrow they are going to elections. I hope they will increase their numbers.

Clause 4 of this Bill further seeks to amend Article 97 by inserting a new clause to ensure that the special seats are allocated proportionately to the number of seats won by a political party and that the provisions of the new clause (1)(ca) will lapse 20 years from the date of the first general elections after the commencement of this provision. Basically, it is what the Labour Party did then to increase its numbers of one gender to get gender equity. Parliament may, however, by legislation extend that sunset clause of 20 years by a period not exceeding 10 years. It is expected that after the 20 years the electorate will vote for candidates without regard to gender and that there will be gender parity in the election of Members of Parliament.

Clause 4 further specifies that legislation made by Parliament must be supported by not less than two-thirds of the members of the National Assembly and two-thirds of all the delegations in the Senate. Because it is a constitutional amendment, for us to dispense of this law we must have the two-thirds required.

Finally, Clause 5 of the Bill seeks to amend Article 98(1) of the Constitution by inserting a new paragraph called (da). This is to ensure that the Senate as a House of Parliament complies with the principle that not more than two-thirds of its members are of the same gender.

So this is the principle. We are not saying we are going to pass it, but the 11<sup>th</sup> Parliament is known for passing all the pieces of legislation as far as implementation of the Constitution is concerned. The only pending Bill is this one. Those of us who served in the 10<sup>th</sup> Parliament know the history of this kind of a Bill.

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

*[The Temporary Deputy Speaker  
(Hon. Omulele) took the Chair]*

From our party nominations, particularly the Jubilee Party, we are happy to report to the nation that we have increased the number of women leaders coming to the 12<sup>th</sup> Parliament by twofold. In Murang'a alone, there are three women who were nominated including my good friend, Hon. Alice Wahome. Jubilee will be the first political party in the history of Kenya that will have two women governors in the name of...

**Hon. (Ms.) Odhiambo-Mabona:** On a point of order, Hon. Temporary Deputy Speaker.

**Hon. A.B. Duale:** You cannot say point of order while you are standing. You have to sit down. We are not in a market.

**The Temporary Deputy Speaker (Hon. Omulele):** What is your point of order, Hon. Millie?

**Hon. A.B. Duale:** She has to sit first in her chair. She is walking in the alleys. We are not in a market.

**The Temporary Deputy Speaker (Hon. Omulele):** The Leader of the Majority Party, in fact you are on a very good point. You are saying that women representation should be appreciated.

**Hon. (Ms.) Odhiambo-Mabona:** Thank you, Hon. Temporary Deputy Speaker, for reminding Hon. Duale that he is not the Speaker of the House; he is the Leader of the Majority Party. I would urge that he sits down when Hon. Millie Odhiambo, MP for Mbita, is talking.

That is the provision of the Standing Orders of this House. Hon. Duale is standing yet the Standing Orders do not allow him to stand when I am talking.

**The Temporary Deputy Speaker** (Hon. Omulele): Hon. Millie, just proceed. It is alright for Members to consult each other.

**Hon. (Ms.) Odhiambo-Mabona:** Well, I am glad he is trying to be evasive by pretending to consult, but the Standing Orders indicate that Hon. Duale cannot stand when Millie Odhiambo is speaking.

Having said that, is Hon. Duale in order to allege that Jubilee will produce the first woman Governor when we know that Wavinya Ndeti of National Super Alliance (NASA) will be the first woman Governor of this country? Let him know that we will produce the first woman Governor, but do we say?

**The Temporary Deputy Speaker** (Hon. Omulele): It is alright Members. You are both beating the same drums.

**Hon. A.B Duale:** No! Hon. Temporary Deputy Speaker, I do not speak for NASA. I speak for Jubilee. So, if she wants to speak about Wavinya Ndeti, it is quite in order. You will have your time. I am talking about my fellow Jubilee nominees, and mark my words, *Inshallah*, two women, Dr. Joyce Laboso and Ms. Anne Wambui Waiguru will be Governors. In the Senate, Jubilee will produce the first two women Senators, that is, Ms. Susan Kihika and Hon. Margaret Kamar. Ms. Kihika is a daughter of a very prominent octogenarian politician from Nakuru. Hon. Margret Kamar served with me in the Tenth Parliament and was a robust Minister for Education some time back. If there are any persons from NASA, their counterparts here will have time to tell us because that is not my business. Millie Odhiambo, I do not speak for you and I will never speak for you because of many reasons.

Hon. Temporary Deputy Speaker, I am fasting and she wants to pick a quarrel with me. I am fasting because I am a serious believer of Islam. I wonder if Hon. Millie Odhiambo is a Seventh Day Adventist (SDA), an African Inland Church (AIC) member or could she be a *Dini ya Musambwa* or Catholic?

So, the Jubilee coalition numbers progressively show that we are more committed to increasing the women leadership in both Houses. One of the reasons that made me put my signature to support the course of the great women of this country, including my mother, wife, sisters, my deputy, and my friend Millie Odhiambo, is that all of us are here because of our mothers.

*(Applause)*

I am sure everybody here had their mother play a very big role in their life. I am a living example.

Secondly, when President Obama came to Kenya he said that you cannot have a team that is always seated on the benches and not playing in the field. The women leaders in this country must be given their space as provided for in the Constitution. The President, who is also our party leader, is committed to seeing that happen. I know President Uhuru Kenyatta will append his signature on this law. He could do that now or during the 12<sup>th</sup> Parliament because there is no doubt in my mind that he will retain his position as the President of the Republic of Kenya. He is Uhuru Muigai Kenyatta, the son of the founding father of this nation.

I beg to support.

**The Temporary Deputy Speaker** (Hon. Omulele): Very well, Hon. Leader of the Majority Party. I think we are all speaking from the same script by beating the drums that we need more female gender representation. There is no cause for alarm or quarrel with Hon. Millie. I have not heard the voice of Hon. Agostinho Neto.

**Hon. Oyugi:** Thank you, Hon. Temporary Deputy Speaker. Indeed, it is a nice thing to see you in the Chair in the dying hours of this Parliament. We hope that in the 12<sup>th</sup> Parliament we will take more robust roles in terms of moving Kenya forward. When I was joining this Parliament, the first Bill that I championed was the Two-Thirds Gender Rule Laws (Amendment) Bill. I came together with my colleagues, Hon. Ken Okoth, Hon. Abdullahi Diriye, Hon. Rachael Ameso and Hon. Stephen Mule to ensure that the spirit of the Constitution under Article 27 is realised. We moved together with other members of civil society to champion the Green Amendment Campaign which, I am happy to report, will start very robustly at the end of this year.

The reason we were doing that was to ensure that those constitutional principles, more so the rights enshrined in the Constitution are not just pies in the sky, but they are rather realisable for whosoever they are accorded. The rights of women in this country, with regard to election, is a story that is painful to tell. This is because you find persons of the female gender struggling during election time with men who come from various spheres. It is very difficult sometimes to get most of the women elected. So, when you see Hon. (Dr.) Shaban, Hon. Millie Odhiambo and other female Members of Parliament here, just know that they are not the ordinary type of ladies - They have worked hard to get elected to this House. There are many men who get defeated during elections and so for a woman to be elected, I think she deserves a pat on the back.

This Bill that the Hon. Leader of the Majority Party has brought has fundamental flaws that need a lot of consideration. Whereas the spirit of this amendment is good, I do not think that the person who drafted this Bill read through it. Hon. Dr. Nyikal - and he is not a lawyer, but an intelligent doctor who has a philosophy of both law and medicine - has engaged me in serious legal discourse. To that extent, we have agreed that the phrasing of Clause 4 of this Bill is not a very good one. It is one that is unrealistic even though you would want to pass this Bill in its present form.

There is a perception that this Clause 4 is the same as the principle of Article 177 of the Constitution. That is not the case. Having discussed with Hon. Dr. Nyikal, we agreed that there are two different sides to it. Article 177 talks about the entirety of the county assembly and so this should not just be a single clause. Clause 4 talks about Article 97 (1), which deals with the election of 290 MPs. That does not take into consideration the entirety of the House, that is, both the National Assembly and the Senate. So, what you have is the problem of tweaking the numbers. It will be difficult to realise two-thirds if you only deal with 290 Members. However, if you are dealing with the entire House as envisaged in Article 97, then you will have a solution. That is why the person who drafted this clause needs to reconsider it. We might pass it, but it still has a problem with regard to attaining and achieving the right numbers. So, the person who did this copy-and-pasting did not do a good job. Whereas we agree that the spirit of realising such rights is a good one, the drafting of this section is not good.

Secondly, I think it is important to agree that affirmative action clauses with regard to gender ought to have a sunset clause. If you look at Clause 4(1)(c) regarding a total of 20 years lapse and then a further 10 years lapse, this is too much with regard to affirmative action. Let us be honest and fair that within 20 years we are able to put in principles within political parties and give capacity to women and make sure they have free competing space. We should not think that

in 20 years' time, we still need to have them affirmed just like we watched with regard to the 2017 General Election. Of course, Hon. Duale is already excited that his party is going to have governance. I am sure that the Party of Independents which I will belong to in the next Parliament might have more governors, Senators and Members of Parliament.

One of the things we need to appreciate is that we must do what it takes to look at political party nominations so that they can have more women in all spheres. If we continue conducting them in the manner we did in the last ones, you can be sure that it does not matter how much affirmative action we do but we will still end up with very few women Members of Parliament because of the intricacies. I think the sunset clause is a good thing but giving it 20 years is slightly too much.

The third thing is with regard to how to achieve affirmative action clauses. You know law is a social science and science has formula. You cannot pretend to guess how to attain certain things, like if you want to achieve the two-thirds gender principle---

**The Temporary Deputy Speaker** (Hon. Omulele): Hon. Neto, just for my own clarity on this, do you have a problem with the sunset period of 20 years or the provision that it may be extended by another 10 years?

**Hon. Oyugi:** I have a problem with the extension of 10 years in Clause 4(1)(d).

**The Temporary Deputy Speaker** (Hon. Omulele): You would be happy if it just closed at 20 years?

**Hon. Oyugi:** Twenty years is fine. We should stop at Clause 4(1)(c) which states there shall be a sunset clause of 20 years.

**The Temporary Deputy Speaker** (Hon. Omulele): Very well. Proceed.

**Hon. Oyugi:** Thank you, Hon. Temporary Deputy Speaker. The third thing I was talking about that is law is a social science and you cannot guess how to attain the two-thirds gender principle. There are only two ways. The first is that we need to agree that as an election principle we are going to have proportional representation and in that regard, of course, then political parties within their means will be giving us the number of women and people with disabilities with regard to the parliamentary strength.

The second way is to have a direct and exact number using the mixed-member proportional representation and this will be giving us the exact numbers we need of a particular Parliament without really guessing how we want to achieve this. To that extent, several jurisdictions have used this mixed-member proportional representation, for example, Uganda and Rwanda.

For five years, we have been trying to juggle balls and levers while there are constitutional principles on how to realise this. Let us be honest that a constitutional amendment is needed and it ought to be one which pays regard to social and legal principles on how to change the various issues. The fourth thing is that it is evident that we will not be able to pass the two-thirds gender Bill in this particular Parliament because we have a couple of sittings to go and we need two-thirds of the Members of Parliament to pass this particular Bill. This essentially shows it might take miracles to marshal numbers and this will be very dangerous. This is one thing which is very disappointing because as a Parliament we have pussy-footed for five years. I think this is shortchanging the women of this country, if we are not able to change this. If at all we are not able to realise rights of a particular sphere, you do not know whose rights are next going to be violated. All the rights in the Constitution are supposed to be realisable. We cannot pretend that when it comes to women's rights they are not important. Then, this will go to the rights of the youth under Article 55 of the Constitution which need to be realised with regard to



employment issues. If at all we are not able to realise these, then we will not be able to realise the rights of all the vulnerable people under Article 57 of the Constitution.

I really think that whatever we can do, a limitation or denial of rights of one particular sphere of the community cannot and should not be allowed. We must do whatever it takes to ensure that in this Parliament and the next under the Green Amendment Campaign among many others, which we will be doing with Hon. Ken Okoth and some of my colleagues, the rights of women under the two-thirds gender principle and those other constitutional principles with regard to rights are realised. My time is up but I think we must give the women of this country the space and numbers that they deserve in this particular Parliament, whether through making sure it is a top-up process or we achieve a proportionate representation process. I support the principle of this particular amendment but I think it needs a bit of more work to make it smoother.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Omulele): Hon. Neto, clearly you do not believe in miracles. It is possible. This is the House of the people of Kenya and as we consider these amendments we are hopeful that we shall give justice to the women of Kenya. In that spirit, I would like to give this opportunity to Hon. Naomi Shaban, Member for Taveta.

**Hon. (Dr.) Shaban:** Asante sana, Mhe. Naibu Spika wa Muda. Mengi yamesemwa kuhusu mabadiliko kwenye Katiba ya Kenya kuhusu suala la viti vya Bunge la Taifa, Seneti, pamoja na mabunge ya kaunti. Ukweli ni kwamba, Wakenya bado wana tatizo la kuchagua akina mama, walemavu na vijana. Mila na desturi za Wakenya ni kuwa kuna viti vinafaa jinsia ya waume na vingine vya sisi wajinsia ya kike tunaagaliwa kijadi katika maeneo yetu. Lakini inawezekana akina mama wanachaguliwa kwa sababu nimechaguliwa mara ya tatu sasa. Inawezekana kuwa si mimi peke yangu. Kuna wengine pia ambao wamechaguliwa hapo mbeleni kama dada yangu Millie Mabona, Martha Karua, Charity Ngilu na Beth Mugo. Wengi wamechaguliwa lakini sio wengi vile inavyotakikana kwa mujibu wa Katiba yetu ya Kenya.

Kipengele cha 90(7) na (8) kinazungumzia umuhimu wa kuwa na akina mama na hata kikaweka makusudio ya kuwapatia viti ambavyo watagombea wenyewe kwa wenyewe ili tuweze kuongeza idadi yao kwa viti vya uchaguzi. Lakini vile vile, tukiangalia Kipengele cha 81 kinazungumzia umuhimu wa kuwa kwenye Bunge la Taifa na za bunge za kaunti, watu wa jinsia moja wasipite thuluthi mbili ya jinsia ili thuluthi ya tatu iweze kupatiwa wale wanyonge ambao hawawezi kupata nafasi wakati wa uchaguzi.

Viti hivi ambavyo vilitengwa kwa ajili ya akina mama viliwekwa pale kwa makusudio ya kuwa watu watavitumia kwa muda wa miaka mitano na baada ya hapo wanaweza kugombea nafasi za maeneo bunge ambazo ni 290. Lakini, kama tulivyoona juzi katika mchujo, kuna akina mama wapya waliochaguliwa. Wengi waliokuwa kwenye viti vile hawakuweza kupatiwa nafasi kuendelea kupigania. Wengi ambao walijaribu viti vya maeneo bunge 290, hawakupatiwa nafasi ya kupigania viti hivyo mnamo tarehe nane mwezi wa nane mwaka huu.

Hivyo basi, bado mila na desturi zetu zimekuwa na matatizo na kwa sababu hio kuna umuhimu wa sheria hii kubadilishwa ili kuhakikisha kwamba akina mama, walemavu na vijana wanaweza kupata nafasi. Kweli, kama alivyosema Kiongozi wa Walio Wengi Bungeni, ni kweli Chama cha Jubilee kimekuwa sana kiking'ang'ania kuwa akina mama waweze kuongezeka. Nimeona pia hata upande wa National Super Alliance (NASA) kwa wakati huu, wamejaribu kuongezea idadi na kuwawezesha kina mama kuchaguliwa hata kwenye viti vikubwa.

Nilikuwa Waziri wa Jinsia na nilipokuwa nikisimamia maswala ya kijinsia, nilitoa mapendekezo fulani na kuzungumza na wengi. Tulivyokuja hapa tukaanza kung'ang'ana na

swala hili, tulikubaliana na wenzetu wa jinsia ya kiume kuwa tusipoweza kugawanya hii, igawanywe kwa asilimia kadhaa kila wakati kwa muda unaofaa. Lakini Mswada huu haukutaja hayo. Na kwa sababu hayakutajwa, siwezi kuyazungumzia kwa sababu Mswada ulioko mbele yetu unazungumzia kuwa baada ya miaka ishirini, tuwe tumefikisha thuluthi zile ambazo zinatakikana. Lakini tunavyoangalia na kuona ni kuwa bado katika muda ule wa miaka ishirini kutakuwa bado kuna tatizo. Kuna umuhimu wa sisi kuwa na sheria ambayo itatuwezesha kurekebisha tatizo hili ili Kipengele cha 27 kwenye kurasa zinazozungumzia haki za kibinadamu kiwezesha kufanyika haraka iwezekanavyo. Hili ni tatizo ambalo korti imefanya uamuzi kuwa tukutane na kusuluhisha jambo hili. Lakini wakati huu, Wabunge wengi wametoka kutafuta kura. Kila mtu anakitetea kiti chake pahali alipo. Itatuhitaji kufanya kazi ya ziada ili tuweze kupata idadi ya watu wanaotakikana.

Kenya inaweza tu kusonga mbele vizuri kama tutakuwa na idadi ya akina mama ambayo inahitajika. Katiba ilijaribu kutupatia idadi lakini vile tumeona katika wakati wa uchaguzi wa mchujo, wananchi wenyewe hawakutaka kupatia nafasi wale akina mama waliochaguliwa kwenye maeneo ya ugatuzi kuwa Wabunge na kupata viti vile vingine. Ukiangalia Kipengele cha 100 kwenye Katiba yetu ya Kenya, kinazungumzia kuwe na makusudio ya kuangalia kuwa kina mama, walemavu na vile vile vijana wamehusishwa. Kipengele cha 100 kinazungumzia masuala mengi. Inatubidi tuangalie kurekebisha kwa Katiba hii lakini vile vile tuangalie kama kuna uwezekano wa hicho Kipengele cha 100 kuwezesha ili tuweze kukitumia kupata idadi ya watu vile inavyotakikana.

Kama ninavyosema, mimi kwa upande wangu nilikuwa nimeona kuwa ingekuwa rahisi kama asilimia hiyo ambayo inatakikana ifike ingeangaliwa kwa muda wa miaka kadhaa ili tufikishe idadi ya jinsia ya akina mama inavyotakikana hapa Bungeni. Kuna umuhimu wa sisi kuyazungumzia masuala haya, kupitisha sheria hii na kukubaliana. Hata viongozi wa vyama vyetu vilivyotuleta hapa, wote wamesema wazi hadharani kuwa kuna umuhimu wa kuhakikisha kuwa akina mama wanahusishwa kwenye Bunge letu la kitaifa na bunge la kaunti.

Nitakomea hapo kwa kuwaomba wenzangu wote tuhusike tuweze kusaidiana na kuangalia njia ambayo swala hili linaweza kutekelezwa.

**The Temporary Deputy Speaker** (Hon. Omulele): Very well spoken. I just wish that Hon. Neto had listened more closely to what you were saying because you have spoken to the issue of the sunset period, for the provision we made for this particular Bill. Hon. Neto has difficulty with Swahili so I hope Hon. Okoth will be useful in explaining to him what Hon. Shaban has said in very lucid Swahili. Hon. Okoth, it is not your chance yet. I would like you to explain to Hon. Neto what Hon. Shaban has said.

I will give this opportunity to Hon. Nyikal, the Member for Seme.

**Hon. (Dr.) Nyikal:** Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to discuss this extremely important Constitution of Kenya (Amendment) Bill.

This is a Bill that actually demonstrates the whole issue of how we should implement our Constitution realising that we may have extremely good principles in the Constitution but have problems with their implementation, depending on how the laws or the Constitution itself was laid out. This is based on a principle that all of us agreed on - the principle of equal opportunity for women. There is no doubt about that. The whole country agreed that women are 50 per cent of the population, and therefore, they deserve their opportunity.

The issue of affirmative action for all women is agreed. Women have been faced with a lot of impediments and disadvantages starting with historical facts of laws, culture and etiquette that tended to lock them out. More important, there is the big role of women in the society.

Women do a lot of unpaid work such as childbearing and childrearing. It is such a big issue that many women cannot take up positions because they value that at the utmost. Those who want to take positions need to be supported. There is no problem with the issue of affirmative action. People are agreed. We start to have a problem when we come to the two-thirds gender rule.

Article 27 (8) of the Constitution talks about two-thirds of appointive or elective positions and that is where we start to have problems. When you look at appointive positions or appointive bodies, there is no problem because you can achieve numbers through appointment. But when you come to the elective bodies, it becomes difficult. Article 81(b) of the Constitution states categorically that not more than two-thirds of the members of elective public bodies shall be of the same gender, and that is where we start to have a problem. This is because it is virtually impossible to predict numbers through an electoral process. Even if we have the sunset clause in 10 or 20 years, it does not solve the problem of achieving a certain number through an electoral process.

We tried with Article 177 in the case of the assemblies and then stated that we will have special seats to ensure that in the case of the county assemblies, two-thirds are not of the same gender. That is achieved by appointing those two-thirds after the election. We have a problem with that. The problem is that if we use the same principle that we have in Article 177, then we are actually going to have a very large number in the Assembly which we seem to be afraid of. In fact, it will be as large as probably 450. I did this calculation with Hon. Shaban in a Committee and that is what happens. When now we want to use Article 177 and appoint people to fill the numbers, then we are faced with a very large Assembly.

*[The Temporary Deputy Speaker  
(Hon. Omulele) left the Chair]*

*[The Temporary Deputy Speaker  
(Hon. Cheboi) took the Chair]*

Hon. Temporary Deputy Speaker, I will repeat this because it is extremely important. So, when we now want to appoint ....

**The Temporary Deputy Speaker** (Hon. Cheboi): Order, Dr. Nyikal! There cannot be any new Temporary Deputy Speaker. The Temporary Deputy Speaker is always the same. Proceed.

**Hon. (Dr.) Nyikal:** I am guided. When we want to achieve the numbers by appointing after getting special seats after the elections, then we are faced with a very large number, which is over 450. As a country, we are afraid of that scenario. We are now attempting to reduce that number by introducing this Bill, which I support. Again, I want people to listen to what I am going to say, which Neto said earlier on. What is proposed here is not the same as what is in Article 177 of the Constitution, and it has a problem. Clause 4(c) says:

“(ca) the number of special seat Members necessary to ensure that no more than two-thirds of the members elected under Clause 1(a) are of the same gender”.

Look at Clause 97(1)(a). It is talking of the 290 Members, and not the whole Assembly as is in Article 177 of the Constitution.

*[The Temporary Deputy Speaker  
(Hon. Cheboi) left the Chair]*

*[The Temporary Deputy Speaker  
(Hon. Omulele) resumed the Chair]*

In this case, we are talking of two-thirds of 290. I do not see how even if you pick these people you will ensure that they are actually two-thirds of 290, which is what Clause 97(1) (a) is talking about. Therefore, there is a technical problem there to the extent that even if we went through, we may still have a problem because those seats are already there and are going to be contested. So, you cannot again determine their two-thirds. Article 177 of the Constitution, which we have quoted, is talking about two-thirds of the Assembly. That is where the problem is. The same is repeated in Clause 5, which also indicates that it will be the number of special seats necessary to ensure that no more than two-thirds of the Members elected under Clause 98(1)(a), which is 47 seats. Again, those seats are set aside and are going to be contested. Therefore, I do not see how this selection after elections is going to give us the two-thirds.

We have not exactly imported the spirit of Article 177 of the Constitution into Clauses 97 and 98, as we intended to do. If that can be looked at technically and resolved, then this Bill will solve the problem.

I realise and appreciate that the special seats will be identified after the elections. That is the only way you can do it other than having proportional representation at the constituency level by identifying constituencies that will give you two-thirds. We have not gone for that. If what we have proposed is worked out, it will actually help us out.

I appreciate and accept that their term is limited to two terms. At least, they will get the

....

**Hon. Oyugi:** On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Omulele): Hon. Aghostinho Neto, what is out of order?

**Hon. Oyugi:** I just wanted to point out to Hon. Nyikal something. Of course, I do not want to interrupt him because he is my senior. I just wanted to help him understand that proportional representation is not with regard to particular constituencies. It is with political parties' strengths then they can align it to whatever representation they want.

Thank you, Hon. Temporary Deputy Speaker.

**Hon. (Dr.) Nyikal:** That would help us even if you apply it to the constituencies as well, but I accept that. If we do not correct the numbers issues then even the sunset clause will not work. Who says that after 10 or 20 years things will change? That is something we should look at.

As I have said, this indicates the problem we have in implementing the Constitution that is well intended. I am happy that the Chair of the Constitutional Implementation Oversight Committee (CIOC) is here. It is time that this Committee and other bodies sat down and started looking at our Constitution line by line as we implement it. We need to find out where we are having problems and look for ways of correcting them through amendments even if it means going for a referendum.

With those remarks, I support this Bill.

**The Temporary Deputy Speaker** (Hon. Omulele): Hon. Nyikal, you have raised a fundamental point. I just urge you to look at it with the view that as we go forward with these proposed amendments, you can bring further amendments together with the Chair of the CIOC so that we can have a clean Bill that will ensure that when our women come to this House, they will be well anchored in law.

I now give this opportunity to the Member for Nakuru Town East, Hon. David Gikaria.

**Hon. Gikaria:** Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to air my views regarding the Constitution of Kenya (Amendment) Bill. I am also a Member of the CIOC, whose Chair is here. This is one of the constitutional provisions that have not been implemented. We cleared with all the other provisions. It is unfortunate that it has taken this long. We have had many interactions with our colleagues women Members of Parliament. In two occasions, they invited us to meetings to try to mobilise and make us understand the essence of having this provision actualised. I do not know if it is possible for these amendments to see the light of the day. I am saying this in line with the very tough constitutional provision of two-thirds gender rule. Of course, this is a constitutional issue. Therefore, we have to raise two-thirds of our membership in order to amend the Constitution. The threshold for passing this legislation is very stiff. Most of the time, people are easily whipped to defeat this constitutional amendment Bill by ensuring that we do not attain two-thirds of our membership. This also affects the sunset clause, which requires additional 10 years. This is to make it difficult to add the 10 years. As it is, the Constitution leaves it at two-thirds. Passing this constitutional Bill is indeed a tall order.

It is also becoming increasingly difficult even at the county assembly level to attain the two-thirds requirement. I will give the example of Nakuru County. Currently, the Assembly has eight elected women members brought by all the political parties. Considering the fact that Nakuru is more of a Jubilee zone, we reduced that number to only three during the nominations. This translates to nomination of one woman for every three elected. The number of Members of County Assembly (MCA) in Nakuru is 55, meaning women can only go up to 19. It means that even if we nominated 19 women, we will still not attain the one-third gender rule at the county level. These are some of the issues that we need to look at.

Of course, during the interactions that we had with our dear lady Members of Parliament, the issue of 290, as ably discussed by Hon. Nyikal, was raised. We wanted to know whether it is two-thirds of the total number of Members of the National Assembly or the Senate or the elective 290. That takes me to Article 97, which gives specific number of Members of Parliament at 290 constituencies, 47 women elected from each county and then 12 nominees. Of course, this will have an effect. Since this so specific, again we need to look at whether Articles 97 and 98... I did not have the Bill. I was trying to go through the Leader of the Majority Party's briefs. I do not know whether the two articles have been amended. It is very important for us to look at them because they are very specific as to the number of Members of Parliament who are supposed to be in the National Assembly and the Senate. So, it is important for us to holistically look at the amendment and the other articles within the Constitution that also need to be critically looked into so that we can actualise the effect of this amendment.

Hon. Speaker, you remember the ruling by the court, which gave Parliament 60 days to pass this Bill. It is also an issue now. Assuming it is not passed, does the same constitutional provision that provides that - if you do not pass... This is because already the period lapsed. Assuming in the 12<sup>th</sup> Parliament again this Bill is not passed, what would happen? Will the same law again be applicable, in the sense that the next Parliament stands dissolved, if we do not pass this Bill? Therefore, it is a matter that we really need to look into. Of course, the provisions

which have been given in the amendments are quite in order. We really need to look into that, particularly the 20 years.

Hon. Chepkong'a had brought his amendment. I do not know whether it is still a property of the House. It had actually addressed some of these issues in terms of how we will stagger this within the 20 years. I also agree with Hon. Neto on the additional 10 years. I think it has been given a very high threshold and it might not be possible to push it to another 10 years.

I think we will need to look at this holistically in the Committee of the whole House so that we can bring the amendments and also look at the other articles within the Constitution that we will also want to see. I want to repeat this. The threshold of two-thirds to amend the Constitution is very high and we might never do it. Of course, we call upon our male colleagues to support this Bill. In the last attempt, I was one of those people who were whipped to get into the House. I hope that the male and female Members of Parliament who will be elected in the coming election will support this very important Bill and give our women an opportunity.

I want to make this very clear. It is upon the women also to take up the challenge. We cannot have 47 women representing counties and most of them are not actively participating in the actual proceedings of the House. It is unfortunate that a few of them do not do that. It does not matter. You do not need to debate in the House to be seen to be active. I think we need value for the space that they have been given. It would be wrong just to have women being nominated to come and sit – I do not want to say, earn salary and allowances. I want to see women participating in the actual management, development and political aspect of this country.

With those few remarks, I support.

**The Temporary Deputy Speaker** (Hon. Omulele): Hon. Gikaria, you have got no fear for the next Parliament in the event that they will have the same amount of time and the same provisions, they can put in place the necessary laws to bring these numbers into their constitutional consideration. I think we must give this our best shot as this Parliament and that is what we are doing now. We should not operate in *fait accompli* mode but we should be hopeful that we can do our best and come up with the law before we adjourn the House *sine die*.

I know the next Member is Hon. Okoth, but I can see he is still consulting Hon. Neto. On the basis of seniority in terms of age I will, therefore, allow Hon. Sakwa Bunyasi to go before him.

**Hon. Bunyasi:** I thank you, Hon. Temporary Deputy Speaker. There are chronological advantages in life and I appreciate to have this one. I think the proposed amendment is fundamentally sound. I have absolutely no squabbles with the drive towards some form of gender parity as agreed for the time being that not more than two-thirds... Therefore, it is seeking to have just one-third of the other. In nature, it is, of course, about 50 to 50. That should happen naturally. That is not where we are headed to right now. Hopefully, it will come by itself in the long run. However, right now, this is just a minimal one that I think we can enforce. So, let us go for it.

My colleagues have already hinted to the mathematical problem of how the drafting was done. Basically, if we are seeking to achieve outcomes right from where we are now, we should say that the National Assembly has 290 Members in the various constituencies. For example, we cannot predict now how many will be of which gender as they go to the August elections. In the August election, we will have 47 women as well who will be elected. We know that number. We will also have an additional 12 people who are going to be nominated to represent various interests. They have a gender. What I suggest is that if you are truly trying to seek a composition in this House to conduct business in a way that includes all these genders in the proportions we

are seeking to achieve, then we should start by saying that after we know – and of course this has been referred to in various clauses of the amendment and in the Constitution – the composition of the 290, we have 47 Members whom we know will be of the opposite gender, and then the 12 who are nominated are also going to be of various genders, for purposes of the parity we are seeking, the number that balances the ratios in accordance with the minimal standards that have been agreed must take that totality. So, it is not just referring to the 290. It should be referring essentially to the Parliament as it would have been constituted in accordance with the clauses that are in Articles 97 and 98 of the Constitution. That produces slightly different arithmetic. It means, therefore, that we can conduct business, beginning the 12<sup>th</sup> Parliament with a stable proportionate representation as we phase out the 47 women, which will happen 20 years after 2010. We shall have now begun to work increasingly with a greater representation of women and not wait for the time period in 20 years and then 10 years. It is not an event that will happen at one specific time. It is a process that produces that outcome.

Having said that, I hope we will pay attention to the baseline that we are comparing with; which we can do in the amendment right away when this time comes up. I think the reason we are not there yet is that even in nature, representation is not done that way and in our political set up now we have many impediments outside the debating arena that result in the outcome we are looking for. We must address those impediments.

First, the issue of the cost of campaign financing is runaway. We know in our society, distribution of wealth is uneven for various reasons. There may be cultural reasons, legal reasons and other reasons that lead to that. We must address that fundamental issue so that we reduce the impediments related to the highly distorted distribution of wealth in our society which comes at play when we come to elections. It does not just affect women but it also affects younger people who have not had a chance to accumulate wealth of their own. There are some exceptions. For example, the gentleman who was nominated and he is *Bwana Mboga*. One watchman was also nominated on the assumption that he has lower income levels than the average person in other spheres of life. There are issues that mitigate against women and youth that we need to address including campaign financing for starters.

Secondly, we must act firmly within the existing law through the implementation of the law, to ensure that words and actions of hate... This hate may be cross-ethnic or gender related. People say all manner of statements. I remember in the first election I participated in, some of my supporters in Busia who were of Somali origin were concerned about the nature and interaction they can have with men. When people realised that even rubbing shoulders alone would scare them, they would go and touch their breasts which is a terrible thing to do. They did not even show up. When you reported this to the police, they would look at you and wonder what they would do. We must get serious with that. If we raised such issues like physical violence, verbal violence and issues of hate, we will encourage more women to come out. I mentioned the issue of violence. Too often violence just becomes a matter of an election. It is not normal. It is not part of an electoral process. If we begin to address those issues, we shall stabilise the base on which gender issues can be addressed. This will encourage women to get into politics. It will now become a natural phenomenon and the chances that the next person will want to run, will only be in proportions related to population.

Hon. Temporary Deputy Speaker, I really think that this drive towards gender parity must be pursued. The reaction across genders on issues and challenges that we face in life are different. If we had more women taking decisions in our public life, using public resources, decisions about, for example, hunger each year, one after another, it might be addressed

differently. In my community I know for a fact that most men wake up in the morning to go to the market. Of course, they seem to have projects in the market. They will say they are trying to earn an income but the truth is that they are not going to the garden where most of the resources are derived from, where income is derived from in terms of food and other crops that they may be growing. Therefore, if we do not get into a situation where these choices are normalised according to the population, we will continue to get the challenges we have received. I think that the numbers we are seeking should be the dead end of the process. Sure enough, we want to define what we want to achieve in 20 or 30 years, but the truth of the matter is that the numbers that result from that are an end result of a process. As I was saying, the issues of how we allocate our resources towards food security to forestall famine and deaths that occur, if women were about a half of this House, we would be making completely different decisions on that. We would not be waiting to import maize at exorbitant prices when people have already died. They reminded us of that a bit earlier. There are ways in which different genders make decisions.

I oppose the extension of 10 years. We must seriously begin to address this now. Twenty years is a very long time and extending it by 10 years... Why do we not want to make it 50 years or a Century to come? You could do that. After all, if we look at what other countries including the Scandinavian countries, advanced as they may be have done, they have not reached it. The British where we derived our parliamentary democracy have not reached it. Why do we not make it 100 years? I do not think that is the direction we should go. We could go the other direction. Rwanda and South Africa have done it. We do not need 20 years to make the decisions that Rwanda has made. Let us get serious on this but first and foremost, let us define what we are seeking to achieve more clearly so that we can begin to see where we are come September.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Omulele): Very well spoken, Member for Nambale. I would like us to proceed this way. I can see the Chair of the Committee that is really the mother of this amendment, Hon. Njoroge Baiya. I would like you to be the last person to speak to this, so that you can listen to what other Members are saying and in that way, you can speak to all matters they have spoken to.

I will therefore allow Hon. Ken Okoth to speak and he will be followed by the Member for Butula and after he speaks, the Chair of the Committee will speak.

**Hon. Okoth:** Thank you, Hon. Speaker. I rise to support the amendment and make my remarks on why and give the context. We, Kenyans, often make the mistake of forgetting our history even the most recent so quickly and find ourselves in a situation where we are dealing with issues as if we are dealing with them for the first time. The reality of the matter is that the push for equity, equality and justice and inclusivity in our political system is a battle that has been going on for a long time. When we go back to the 2010 Constitution, which we have all sworn to defend and uphold, a lot of the debate narrowed down to: Is the Constitution good enough to be passed as it is or does it have some fault in it that should be fixed before it is passed? That was the question. The people who were in the “No” campaign, those in the “Yes” campaign and those considered to be “watermelons” agreed that there is something that needed to be fixed in the Constitution. It is a living document and is not perfect as it is the reality in many other places. If you recall very clearly and I want to put it on record, the argument was, “No” side said 20 per cent of the Constitution is bad and we should talk, agree and fix it before we pass it. People who were on the “Yes” campaign agreed there is 20 per cent that is not good, but agreed to proceed but fix it in the first five years. They agreed to review it. Hon. Aghostinho



Neto and the Leader of the Majority Party, Hon. Duale were remarkable for what they said this afternoon. If they will go down in history... My good friend, Aghostinho thinks he will come back here in October as an independent Member. He said when we talk about the definition of spouse, we should expand it. This was a constitutional issue that was debated at that time. We have had time in the last five years, without too much pressure to fundamentally put these issues down and question them. What is the direction that Kenya will take on the 20 per cent of the issues? I belong to the Orange Democratic Movement (ODM) and the party was among a group of parties and civil society that came up with *Okoa Kenya* Movement. People seem to have forgotten that there was an *Okoa Kenya* Bill which went and collected signatures to amend the Constitution. That Constitution (Amendment) Bill that was proposed by *Okoa Kenya* included issues of how much funding should go to our county governments. It had a forecast on devolved functions. It looked at the proper formula, reviewed the nature of the Provincial Administration, what used to be former and now a branch of the national Government administration. It looked at the wage bill in line with the county governments. County governments have now duplicated roles. You find that we have a ward administrator, sub-county administrator yet the national Government has the same people. You wonder how many of these people we need and whether we could use them jointly. The *Okoa Kenya* Bill, unfortunately talked about a ward fund in place of National Government Constituencies Development Fund (NG-CDF) which were very important issues. We must devolve utilisation of resources and bring them constitutionally to the lowest level in a manner that is predictable. It did not talk about the two-thirds gender rule. The two-thirds gender rule must be accomplished. We all agree on that but some people are opposed to it. I think it is a good thing.

To the women of Kenya, it is to tell you that your hope will not come through the 11<sup>th</sup> Parliament. This Parliament in which I serve has done many good things, but there is one bad thing it has not done, and which will remain as a stain and an opportunity we had. We did call for quorum a couple of times here. I remember a time when Hon. Stephen Kalonzo Musyoka and Hon. Raila Odinga were in the Speaker's Gallery while we were debating amendments on the two-thirds gender rule and it did not pass. Now we are left with three days next week for this House to meet. Therefore, I am telling the women of Kenya that your hope is not here, not in this 11<sup>th</sup> Parliament. It is a sad thing, but I must break the news to you.

Number two, the women of Kenya must be ready to collect signatures because there is no guarantee that the 12<sup>th</sup> Parliament, with the attitude of chauvinism and entitlement, that when it comes to spending public money to engage a few more women to participate in our leadership, we are quoting the wage bill. But the amount of corruption that goes on in this country, just a fraction of that would be enough to pay for the salaries of any women we bring in here, whether we nominate 90 or 100 more. While I am talking about the wage bill, let us go to the reality of the matter and say we must bite the bullet and face some hard choices.

Hon. Aghostinho Neto, at the beginning of this Parliament in April or May 2013, brought to the Budget and Appropriations Committee a very clear and simple Bill, proposing to reduce the size of the National Assembly and the Senate to make it affordable. So, we cannot speak from the two sides of our mouths. On the one hand, when you want to frustrate women, you tell them about the wage bill. In the first instance, Hon. Aghostinho Neto had brought a legislative proposal that was stopped as a money Bill, proposing to reduce the size of elected officials so that we would have a smaller Parliament that accommodates and meets the two-thirds gender rule. It was rejected. What is our stance really?

Hon. Agostinho was advised it is a money Bill and you may not proceed by reducing the size of Parliament and making it smaller and more affordable. What was he told? He was urged: “Go and come back with a better formula that increases the size of Parliament.” He did. When he came to this House again, the Departmental Committee on Justice and Legal Affairs and the Budget and Appropriations Committee – and Hon. Baiya is here. He knows how these things go. It got a nod but it was never published and brought here for debate. So, I wonder why we pay bright minds like Hon. Agostinho to go do a proper Bill and then it is not debated.

Here we are debating Duale II Bill. What happened to Duale I Bill? What happened to Sen. Judith Sijeny’s Bill? Here we are debating Duale II as a formality. My reminder to the women and any person of good conscience who cares about inclusivity in our leadership: We are not going to realise this in the 12<sup>th</sup> Parliament. The reason we are discussing this is because Judge Mativo ordered that within 60 days, we must discuss it. Those 60 days expired last Monday. So, any right thinking Kenyan is within their right to petition the Chief Justice to write to the President to dissolve this Parliament. But this Parliament is getting dissolved next week. So, by the time you deliver the letter to the CJ and he considers the matter and delivers the same to the President, it will be in vain; it will have been passed by time.

We are looking ahead to the 12<sup>th</sup> Parliament. I hope that more women will be elected on our parties and make it here. The first order of business in the 12<sup>th</sup> Parliament will be to finish implementing this issue. Let us also come up with a proper Bill on the issue of referendums. Two issues stand out in this country on how we involve public participation and how we do referendums. It is not clear. Those are gaps that we are leaving as the 11<sup>th</sup> Parliament. I hope whoever will be in the 12<sup>th</sup> Parliament will quickly address the guidelines and proper legislative basis for Kenyans holding a referendum.

Number two is this: What constitutes proper public participation at the county assembly level and at the National Assembly level? Those are issues that we must address. Otherwise, we are neither here nor there. This issue will rear its head again in the 12<sup>th</sup> Parliament because this Bill is not going to pass. When we get a House that is not properly constituted, there might even be a constitutional crisis unless we proceed... I beg for one minute. I see my time is running out.

**The Temporary Deputy Speaker** (Hon. Omulele): Hon. Ken Okoth, you have two more minutes.

**Hon. Okoth:** Thank you, Hon. Temporary Deputy Speaker. Unless we proceed with our usual ways of impunity and ignoring things, the reality is that, if the 12<sup>th</sup> Parliament is not properly constituted, we will have a constitutional crisis. We will either have to pass a formula that can work to make that House legitimate or not. The message to Kenyans is that many Kenyans are tired with the cost of Government. They are concerned about the structures that were set up in this Constitution. Some even say the number of counties is high and the constituencies are too many. We must have that dialogue. It should be held separately from the election but very soon.

I regret that in the four years that we have been here, we have not been able to have that dialogue. Even the proposal that *Okoa* Kenya Movement brought, which could have been embraced and expanded, was never done. It is a betrayal to the cause of inclusivity and equity in our leadership, but I hope we will make more steps going forward to make Kenya more inclusive. We need a clear law on issues of referendum and clear guidelines on what constitutes public participation. Proper public participation must meet constitutional threshold so that it is not just done as a by the way to check the boxes and say. “Public participation was done and

something was published in the newspapers.” But you do not have the chance for members of the public to really engage.

With those few remarks, I would like to note that I support the Bill. I regret that it has come too late. I regret that we are doing it because our arms have been twisted as a House by the ruling of Justice Mativo, and that we are not going to pass it. Any Kenyan citizen can thus ask for the House to be formally dissolved even though that will happen next week. It is a shame. The struggle continues. To *wamama wa Kenya, msilale. Bado mapambano*. The struggle continues.

**The Temporary Deputy Speaker** (Hon. Omulele): Hon. Michael Onyura, the Member for Butula. But before you speak, Hon. Ken Okoth, I am sure you have acquainted yourself with the provisions of Article 261, particularly sub-article (9) thereof, which allows the next House the same latitude that this House had as far as enacting these particular provisions on gender parity is concerned.

The Member for Butula.

**Hon. Onyura:** Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill. In fact, I support it in principle. It is true that there are certain areas that might need cleaning up and improvement. I think the principle is right. The Kenyan people, exercising their rights and choices at the time of making the Constitution, decided that elective and appointive positions should conform to the two-thirds gender rule. It is upon us in this House and all the other Kenyans to ensure that, that is fulfilled. That was a way of providing an affirmative action to ensure that, that happens.

As I support this Bill, I ask myself: Would it be good for this country if women were facilitated to participate in various activities as fully as possible? I think it would be a good thing. Therefore, we should look for ways of implementing this law. This Bill will ensure that we achieve the two-thirds gender rule in this House. I am happy with certain provisions, including the sunset clause that provides for 20 years. It shows that we are now working towards a certain target. I have no problem with the extension of tenures. The clause states that after the 20 years, if we have not achieved the one-third gender representation, then Parliament may--- It does not say, “Parliament shall”. My take on this matter is that after the 20 years, depending on the prevailing circumstances, the House in its wisdom, will decide whether there is the sense in extending or not.

I am also happy that there is a provision that those who will benefit from this nomination can only serve for a maximum of two terms. That is good because it ensures that we do not have people here benefitting forever. I am also encouraged that a good number of the ladies nominated in this House have decided to run in the coming elections. They may not have succeeded in the nomination exercise, but going out there to contest is good enough. I know that some of the nominated women Members have done well in the nominations and that is very encouraging.

I urge the House to support this Bill. I thank the principals from both sides of the House for supporting it. I urge them to continue supporting this position. Some of the challenges that we are likely to be faced with include high costs and a larger House in terms of numbers. However, we just have to be ready to pay a certain price. We have employed affirmative action in certain areas, for example, in the education sector. The girl-child has been given consideration and certain allowances are given to her in terms of meeting examination thresholds. Even in various recruitment exercises, we have employed affirmative action. We should be prepared to pay a price that will ensure that we give equal opportunities to both genders. The population figures in this country show that the ratio of men to women is about 1 to 1.

I think the number of women may be slightly more than that of men. Given those statistics, one wonders why the majority should be so under-represented. There are compelling reasons for us to go that direction. I listened to lawyers, including my friend Hon. Neto, who pointed out certain areas that might need to be cleaned up. It is important that, that is done. We do not want to pass a law that will be difficult to implement or to interpret.

We have been talking about the elective positions, which are more challenging. I do not know why we have not achieved the target when it comes to appointive positions and yet, that is an area which is less challenging. I am talking about Cabinet, senior government and corporate positions. The spirit of the two-third gender principle should be taken on board and implemented in all sectors. If we attain that, it will speak of our maturity as a society. In any case, quite a number of women who were elected to this 11<sup>th</sup> Parliament have done a fairly good job. I believe that those who are going to be elected this time round will also do a good job.

Hon. Temporary Deputy Speaker, I support the Bill.

**The Temporary Deputy Speaker** (Hon. Omulele): Very well. Let us have Hon. Baiya.

**Hon. Baiya:** Thank you, Hon. Temporary Deputy Speaker. I support this Bill. I join my colleagues who have spoken in support of this Bill. This is one provision of the Constitution that the country has had a lot of challenges implementing. We believe that these challenges have not yet been overcome. In fact, the way we have gone about to implement this matter has ended up creating more challenges. The genesis of this is a constitutional provision which, in itself, no one has a controversy with. It is because the basic principle is contained in the Bill of Rights under Article 27. It is a fundamental principle of equality and freedom from discrimination. This is the provision of the Bill of Rights that states that nobody should be discriminated on the basis of gender, sex, creed or religion. It is a principle found in nearly all societies that lay claim to any democratic credentials.

The other constitutional principle that this Bill seeks to implement is about the election system of the country and some of the minimum standards set out, especially in Article 82 (2) of the Constitution. Indeed, not more than two-thirds of members of elective public positions shall be of the same gender. Even though we are talking about the threshold of one-third in our country, the gender status is more or less equal. It is a reflection of our cultural background that we have a problem achieving this one-third threshold. More importantly, it has been a challenge for us to enact legislation in this regard. But if you really look at the constitutional implementation requirement, it requires us to not only amend it, but to even come up with other mechanisms. Article 27(7) and (8) of the Constitution clearly makes it imperative for the State, including the Legislature, to come up with legislative and other affirmative mechanisms to overcome past discrimination and bring parity in areas where there has been marginalisation, which includes the area of gender imbalance.

Unfortunately, political parties since 2010 have all focused only on enactment of legislation and the efforts being made have not been fully embracing these constitutional principles. Even when the court has been given an opportunity to interpret it, the principles have been relegated as aspiration and not necessarily capable of immediate implementation. Clearly, it is the case that until we have fully realised or implemented the two-thirds gender principle, the Constitution will not have been properly and faithfully implemented to its letter and spirit, which requires that, in elective bodies, either gender should not exceed two-thirds.

There are challenges on implementation with regard to the two-third gender rule concerning Members of Parliament. That is because Article 261(7) of the Constitution requires the President to dissolve Parliament in the event of non-compliance and yet, under the current

Constitution, the provision to dissolve Parliament was exclusively a preserve of the previous Constitution whose provision had been saved until the first general election. It turns out that, as we speak, the President does not have any power under this Constitution to dissolve Parliament. Even if the Chief Justice (CJ) was to notify the President, he would be acting in vain because under what constitutional provision will the President purport to dissolve Parliament when the Constitution which was in force before 2010 has already been repealed?

We hope that the MPs of this Parliament or the 12<sup>th</sup> Parliament will rise to the occasion and appreciate that, notwithstanding challenges or mechanisms of implementation, there will always be a gap between what the Constitution says and what we are going to have. This will, in the course of time, put the Judiciary under clear scrutiny if it does not take the relevant mechanisms to compel either of the Houses to ensure that this Constitution is properly and fully implemented. Even then, the national Government will also make the work of MPs and those responsible for implementing the Constitution easier. Political parties also have a big role to play because they can help a lot in terms of enhancing mechanisms of implementing the Constitution.

As we debate this Bill, I am sure going by the peculiar circumstances of time, this Bill may not see the light of day before the end of this Parliament. It is, therefore, incumbent upon the current and future National Assembly to appreciate its burden and responsibility of implementing constitutional principles. I know being a male-dominated National Assembly, some of us feel that we are possibly making substantial concession to allow the fair gender to also get proper and fair representation, but it behoves all of us to appreciate this. The reason why we talk about this principle is not about supporting the fair gender, but about mainstreaming gender affairs in our country where we want decisions to be made in the most objective manner. Therefore, it is imperative that the decision-making process is not substantially handicapped by discriminative exclusion of members of one gender. The main victims will not just be women, but even men, the youth and the rest of the society.

This constitutional principle is not necessarily meant to help women, but the society at large. Therefore, it cannot be eliminated because it is already entrenched in the Bill of Rights and sections of the legislative processes. Until we undertake a referendum to remove it, we may not be able to eliminate it. We should not get to a point where we will abandon some of these clear fundamental human rights about non-discrimination merely because we think they should not be enforced. In the course of time, I believe if the State employs both short and long term mechanisms, it may not be necessary to have a 20 years review period of implementation because most probably, the country will have risen to the occasion and given fair treatment to all genders making it unnecessary to extend the scope of implementation of this Bill.

With those few remarks, I beg to support this Bill.

**The Temporary Deputy Speaker** (Hon. Omulele): Very well. I now give this opportunity to the Member for Vihiga, Hon. Yusuf Chanzu.

**Hon. Chanzu:** Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to support this Bill. This matter has come before this House on several occasions. I think the approach which has been taken now is ideal but, unfortunately, it is not timely. In principle, I support the idea because this is what came out when Kenyans were giving their views on the kind of Constitution they desired. It is important for Kenyans to be given their desires.

The 20 years sunset period is good because it gives us time. I think there was lack of preparedness at the time when the Constitution was being implemented. Therefore, this is enough time so that there is adequate preparedness. With regard to the level of education, there are equal opportunities for both girls and boys in this country. It is only that we have some

problems with cultural behaviour and beliefs which have hampered the development of the gender issues in various parts of the country. I am sure if enough time is given for awareness, it will be easier to implement this than having to give positions to people when they are not prepared. Either way, the period which has been given is appropriate because it will create opportunities for everyone in the country. We have on several occasions come to the realisation that in some places like schools, the boy-child is being affected by too much talk about the girls. I hope that when we talk about the fact that the enactment of this Bill shall occasion additional expenditure of public funds, I am sure there will be more awareness created all over the country to ensure that everybody is at peace or at ease with it.

I keep quoting the Rwanda situation where there was genocide. When President Kagame decided to have more women in Government, there has been peace and a lot of progress. This is because women tend to be more peaceful than men and it is easier to carry out certain assignments through women. You will find that even in the places we come from, the churches are for all. But many times when we go to churches or religious places, you will mostly find women. That is why there has been a lot of peace in those churches until they get invaded by some men who are out to divide the church.

This Bill takes into account the issues that were not foreseen during the time of making the Constitution. There are a number of issues that arose because of the time that was taken and the kind of pulling from both sides and the competition that was there when the Constitution was being drafted and written. I remember when the Constitution was being passed in Parliament, we could not debate it. We said that Members of Parliament passed the Constitution the way it was. We just passed it the way it was because there were so many vested interests pulling in different directions. Now that minds have settled, it is the right time for this to be brought up. There were contentious issues and this one was among them. It is a good time for it to be debated when Kenyans are sober in their thinking. The most important thing is that we should take care of the proportions as has been said.

Article 90(2)(c) of the Constitution says: “Except in the case of county assembly seats, each party list reflects the regional and ethnic diversity of the people of Kenya.”

This is a very important one but we have not been able to adhere to it even in the positions we have taken, leave alone the issue of women. Even in the issue of appointment of Cabinet Secretaries and Principal Secretaries in Government, this has not been adequately adhered to. This is what sometimes causes the division and animosity we have in our campaigns. Those are some of the issues that bring about a lot of hostilities. Those who are campaigning for different positions, even the presidential ticket, do not have any idea about what the country should be like. They campaign in different directions because some of the aspects which were in the Constitution have not been adhered to.

It is important that as we talk about the gender rule, we must also think about the regional and ethnic diversity. Kenya thrives on taxation. Apart from income tax, which those who earn a salary pay, the rest of the people pay a lot in terms of VAT - that is 16 per cent. It is a big proportion of the revenue that the Government collects. Because of that, each part of the country deserves to be served in the way that is contemplated and expected by Kenyans who live everywhere in the country. Once this is done, I am sure it will be easier for everybody to be taken on board. It will be easier for every Kenyan to feel a sense of belonging. That is why it is important that such a Bill is debated and everybody is made aware of what is happening.

With those few remarks, I support the Bill.

**The Temporary Deputy Speaker** (Hon. Omulele): Let us have Hon. Kimani Ngunjiri.

**Hon. Ngunjiri:** Thank you, Hon. Temporary Deputy Speaker. I rise to support this constitutional amendment Bill as proposed under Articles 90, 97 and 98 of the Constitution.

I believe that for this nation to develop and make sure that there is full participation of all Kenyans, we must make sure that we include gender in terms of our consideration of every sector of our economy. I know that when we are discussing this two-thirds or one-third gender rule, we normally like referring to this matter as a “women issue”.

This morning, I had an opportunity to visit a school in my constituency in Kamirithu and at the same time, I had a chance to meet the participants of the National Youth Service (NYS) *Kazi Kwa Vijana* Programme. I looked at the numbers of the students or pupils who were in this school and I was surprised. Majority of the kids who are in school are female. I also saw that many of the *Kazi Kwa Vijana* participants were also female. They were more than the men. I would like us to know that a time will come when, we, the men who have been reluctant to push this Bill will be marginalised.

Last week, for those who were in Madaraka Express, they may remember how many ladies were in that train providing various services. The ratio of men to the ladies was 1 to 8. It is important for us to know that we can no longer hold the wishes of this country. It was the wish of the people of Kenya that no gender should be more than the other; that we must open doors for those people who feel they do not have a fair opportunity. This time, in our development of this nation, the women particularly in elective positions, have a hard time in fair competition with men. The men seated here are also married. They have daughters. In my household, there are only two men against four ladies. When I consider the potential of the women in my house, I would never want them to be constrained to do what they must for this nation just because they belong to a certain gender.

For this reason, we, in Kenya, should not benchmark ourselves against our neighbours. Even the First World countries in Europe and America are struggling with the same kind of thing. Kenya can show the way forward by implementing the one-third gender rule to ensure that both genders play a meaningful role in the development of this country. If we allowed our women in particular to get into areas of employment and leadership in this country, we will unlock so much energy that will take this country to another level. If we keep on holding back the gender rule for various reasons that we may have, we will be holding this country back.

It is my wish that we should not leave this matter hanging forever. It should be finalised. I pray that we, men, must also remember that tables can be turned, and we could be crying in future. We will wish that this Bill was passed to safeguard men’s interests. It is important that as we move forward, all of us look for the right mechanism and propose the right ways to ensure that the gender rule is successful in this country.

I support.

**The Temporary Deputy Speaker** (Hon. Omulele): We shall have Hon. Wamunyinyi.

**Hon. Wamunyinyi:** Thank you very much, Hon. Temporary Deputy Speaker for giving me a chance to also make my contribution on the Bill before the House. Let me state that, at the outset, I am not opposed entirely to the issue of ensuring that there is gender balance as envisaged in the Constitution. I respect and always believe in the independence of this House. This Bill was brought before the House because the President directed the Leader of the Majority Party to do so. That means if he had not, this Bill would not be before the House. I am also sure that even at the time the President was giving that directive, he knew that this was going to be an exercise in futility because it will not go through.

Campaigns are going on. You cannot use this law to purport to be supporting the women agenda. This is a campaign gimmick that should not have been allowed. I am sure we have just one week to go. This House is going to be sitting for the next one week only. On 15<sup>th</sup> June, we are adjourning *sine die*. For us to implement this law, we have to go through another very important stage. This law will have to go through the Second Reading and the Third Reading.

Ordinarily, although I know this is a matter which has been on the table for quite a while, I have not seen the latest Committee Report that will give details which also include comments made by the public. This is something we need to point out as Parliament.

**The Temporary Deputy Speaker** (Hon. Omulele): Hon. Wamunyinyi, I want to give you time. I know you are very passionate about this matter. So, just take your time and express your points clearly.

**Hon. Wamunyinyi:** Thank you, Hon. Temporary Deputy Speaker. In order for this kind of Bill to be brought to the House, there ought to be a Report from the relevant Committee of Parliament. However, in this particular case, there is no such thing because the President directed at a *baraza* that this Bill must be brought to Parliament. The institutions in our country and, more so, the Legislature, must be independent. We should be transacting business independently. That is why you are there. You are the Chair. We do not have to entertain campaign gimmicks when it is, in fact, obvious that we are not going to raise the numbers to amend the Constitution in the next one week. That is why I am saying it is futile to introduce this Bill before the House. Maybe, it is a public relations exercise, but it will not help the President because 10 million strong voters have already made up their mind. The 10 million strong National Super Alliance (NASA) supporters have made up their mind. This will not help.

It is important for us to actualise the one-third gender rule, especially given that we have wives, daughters and other ladies who are also entitled to leadership positions. Ladies feel that they are also equal to men. I believe that in the eyes of God, all persons are equal, unless you know anywhere that God has given different ratings to these people. We are all equal in the eyes of God. Let this be a natural aspect. God has given us the power to rule over the world and we should all do it equally. Why are women contesting for seats? Why do they not just wait for allocation? They are competing with men and other women. The special seats for women in the counties are enough. I empathise with my good friend, Hon. Kiragu's thoughts, but this is not something you want to sit and say that people are seated there and should be given free seats. Why give people free seats? Let them fight for them. They should fight for the seats.

We have been talking about escalation of cost of doing business. Even in Government, people have talked about the cost of salaries and the cost of running institutions like Parliament. There is a lady called Sarah Serem. She inadvertently cut our salaries. She reduced our salaries and allowances and went away with it. The reason that was advanced when she was doing this was that Members of Parliament are so many, and that we are eating so much resources that would otherwise go to development. If, after the general elections we allocate seats proportionately to political parties for them to nominate in order to get a balance of some sort, are we going to cut the cost or increase it? These are the facts that must be considered. I am very sure that if that happens, there will be chaos. This House already has 349 Members. That number is big. We would be talking about mechanisms of getting rid of some constituencies, which ought to be wards. Some constituencies have just about 50,000 or 60,000 people while others, like mine, have 400,000 people. My constituency has a population of close to 400,000 with over 110,000 registered voters. Therefore, in my view, we would be dealing with how best we would go about the process of reducing the numbers of Members of Parliament, constituencies and the



cost. This is because if you increase the number of members here, you must also increase the staff. It is going to be costly to maintain a Member of Parliament and a member of staff here in Parliament. So, you will just be doing more harm to Kenyans who are already over-burdened. This is because this is going to be taxation. You will also increase tax when money is required to deal with the issue of meeting the cost of operation of Parliament, the Commission and even running constituencies.

**The Temporary Deputy Speaker** (Hon. Omulele): Hon. Wamunyinyi, I like your line of argument also considering that those who are already here and debating this very important matter that touches on the gender parity issue do not seem even interested to debate it.

**Hon. Wamunyinyi:** Hon. Temporary Deputy Speaker that is the point. Are we trying to create opportunities for people to come here and make money and not make any contribution or what is it? I have had the opportunity to visit some of the most developed democracies. I have been to the Congress and the House of Commons. When you get to those developed democracies and talk about gender, they ask you: "What do you mean?" They do not know this thing called gender. Go to those institutions and you will find that there is nothing like that. Why the double standards? Why impose it on countries that are developing. Leave it to us. Let us manage our affairs.

In our country and particularly the community I come from, which you also happen to come from, we know the role that the ladies play at home. They know what they are expected to do and they do it very well, given a chance. They help families. When ladies get something, the family has something at home. We also get to build families and the nation through them. You hardly see most of them building the nation or even making children. They do not build the nation. So, I do not think that it is right for anybody in Europe to lecture Kenyans. Some of the Non-Governmental Organisations (NGOs) and the civil society have been pursuing this, but when you look at those countries funding these activities, like those I mentioned, they have nothing called gender balance in their countries.

However, when they come here, they send a few people in Kenya with some money to come and lecture people and the civil society and tell Parliament what to do. The President also follows and directs Parliament to sit and pass the Bill. We must get away from this. This is the Legislature. This is the National Assembly and you need to consider your own business. The Constitution gives you power. Do not take it directly from anywhere, even from the President. Let him run the Government and let Parliament do its business. Nobody from anywhere should come to lecture Kenyans about this. Let women fight for seats. Let them be elected like men. In any case, like I said, we are equal. So, we should not have to go to that direction of having to follow directions on what to do.

I wish to condemn some of the commissions that have been set up by some members of Government. It is not fair for the Government not to act to protect women in some instances, where they have been raped and mistreated by some crooked men. You can talk to a woman and express yourself. Why do they use force on women? You hear some of the cases are staying in court for six, seven or eight years. This Government pretends. In some cases, criminals have been acquitted for mishandling those cases.

On Friday last week, in my constituency, a policeman shot dead a woman who was selling *machungwa* and *mboga*. This policeman just removed his gun and shot her dead. The police are expected to protect. This is why they are *utumishi kwa wote*. They should not take sides. They should not be supporting the Jubilee Party because it has just a few days to govern this country. The National Super Alliance (NASA) will be taking over and those policemen will

be under NASA. They will be serving Kenyans under a new government of NASA. Let them be reminded that they are *utumishi kwa wote* serving all Kenyans and when an innocent life like I saw on Friday is lost from a bullet--- An innocent woman who was struggling to sell her *mboga* to make a living and meet obligations for her family was shot dead. As we speak now, I have not seen action taken. We want to see justice done. The officer who shot *Mama Kadogo* should be arrested and taken to court.

Another incident was of a motorcycle rider from my village who was also shot. Wekesa Wechalukha comes from my village; you know Buhema at the hill. He comes from there. He was shot and a bullet was lodged in his leg. One of the bones, the tibia, was shattered. So, it is going to be very costly even to get him treated. This is someone who rides a bicycle to earn a living. Now, the leg is shattered. Is he going to do this again? Is he going to get something for his wife and children? Obviously, no and someone somewhere who is trigger happy is enjoying. Should there be fresh training to some of them? What is most annoying is that the police were moving with Jubilee youths who were armed with crude weapons. They descended on innocent people. I expect the electoral commission to act on this because this amounts to electoral offences. They have meted violence on innocent people. That is why I am saying that this Government of Jubilee must go home on 8<sup>th</sup> August to save Kenyans. The price of *unga*, sugar and milk has gone up. There is corruption in high offices. Where is this country heading? Hon. Temporary Deputy Speaker, for Kenya to survive and for Kenyans to lead fairer lives, Jubilee must go home.

**The Temporary Deputy Speaker** (Hon. Omulele): Very well Hon. Wamunyinyi

**Hon. Wamunyinyi:** We, as Kenyans, feel what the ordinary *mwananchi* is feeling. We therefore must work towards ensuring that this Government goes home. I hope that everybody, even some of the Jubilee supporters get this message so that Jubilee goes home as we save Kenyans. With those few remarks, I wish to state that I am going to withhold my support for this Bill.

## ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Omulele): Hon. Members, the time being 6.30 p.m., this House stands adjourned until tomorrow, Wednesday 7<sup>th</sup> June 2017 at 9.30 a. m.

House rose at 6.30 p.m.