

PARLIAMENT OF KENYA**THE NATIONAL ASSEMBLY****THE HANSARD****Wednesday, 16th October 2019**

The House met at 2.30 p.m.

*[The Speaker (Hon. Justin Muturi) in the Chair]***PRAYERS****PAPERS LAID****Hon. Speaker:** Deputy Leader of the Majority Party.**Hon. Jimmy Angwenyi** (Kitutu Chache North, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:Reports of the Auditor-General and Financial Statements in respect of the following constituencies for the period ended 30th June 2018 and the certificates therein:

1. Hamisi Constituency;
2. Emuhaya Constituency;
3. Luanda Constituency; and
4. Bondo Constituency

Hon. Speaker: The Chairman of the Departmental Committee on Defence and Foreign Relations.**Hon. Katoo ole Metito** (Kajiado South, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House, Wednesday, 16th October 2019:

The Report of the Departmental Committee on Defence and Foreign Relations on its consideration of the Agreement between the Government of the Republic of Kenya and the Government of the Republic of South Africa on Defence Co-operation.

Thank you.

Hon. Speaker: Next Order.**NOTICE OF MOTION****ADOPTION OF REPORT ON DEFENCE CO-OPERATION****Hon. Katoo ole Metito** (Kajiado South, JP): Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on its consideration of the Agreement between the Government of the

Republic of Kenya and the Government of the Republic of South Africa on Defence Co-operation, laid on the Table of the House on Wednesday, 16th October 2019 and pursuant to Section 8 of the Treaty Making Ratification Act, 2012 approves the ratification of the Agreement between the Government of the Republic of Kenya and the Government of the Republic of South Africa on Defence Co-operation.

Thank you, Hon. Speaker.

Hon. Speaker: Next Order.

ORDINARY QUESTIONS

Question No.455/2019

UPDATE ON THE ASSAULT ON MS. NORAH JEPCHICHIR MOIBEN

Hon. (Ms.) Gladwell Cheruiyot (Baringo CWR, KANU): Hon. Speaker, I rise to ask the Cabinet Secretary for Interior and Coordination of National Government the following Question:

(i) Could the Cabinet Secretary provide an update on the investigations regarding the attack of one Ms. Norah Jepchirchir Moiben of ID No. 25946764 who was attacked by unknown assailants on 6th August 2019 near Camp David adjacent to Eldama Ravine Police Station in Lembuskwen Ward of Baringo County during which both her eyes were reportedly gouged out?

(ii) Could the Government consider facilitating Ms. Norah, a registered P1 teacher recently employed by the Teachers Service Commission, TSC No. 671024, to undertake a course in Braille, following her enrolment at Machakos School for the Blind, knowing that this lady is also a single mother?

Thank you, Hon. Speaker.

Hon. Speaker: The Question is referred to the Departmental Committee on Administration and National Security to have it responded to.

Member for Voi, Hon. Jones Mlolwa to ask Question No.456/2019.

Question No.456/2019

WITHDRAWAL OF HARDSHIP ALLOWANCE FOR COUNTY OFFICIALS

Hon. Jones Mlolwa (Voi, ODM): Hon. Speaker, I rise to ask the Cabinet Secretary for Interior and Coordination of National Government the following Question:

(i) Could the Cabinet Secretary explain why in June 2019, the Government withdrew hardship allowances for Assistant County Commissioners, Chiefs and Assistant Chiefs in Mbololo and Ngolia locations in Tausa Division, Voi Sub-County, Taita Taveta County?

(ii) When will the said hardship allowances be reinstated?

Thank you, Hon. Speaker:

Hon. Speaker: The Question is referred to the Departmental Committee on Administration and National Security to prioritise for response by the Cabinet Secretary.

The next Question No.457/2019 is by the Member for Nyatike, Hon. Tom Mboya Odege. He has written to request that Hon. Paul Abuor asks the Question on his behalf. Hon. Abuor.

*Question No.457/2019*STATUS OF COMPENSATION OF AFFECTED PERSONS
IN LOWER KUJA IRRIGATION SCHEME PROJECT

Hon. Paul Abuor (Rongo, ODM) on behalf of **Hon. Tom Odege** (Nyatike, ODM): I beg the Cabinet Secretary for Water, Sanitation and Irrigation the following Question:

(i) Could the Cabinet Secretary provide the compensation status for the persons whose land was affected during the implementation of the Lower Kuja Irrigation Scheme Project in Nyatike Constituency, Migori County?

(ii) What is the resettlement plan for persons that have not been compensated and are still living within the project area?

Hon. Speaker: The Question is referred to the Departmental Committee on Environment and Natural Resources for the Cabinet Secretary to appear and give an answer. Before we move to the next Order, I wish to recognise students from Pupils Reward Scheme (PURES) Village courtesy of State House from Dagoretti North Constituency, Nairobi County at the Speaker's Gallery, those from Tumaini Preparatory Education Centre, Embakasi South Constituency, Nairobi, and those from Jordan College of Technology, Thika Town Constituency, Kiambu County. They are all welcome to observe the proceedings of the National Assembly this afternoon.

Next Order.

BILL*Second Reading*THE REPRESENTATION OF SPECIAL INTEREST GROUPS
LAWS (AMENDMENT) BILL

(Hon. Jeremiah Kioni on 15.10.2019)

(Resumption of Debate interrupted on 15.10.2019)

Hon. Speaker: Hon. Members, before debate on this Motion was adjourned yesterday for the Zero Hour, the following Members had contributed: The Mover of the Bill, Hon. Jeremiah Kioni and the Seconder, Hon. Wafula Wamunyinyi, Hon. David Sankok, Hon. Dennitah Ghata, Hon. Godfrey Osotsi and Hon. Sara Korere who has a balance of five minutes. Therefore, if Hon. Sara Korere is present in the Chamber, she can make full use of her five minutes.

Hon. (Ms.) Sara Korere (Laikipia North, JP): Thank you, Hon. Speaker. Hon. Members, as we contribute to this Bill, one wise man once said that sometimes for you to be heard, you do not have to raise your voice all the time, at times you improve the argument. For the women of this nation, the special interest groups, the persons with disabilities and ethnic minorities, through this Bill, we are improving our argument.

For the women of this country, we know how many times we have attempted to bring Bills to this House to give effect to Article 100 of the Constitution and you know what has happened. We have gone to the length of even sweet talking our colleagues here and taking them for dinner. We have also seen party leaders finding their way to the galleries.

Hon. Aden Duale (Garissa Township, JP): On a point of order, Hon. Speaker.

Hon. Speaker: Let the Member contribute. Proceed.

Hon. (Ms.) Sara Korere (Laikipia North, JP): Thank you, Hon. Speaker, for protecting me but it is a fact. You have seen party leaders finding their way to the galleries to come and laugh at the women in the name of supporting them while we knew they never even at one point called for parliamentary caucuses to lobby for support of our Bill. I plead with the Members of this House that there is a time when we have to use our positions. I want to take cognisance of the women who came to this House before us, who did a great job in Naivasha to have the positions of the 47 women representatives that we have today. I also want to take cognisance of the affirmative action through nominations which have unlocked the potential of so many women who would otherwise not have been noticed by anybody. I plead with this House that we pass this Bill, that we support the women of this country, that we bring them on board in as far as policy and decision-making is concerned, and that we give power to the people living with disabilities.

As I wind up, I want to talk about the Political Parties Act. As it is, political parties are the biggest impediment and roadblock to the election of women and special interest groups. This is happening because political parties have been taken hostage by the male dominance in politics. By making sure that the funding of political parties is pegged on how many women have been cleared by political parties to vie for seats, how many Members with disabilities are cleared by political parties... You have seen a lot of special interest groups being gagged by political parties. When I talk about this, my own political party, Jubilee, if it were told to produce the list of their nominees for party lists, I am sure they would be at a loss to explain how they gave out some nominations to some members who do not fall in the category of women, youth and people with disabilities. The same case applies to the Orange Democratic Movement Party. So, the two biggest parties in this country are known for their disregard of people living with disabilities, women and special interest groups. I will not name them on the Floor of the House but I will name and shame them in political rallies.

Thank you.

Hon. Speaker: Hon. Members, I know this Bill can easily cause a lot of excitement. This Bill is titled, "The Representation of Special Interest Groups Laws (Amendment) Bill." For information of those who perhaps have not had a chance to look at the copy of the Bill, this is the Bill which seeks to implement Article 100 of the Constitution which as you all know, if you go to the Fifth Schedule, and I said this yesterday, it is the only Bill that Parliament has since the promulgation of the Constitution, not enacted. Article 100 requires that Parliament shall enact legislation to provide for representation in Parliament, not in other elective bodies, of the following groups: women, youth, and persons with disabilities and minorities, and marginalised communities.

An hon. Member: And Men!

Hon. Speaker: That is if men belong to the category of marginalised or minority groups. The Bill is now in the Second Reading. You can now advance all those arguments but there will

still come the Third Reading at which you will have an opportunity during the Committee of the whole House to propose any additional amendments. Please note that you cannot remove those categories that have already been specified in the Constitution.

Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Thank you, Hon. Speaker. I beg to support this Bill from the Constitutional Implementation Oversight Committee (CIOC). I do not know why both the 10th and 11th Parliaments did not actualise this. We are now in the 12th Parliament and have not actualised it. Article 100 reads as follows:

“Parliament shall enact legislation to promote representation in Parliament of –

- (a) women;
- (b) persons with disabilities;
- (c) youth;
- (d) ethnic and other minorities; and
- (e) marginalised communities.”

We have been very busy dealing with the two-thirds gender rule. Once we pass this Bill, the two-thirds gender principle will be closed in my own reading because women, youth, minorities and marginalised groups are here.

An Hon. Member: And elders!

Hon. Aden Duale (Garissa Township, JP): No. From the behavior of Hon. Kamanda, I do not think we can add elders, unless another elder convinces me otherwise.

(Laughter)

The Committee has looked at this thing. When I listened to Hon. Sarah Korere, I was shocked. She has been a beneficiary of United Republican Party (URP) since 2013 through a nomination by the party leader then. Through that nomination, she became a very active Member of the 11th Parliament and she later won a seat. Majority of the women who are in this House, the likes of Hon. Millie Odhiambo...

Hon. Junet Nuh (Suna East, ODM): On a point of order! Which Party Leader?

Hon. Speaker: Hon. Junet, you have already asked by shouting: “Which party leader?” So, that cannot be a point of order.

Hon. Aden Duale (Garissa Township, JP): For your information, the party leader of URP then was none other than the current Deputy President. Hon. Millie Odhiambo was also nominated. She did very well and she is now a constituency Member of Parliament. She got that seat courtesy of ODM. Hon. Sofia Abdi, in 2007, was nominated by the party leader and today she is a sitting Member. There is no way you can now castigate the party leaders who brought you to this House. There are many of them here. There is also Hon. Wangari of Gilgil who came in through United Democratic Forum (UDF) Party. I will name them. In fact, 50 per cent of the women sitting in the House now have been elected to their seats. Look at the Senate! Hon. Lesuuda was nominated by The National Alliance (TNA). We also have Hon. Fatuma Dulo. I want to tell the women in this House that you cannot castigate the hand that fed you or the hand that made you a politician today. So, Hon. Sara Korere, I know your history. We are very good friends. You and I were in URP. You are a serious leader. When you go to church on Sunday you need to repent because of that statement you made.

(Laughter)

It is because we are preparing you for another... This Bill is very good. I really want the House to finish it very fast.

Hon. Speaker: Let us hear a point of order from Hon. Sara Korere.

Hon. (Ms.) Sara Korere (Laikipia North, JP): Hon. Speaker, is the Leader of the Majority Party in order to mislead this House that he is giving me directions to go to church and repent? I also want to remind him, because he seems to suffer from some selective amnesia, that His Excellency the President of this nation was actually nominated by His Excellency the second President of this nation. I do not know why he is only mentioning the women. Plus, he cannot purport to say that the women in this House have been made by nominations. We worked for those parties to get nominations. I do not know why he chose to forget that point. We work for parties to get nominated.

Hon. Speaker: I think that is a point of argument. However, you made your point.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I do not want to go to the minutes because I was the Deputy Party Leader of URP then. I do not want to cite the minutes of how we nominated Sara Korere and many others. I can even table the minutes here. There was a lot of competition.

Hon. Junet Nuh (Suna East, ODM): Tell us what transpired!

(Laughter)

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, you know, I will forgive Hon. Junet for anything he says for as long as the Kibra by-election is still on. He cannot be charged in a court of law on anything he says because he is under siege in Kibra. I talked of Sunday because she is not a Muslim. At 4.00 p.m. I am going to pray, but they have to wait for Sunday.

This is a very important Bill. Let us not lose focus. We grappled with the two-third gender Bill from the 10th Parliament when Hon. Martha Karua was the Minister for Justice and Legal Affairs and it could not move anywhere. Let us pass this Bill so that the youth, women and the marginalised can have a place. A Nubian in Kibera and the Elmolo in Marsabit can be Members of Parliament if we pass this law. They fall within the category of minorities and marginalised groups.

This Bill proposes to amend a number of statutes. It will amend the Independent Electoral and Boundaries Commission Act, No.9 of 2011, the Political Parties Act, the Elections Act, the National Gender and Equality Commission Act and even the Election Offences Act.

This Bill seeks to amend the Independent Electoral and Boundaries Commission Act, 2011 in order to do two things; one is to achieve the interpretation of Section 2 on the definition of “special interest groups”. That is a very complicated interpretation. How do you define special interest groups? We need to define them as listed in Article 100 of the Constitution; namely, women. However, who are these special interest women? Who are these PWDs? Who are the marginalised? Who are the minorities? What does “ethnically marginalised” mean? If you go to Homa Bay, for example, Hon. Mbadi is a Suba. Is he a minority? Is he marginalised? It is for this House to define the interpretation under Independent Electoral and Boundaries Commission (IEBC).

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Two, we need to look at Section 4 in order to include among the functions of the Commission, the preparation of a voters register. There is a talk everywhere that political parties appoint their girlfriends and boyfriends. There is no world without a boyfriend or a girlfriend.

(Loud consultations)

Let us not cheat ourselves. There is no woman who does not have a boyfriend. If there are, they are very few. There is no man who does not have a girlfriend. We are told that political parties are using their boyfriends and girlfriends. Is it a crime if you favour your girlfriend to come to the House? Unless you change the law and you define it by saying that they are your next of kin, we must put it in law that you cannot appoint your girlfriend to these special seats. So, this is a very good law.

(Loud consultations)

An hon. Member: What about boyfriends?

Hon. Aden Duale (Garissa Township, JP): Even boyfriends. But there are no women party leaders. So, I do not think we have boyfriends here.

In the Political Parties Act, what do we amend? Under the Act forming the IEBC, we must tackle the section on interpretation. Under IEBC, we must give the power to prepare the party list for nomination. This may be through a process decided in the regulation. The IEBC must do vetting of the party list. Is the person being presented a relative of Hon. Duale? That must be put in the regulations. Otherwise, if we do not do it and then I bring my relative, then there is no crime I would have committed. So, we have an opportunity to include that in the regulations.

In the Political Parties Act, we need to amend Section 2 on interpretation to define who ethnic minorities are. It should be a group that is not the dominant one in a given society and includes racial minorities. For example, Hon. Junet, in Migori, is an ethnic minority. Within the context of the Somali community he is not a minority. However, if you look at him from the perspective of Migori County and compare him with other people who live there, then he becomes an ethnic minority in that county. So, we must define that. Which is this dominant group? We must get the ratio of minorities. We should amend Section 20 and require political parties to change their rules and names of symbols. That will help us on how to nominate these people.

Finally, this Bill is seeking to amend Section 13 of the Elections Act to require political parties participating in elections to ensure that during party nominations, one-third of the candidates who go for primaries are of either gender. I oppose that. When it comes to elections, it is universal suffrage; that is in the Constitution. You cannot force voters in this country to choose a man or a woman. If they decide to bring 349 male MPs to this House, that will be the choice of the voters of this country. I want to ask the Chairperson of the CIOC not to take that route. You cannot subject us to what goes on in Rwanda where you say, for example, that Garissa County has six constituencies. Therefore, Garissa Township will have a male MP and Ijara will have a woman MP. That is not pure democracy. The people of Kenya will elect MPs. The number of women coming to Parliament is now increasing. I was in the 10th Parliament.

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They were hardly 18 women MPs then. Today, with the County Women Representatives, they are over 78 women MPs. So, I disagree with that proposal and I will oppose it.

There should be no party lists in nominations. Men and women must compete. If Hon. Jessica won her seat twice; Hon. Sara Korere won her seat after we nominated her against a tough man called Hon. Lempurkel; the Member for Rangwe; Hon. Wangari and Hon. Alice Wahome won their seats and came to this House, half of the 47 County Women Representatives sitting in this House must become constituency MPs in the next elections. The Constitution has given you an opportunity under affirmative action and 47 free seats. That is like a ladder. Use it to get the constituency seat. I am not inciting you against the current sitting Members of Parliament. You have an opportunity. This issue of favouring women is a no. Majority of the voters in our country are women. If they want to elect women, let them elect a woman President; we have not obstructed them. We cannot put a gun on the head of voters. Voters will elect whoever they want. If they want to elect women from the President to Members of County Assembly (MCAs) so be it. If they want to elect men, they will have their own reasons.

This Bill is good. We need to define the special interest group persons with disabilities, the minorities and the marginalised. Once we are done with this Bill, send it to the Senate and then it is assented to by the President and the issue of two-thirds gender rule will be resolved. Today, in the House of Commons, women representation is less than 28 per cent. In the USA congress, it is about 29 per cent. Therefore, our friends cannot force us to...

An hon. Member: ... *(Off record)*

Hon. Aden Duale (Garissa Township, JP): What is your intervention? I am still contributing.

Hon. Kioni, you have done well. You have solved the problem I had for many years. I will support this Bill, but we will amend it. As Hon. Junet said, we will have to look for a place for elders. We will tell Hon. Kamanda to behave well until we finish debating this Bill.

I support.

Hon. Speaker: Hon. Members, if somebody says something you do not like, there is nothing out of order. When somebody from this side has spoken, we go to the opposite side. It is important to relax when you are debating this Bill. I know emotions are running high. However, it all depends on the language you choose to use. Member for Migori County, relax. I have already explained what is being debated. This Bill seeks to implement Article 100. It is good to know this country adopted the current Constitution and the electoral method that it gave to itself. The people of Kenya chose an electoral system called "A first-past-the-post" which you cannot guarantee results before the race is over. It is everybody for himself and God for us all.

(Hon. Junet Nuh was upstanding)

Member from Migori, relax. Take a copy of the Bill and go through it. I know you have ideas you want to assist the House with on this matter but remember, as I said, Article 100 is for Parliament to enact legislation to provide for representation in Parliament. I want Members to distinguish that. This is to provide for representation in Parliament, not in other places. Distinguish this from Article 27, which states that the state is required to use measures, including affirmative action and legislative processes, to ensure that not more than two-thirds of either

gender is represented in appointive and elective bodies. Those are bodies. Here, we are specifically dealing with Parliament. It is important that we appreciate this.

Hon. Junet.

Hon. Junet Nuh (Suna East, ODM): Thank you, Hon. Speaker for giving me an opportunity to contribute to this matter. First, I want to thank the Committee for this important Bill. This Bill dismisses the myth that we have lived with for the last seven years. That, if we do not pass the two-thirds gender Bill Parliament will be dissolved. I have been agonising quietly on that matter. It was a lie that somebody will move to the Supreme Court and dissolve the Parliament of the Republic of Kenya. I do not know how that lie gained momentum all over the country.

Article 27(8) of the Constitution says that, in addition to the measures contemplated in clause (6), the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender. As constituted here, we are not the State; we are Parliament. We are legislators. The State has three arms: The Judiciary, the Legislature and the Executive. We can only legislate for the Legislature to implement the two-thirds gender rule. If you look at the Fifth Schedule of the Constitution, there is nowhere where it is stated that we must legislate or bring a Bill on the two-thirds gender rule. What we are implementing is Article 100 of the Constitution, which in the Fifth Schedule says that we implement on minorities, marginalised, women and people with disabilities. So, I do not know who misled this country for that long. That man must be arrested. Who told the country that we must implement the two-thirds gender rule in this country? I knew from the word 'go' that, that is not in the Constitution. What is in the Constitution is Article 100 that is to be implemented under Article 27(8).

Now that the Bill to implement Article 100 is properly placed before us, I support it. I want also the other arms of Government—the Executive and the Judiciary—to come up with legislative proposals on how they want to achieve the two-thirds gender rule, because it is whimsical that side. There is no proper legislation that says that the Judiciary must have two-thirds representation. Even in the Executive, it is whimsical. Now as Parliament we are legislating on it.

Having said that, I do not know why we should legislate for women. If you look at the statistics of this country, normally we are told women are more than men. As we consider this Bill, I think we need to do some scientific research on how men convince women to vote for men more than for themselves. That must be done. If they are more than men, why can they not just vote for women, the way they have done to Hon. Jessica Mbalu and the rest? That scientific study can be part of the public hearing process of the Bill. The Committee must ask members of the public how comes many women vote for men. How do they convince the women to vote for them? Hon. Mbadi has more women supporters than men. I have been to his constituency. I do not know how he talks to them. What tactics is he using? Some of them could be extraordinary. He needs to share them with the House. I went to his house one time and 80 per cent of the people there, his constituents, were women. There were only 20 per cent men. So, what is that secret that Hon. Mbadi is using? Women can also use it so that they can convince more men to vote for them. Women are more objective when it comes to supporting people. Once you have the support of women and the youth, you are sure of winning a seat.

To conclude, this issue has been longstanding. Since the Constitution was promulgated, we have been on this issue. Today is a great day for this country because we have found a solution to this problem. The best practices in the world — if you look at the US or the UK — democracies that are over 100 years, did not go through these shenanigans we have been having for the last seven years: that we must have two-thirds.

With those few remarks, Hon. Speaker, I support the Bill. But women must introspect. They must talk to themselves. How comes more of them vote for me than one of them? There must be something I am doing that they need to do to men.

Thank you, Hon. Speaker.

Hon. Speaker: Member for Gichugu.

Hon. Gichimu Githinji (Gichugu, JP): Thank you, Hon. Speaker, for this opportunity to also support this Bill. I start by thanking the Committee led by Hon. Kioni for the good work. We need to define special interest groups. If you look at Clause 10, people who are referred to as special interest groups are supposed to be facilitated even in campaigns, capacity building and civic education and that includes what we are calling marginalised communities. So, before we even pass this law so that these special interest groups can be supported, we must also look at the issue of discrimination which is also a pertinent issue in the Constitution, so that we do not have people who are capable, just because they come from so-called marginalised communities, being supported against or at the disadvantage of other communities.

When it comes to defining the term “marginalised communities”, it is very important to also define marginalisation in economic perspectives. You will find that most of the constituencies in the central region, especially Gichugu where I come from and Mwea have very high populations and economically these constituencies are also disadvantaged when it comes to sharing the national resources. So, that is also a part of marginalisation that we should be looking at *vis-à-vis* marginalisation to the extent of the areas that are arid or areas that do not have fertile agricultural land. That is what has been the perception.

When it comes to the Political Parties Act, I really support where PWDs are supposed to be facilitated. Capacity building has to be done because this is a group that has been a bit left behind. We should be very careful and considerate about PWDs in this country. This Bill also seeks to propel women to reach to levels that they have always wished. At the same time, we should look at the issue of support to the special interest groups holistically so that we also do not offend the Constitution in matters discrimination. The Bill restricts us to debate only issues of representation in Parliament. I believe an amendment needs to be done so that we also cover county assemblies. A county assembly, by definition, is not a Parliament.

Hon. Speaker, because there is too much interest to contribute to this Bill, I rest my submissions. I support the Bill with amendments at a later stage. Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, let me give you some little guidance. Article 27 of the Constitution has been quite contentious and deals with the issue of equality and freedom from discrimination. Specifically, Article 27 (4) thereof reads as follows and I quote:

“The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.”

That is Article 27. It forbids any form of discrimination on any of those grounds. But again, so that we do not get confused, it is important to look at the interpretation Article of the Constitution, Article 260 which defines a marginalised community. It means:

- (a) A community that, because of its relatively small population or for any other reason, has been unable to fully participate in the integrated social and economic life of Kenya as a whole;
- (b) A traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and economic life of Kenya as a whole;
- (c) an indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or
- (d) pastoral persons and communities, whether they are—
 - (i) nomadic; or
 - (ii) a settled community that, because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole.”

So, Hon. Members, because that is already in the Constitution, any attempt to try and include other forms of definition in this Bill, even when it gets to the Committee of the whole House, will then be running afoul of the Constitution itself. So, as we debate this, and I am making this point clear because yesterday when I left the Chair, the Hon. Wilson Sossion claimed that the Bill has not gone far enough that it has not recognised workers as marginalised. I was listening to the debate in my office and I thought that Hon. Sossion as a MP is a worker. So, you will have to go and define who a worker is so as to exclude MPs from being workers. If workers are marginalised, then I do not know who is not.

Therefore, I am just making this clear. I thank the Constitutional Implementation and Oversight Committee (CIOC) led by Hon. Jeremiah Kioni because they have looked at all these aspects of the Constitution and tried to make the best they can in trying to come up with a Bill to implement Article 100. So, let us not try to import other definitions which will then make it unconstitutional. I have said this Hon. Members because I know that sometimes especially now that I could see emotions were running high, it is possible that somebody may want to come and say that the elderly have been left out. I have heard that discussion and if we go that route we might start saying that there are no sheikhs and bishops included here, the army is not included and we will never get an end to it. The definition which is here is not the one that is generic. A generic definition will have started by “marginalised community includes” That way, we could have a possibility of adding any other group. This one is very clear, marginalised community means ... It further goes to define what a marginalised group is.

It says:

“A marginalised group” means a group of people who, because of laws or practices before, on, or after the effective date,(27th August 2010), were or are disadvantaged by discrimination on one or more of the grounds in Article 27 (4); which I read out as thus:

The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.”

Therefore, Hon. Members when we get to the Committee of the whole House, please when you want to put in amendments do not introduce anything that will water down these definitions which are already in the Constitution and you cannot introduce anything that contradicts this.

I thank you Hon. Members. I see the Member for Seme is not here. Let us have the Hon. Member for Makueni.

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Speaker for giving me an opportunity to contribute on this very important law. It is a requirement of the Constitution that we enact this particular law. Article 100 talks about promotion or representation of marginalised groups and it deals specifically with Parliament which will enact legislation to promote the representation in Parliament, meaning the National Assembly and the Senate. I do not know what the case of the county assemblies is as it was alluded by the Member for Gichugu. Unless we amend the Constitution, I do not think we will deal with the county assemblies now.

However, I believe from what will forego in the political parties and all the other areas we will to deal with. I am sure through that we will still cater for the county assemblies in one way or another or through other legislation touching on devolution.

Hon. Speaker: Hon. Maanzo, sorry I wanted to make a clarification. I will preserve your time.

Hon. Members, because this was raised and it is constitutional, I think it is only fair... Hon. Junet, this point was raised and it is a matter of the Constitution. It is a duty placed on me just to draw the attention of the House to this fact and also to the Hon. Githinji Gichimu, the Member for Gichugu. The membership of county assemblies is provided for under Article 177. For avoidance of doubt so that we do not again veer there, it provides as follows:

“(1) A county assembly consists of—

(a) members elected by the registered voters of the wards, each ward constituting a single member constituency, on the same day as a general election of Members of Parliament, being the second Tuesday in August, in every fifth year;

(b) the number of special seat members necessary to ensure that no more than two-thirds of the membership of the assembly are of the same gender;

(c) the number of members of marginalised groups, including persons with disabilities and the youth, prescribed by an Act of Parliament; and

(d) the Speaker, who is an *ex officio* member.”

Therefore, the issue of marginalised members in county assemblies, gender and youth is already catered for in the Constitution once again. So, we are on a safe ground. Hon. Kioni and his Committee have done a thorough job. This is already provided for. I was just providing clarity.

Hon. Maanzo proceed. You can commence afresh.

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Speaker. That clarification clears that peculiar matter. When you look at the political parties and the statutes, political parties are very crucial when it comes to an election and its guidelines mainly because they conduct the nominations. While doing that with this amendment, it is clear that political parties will then consider Article 100 and the law will have been fulfilled in that particular matter. Similarly several other statutes will have been amended which deal with this particular issue and that means this will make the fullness of elections and will take care of marginalised groups.

Hon. Speaker, generally the representation of Special Interest Groups Laws (Amendment) Bill 2018, is also required to be enacted by this House at some point. The House after thorough preparation and by going through all the processes required ended up with a very concise law which in the cause of our debate. Before we conclude the Third Reading, any necessary amendments can be brought so that we can make it better and ensure that Article 100 is fulfilled.

Otherwise, I support this Bill and urge my colleagues to support it so we can fulfil the Constitution and ensure that as a nation we take care of the marginalised.

Hon. Speaker: Hon. Rasso, you have the Floor.

Hon. Ali Rasso (Saku, JP): Thank you, Hon. Speaker. I rise to support this very important Bill. I want to thank Hon. Kioni and his Committee for bringing it. As my colleagues have said it is a historical Bill. It is indicative of our Constitution as a living document and successive Parliaments should have input so as to look after our people in a better way.

My worry has been allayed particularly in the area of the two-thirds gender rule which appears to have been placed in the political parties. This is going to arm-twist them, but they must adhere to it. I believe there is almost a general consensus that the House in good time will provide an amendment to that effect.

Section 10 of this Bill states that Special Interest Groups (SIGs) will be provided with assistance in civil education, capacity building, facilitating campaigns publicity and such other measures. This Bill has also aligned us to Article 27 of the Constitution on the issue of discrimination based on whatever facts as clearly laid out therein.

I think this Bill is good and the political parties must walk it once it becomes part of our statute and particularly in the area of minorities and minorities groups. Clearly, I have in mind the Elmolo, the smallest community that lives along Lake Turkana in Marsabit County. In the fullness of time if such communities are not looked after and represented both at the county assemblies, Parliament and Government their culture and language is likely to disappear.

With those few remarks, I beg to support and would like to see this Bill move to the final stages. Thank you.

Hon. Speaker: Member for Migori, you have the Floor.

Hon. (Ms.) Pamela Ochieng (Migori CWR, ODM): Thank you, Hon. Speaker, for giving me an opportunity to add my voice to this Bill. I totally want to agree with the Committee for coming up with it. I think by and large I support it. Even when you were asking me to relax the truth of the matter is that I was very much relaxed. Except, I was concerned because the Hon. Member who was speaking at that point was claiming that the 47 women have been given free seats. I do not think this is the truth because campaigning in a whole county without enough resources is no mean achievement.

I concur with the Members who have spoken before me and said things which need to be looked at in this proposal like the definition or clear instructions as who the SIGs are. Most of the time we have observed in Kenya when there is an option, possibility of supporting or encouraging a given group of people to do something then, all over sudden everybody becomes a SIG. Therefore, this amendment must be clear enough and tell us exactly who the SIGs are.

When we are talking of minorities I have an example of my beloved MP for Suna East who has been mentioned as an example of a minority group in Migori. I think some of these definitions are misinformed. If I was to give you the statistics of Migori County, the community

he comes from and the numbers of those residing in that county, then you can dismiss the idea they are not really a minority.

Over the years, I have learnt that some of these wordings we use like minority, disadvantaged and SIGs are never clear and have been subjected to a lot of abuse. Anyone person can wake up and coin some story claiming they are disadvantaged or marginalised in one way or another. I am here to submit to the House that in those communities which are considered majority there are cases where somebody is really disadvantaged. For example, we have heard of cases where leaders are not elected because they lack the financial muscle to mobilise masses and sometimes fail to give out some things to make people vote them in.

I wish as we propose the enactment of this Bill to interpret the operationalisation of Article 100 of our Constitution, these definitions are made very clear. We are here as women and we know as we stand here we are not crying like babies as though women are incapable. We know we are very capable, but we have had a very patriarchal state where elections and things that go with it are so violent and male oriented. Most of the time, women want to do things in an honourable way, disciplined and righteous manner, sometimes we have debated and said, they need special regulations, policies and frameworks to support election of women to seats.

For example, looking at our counties, right now majority of the Governors are male. Yet, we know we have very capable women in this nation who can become Governors but because resources are not in our hands most of the time we become marginalised. With that in mind, we cannot rule out the question of women being supported by the laws and policies which can bring many of them to positions of authority.

Hon. Speaker, even as we talk about marginalised areas, you will agree with me that devolution serves as an equaliser. Therefore, when we are debating such a Bill, it is important to note that the case of marginalised groups or individuals in the community may need to be redefined and changed because right now we have capabilities even in those devolved governments.

We thank the Committee. We stand for a better Kenya. We want to see Article 27 of the Constitution, which you mentioned and gave us guidelines on, being taken for what it means. It talks about people not being discriminated because of pregnancies... You will agree with me that when somebody is pregnant, they are so delicate. You cannot subject such a person to the kind of violence that we sometimes see. There is need to find a way of protecting pregnant women who are also interested in leadership positions be they elective or otherwise.

We look forward to a Kenya where whatever we are discussing in this House can actually be implemented for what it is. It is not enough to just talk here and say that so far the women have been capacitated and yet we know... For example, on the so called National Government Affirmative Action Fund (NGAAF) that we are given, in my county of Migori we have eight very large constituencies and 40 wards with very poor people. My county has very many orphans and widows. Somebody cannot say that the money we are given is too much that we have been facilitated enough. Indeed, we are suffering because what we have is sometimes impossible to manage. It is not enough to facilitate people who can help you run your affairs in the county.

If only the playing ground could sincerely and honestly be levelled for both men and women, Kenyan women would not be crying. However, because it is not level, then we need to know that to a greater extent, women of this country are still disadvantaged. That is a fact to be taken into consideration even as we support this amendment that has been brought before us.

With those few remarks, I beg to support this Motion. I pray that those points that I have raised be taken into consideration.

Hon. Speaker: The Member for Igembe North, you have the Floor.

Hon. Maoka Maore (Igembe North, JP): Thank you, Hon. Speaker, for the opportunity to say a few words about this Bill. From the outset, I support it. We need to ask Kenyans to allow debate and reopening of what was passed in 2010. At the time the current Constitution was being passed, there was a lot of pressure from every corner and from everybody. I know many NGOs and international organisations, most of them anarchist, infiltrated our Constitution and things that were put there were like an experiment which is not even in those western countries. After we finish this one, it is wise to ask the CIOC to also revisit the contents that are in the Bill of Rights. The rights that are being implemented here are not practical in any other country.

For example, the people who are charged with capital offences are treated with the easiest of care by our judicial system. If you are caught dealing in drugs in many countries in Europe or the USA, you will have to stay in jail until the case is completed. However, in Kenya, a serial killer commits murder and walks to a judge who treats him nicely and he gets bail. In places where you are talking about rights, there are limits. If you live in a country where terrorists are making life difficult for very many of us... Three days ago, we had a problem where our GSU officers were blown up within our borders and ten of them died. However, if you catch the guy who blew them up and you take him to court, you will hear a judge being very nice to the fellow. In the evening he will be out on a bail of, maybe, Kshs100,000 or Kshs200,000. These things are not supposed to be in any Constitution.

Now that they are in our Constitution, I will ask the CIOC to do something about it the way they are trying to address this story of marginalisation. It is a word which has been misused over the years. If you are marginalised, and I know it is not cultural or does not fit the definition as per the Constitution the Speaker read out, it is wise to have those things that are used as an excuse to get access to privileges that you would not get or that you are getting when you are not entitled to them. I will give an example. The US Congress has 435 Members. The Senate has 100. The total is 535 Members. There is not even one which is reserved for those special interest things or gender. People need to compete equally. The only thing that we need to do is to look for those areas of legislation that need to be put together if the barriers are there. I know that, before and even now, we have no barrier in our laws that bar somebody not to run in a specific area because one is a woman. You can give credit to places like Ukambani or even central Kenya and the Rift Valley where women run for elections and win. Those are examples which should be encouraged. That is how cultures evolve. You cannot legislate on them. We have created a bad document. We have had a problem with it. I know it is the NGOs and the activists who did it. We are now correcting it and that is good.

In Meru we have had a problem over the years such that it is difficult for somebody to be elected. Other communities faced with the same problem are the Kisii, the Somali and other communities in northern Kenya. You do not legislate on those things. When people go to the polls, they elect a leader and the matter should end there. You do not put those encumbrances that after 10 or 20 years, you will stop this gender thing. Why are you putting it in the first place? Then we are talking about non-discrimination. If you are not discriminating in one part of the Constitution, you are doing so in another part. That is why I thank the Committee for trying to harmonise our Constitution so that we do not have those areas that are not created by legislation.

There are no barriers created by legislation. So, legislation should not create avenues that are likely to be abused.

I remember you were talking about Article 95 of the Constitution about representation of the people. When you are elected as a Member of a Constituency, you are representing everybody there. You represent the poverty if there is poverty. You represent the wealthy, the animals and the interests of all the people who are there. *Hata panya ile iko huko na paka*. We need to understand that when you are doing a constitution it is a document which should hold us together and not one which can be used and abused by international NGOs that actually infiltrated our Constitution in 2010. We have nearly 10 years of living with it. We have seen where it is bad. It is time we went step by step and amended it, specifically the Bill of Rights, which I have talked about. That is where we were messed up. You appoint somebody and hear somebody in court saying you do not have power to appoint. Let us say you are the President and you appoint somebody, it is likely that somebody else from the streets will claim that you have no power to do so. You then wonder why were you given the votes if, indeed, you are running the country. These things need to be removed.

There is also public participation. If you are a Member of the National Assembly who is appointed or elected by the people, when you want to legislate you go back again to the same people who elected you to ask them whether you are doing the right thing. They should ask you after five years. If you misbehaved, they just vote you out. If you do well, they let you do your work. People wanted to participate in the legislative process but when you go to those public participation forums, they are not there. It is just about money. You go around the counties and meet two or three people. Sometimes there is no one because it is not in our people to public participate. It is not in the masses. It is those NGOs that wanted to participate and create anarchy. That is what we are going through. We are going through a moment of anarchy that cannot be understood. You cannot define it. You cannot explain where you are at this moment in history.

I thank the Committee for moving us forward. There are those who see a country. There are those who see a nest with eggs which they want to pick. This is the moment we create a country. This is the step we are taking. I encourage the Committee to come up with more.

Hon. Speaker: Let us have Hon. John Mbadi. Do you also want to do public participation?

Hon. John Mbadi (Suba South, ODM): Thank you, Hon. Speaker. I also rise to support the Bill. Before us is a Bill by the Constitutional Implementation Oversight Committee, chaired by my good friend, Hon. Jeremiah Kioni, who has made recommendations on amendments to about seven statutes. In summary, we need to understand why those amendments are necessary and what this Bill intends to achieve.

We must agree that our 2010 Constitution had some contradictions in its provisions. First, it emphasised on the first-past-the-post mode of election. It then made a provision that at least not more than two-thirds of either gender must be in elective and appointive positions. It also provided Article 177 for county assemblies but when it comes to the National Assembly and the Senate, it provided for 16 seats for women in the Senate and 47 seats in the National Assembly. It is a contradiction. We must accept that that is one of the contradictions of our 2010 Constitution. Either those who drafted this Constitution or those of us who voted for it did not take time to understand the connection between these provisions or it was deliberate. Some

people wanted the Constitution to be passed and made some juicy provisions in it which would, in effect, not be implemented and put us where we are today.

A way out of this confused position that we have been in from 2010 had to be found. We have struggled very hard. At times we make attempts which we know very well are very difficult to realise. When Duale was moving his Bill to provide for the two-thirds gender rule, we knew very well it was a tall order. We had to make an attempt to actualise this provision of the Constitution. It may not be perfect but at least there is some effort to ensure that we mainstream marginalised groups to the political discourse of the country.

We need to understand why this is necessary. Why is it that the female gender or the women of this country who constitute over 50 per cent... I am hesitant. I do not want to give percentages because I am not very sure if it is 51, 54 or 55 per cent. It is close to 51 but it may not be exact. Therefore, I safely say women constitute over 50 per cent of our population. How come electing women to this House to realise the two-thirds gender rule has not been possible? This is because we must admit that we come from a cultural background and society that does not regard women leadership. This dates back to several decades. It is not easy to get it out of the minds of Kenyans in a short period of time. It has to be gradual.

I remember one of my late cousins. One time we were just discussing in a very friendly environment and his wife made a contribution and it became a big issue. He could not believe how, after he had already contributed, his wife said something opposite to what he said. Having someone with such a mind-set going to the polling station and voting for a woman is very difficult. We must accept that this patriarchal society will be here for a while. That is why we have to look for ways of ensuring we have some kind of gender equity so that neither gender is left out.

We should also include other marginalised groups. It is not just about gender. I am happy that this Bill is addressing another issue which we have been asked to deal with in the Constitution of bringing in people living with disabilities and other minority communities or marginalised groups. They also need some affirmative action to find their way into elective positions. This Bill is making a serious attempt to also include these other groups. On that basis, we need to support this Bill strongly.

One reason why it has been very difficult for women and other marginalised or special interest groups to win seats - apart from the general cultural mentality of Kenyans - is the aspect of civility in our electoral process. If we enforced the laws that govern the electoral process in this Country like the Election Offences Act, the Election Campaign Financing Act and the Elections Act and ensured that the provisions of these statutes are implemented, we may not even need affirmative action.

First, women complain about violence. I have a rider. We should not assume that it is only men who are violent in this country. I also know of women who misbehave a lot during campaigns. They conduct their politics too violently. We want to enact laws to protect these people and they are the most aggressive and even organise for people to be beaten in funerals. It is annoying. This is being done by people who have gone to school. Why do you think you have to fight to win a political office? You do not have to. Largely, there are more men who promote violence. Therefore, it discourages women. The use of certain words and abuses is not restricted to men. There are also women who abuse men during campaigns. We need to respect the laws and statutes that are in place to govern not only elections, but the general coexistence of the

Kenyan society. Let us be civil. If we are civil and enforce these laws, we may need to do very little to have gender parity at the ballot.

Hon. Speaker, there is something very interesting that you mentioned. I saw it in Clause 17. Already the Constitution has provided for affirmative action in the county assembly. So, when you say that political parties should send their list of those who are supposed to participate in elections and that one third of political parties' nominees for parliamentary and county assembly elections should be of either gender, I do not know why it is necessary even for the county assemblies. Maybe, it is to help us cut the cost so that some are elected and, in the process, we reduce the number of nominated members of county assemblies (MCAs). But we have no problem in county assemblies. We have to do something. That is why I am accommodating this.

The problem we will encounter is how we will ensure that a third of the candidates are of either gender. What if the other gender shies away from your political party? What would you do if those coming out to run for the seat are not a third of one gender? What happens? Do you stop fielding candidates or do you reduce the number of candidates you are fielding? That baffles me. Probably, what parties will do is to look for women all over the place where they know they do not have strength, areas where the party is not strong and we will field women candidates there knowing well that they will not win. I do not know if this will help in actualizing this provision.

We also need to be observant about scandalizing the nomination process. Nomination is not bad. In fact, there are certain places or jurisdictions where elections are through proportional representation. You just bring a list of your members and then you go and elect parties. Once a party has won, you pick based on the list that was sent to the electoral body.

Hon. Korere has left, but she shocked me when she said the parties nominate women based on other considerations. That is very unfortunate. There could be some cases like that, but it is also wrong to scandalise all nominated Members of Parliament, including Hon. Korere who was in the 11th Parliament as a nominated MP. Then she comes out to say that we base nomination on other considerations. I hear sometimes people say that political parties nominate girlfriends of leaders. But in the National Assembly, I can speak for ODM. We have three nominated MPs here and I know why we nominated each one of them. There is a reason why we nominated Hon. Sossion to represent workers. We targeted the teachers. We wanted to show teachers that this is a party that accommodates them and that is why we nominated Hon. Sossion who is the Secretary-General of Kenya National Union of Teachers (KNUT).

We nominated Jacqueline Oduol because she has been persistently and consistently promoting the women agenda in ODM. She has even sacrificed and uses her resources to promote gender issues. She has gone across the country to train our women. If you give such a person a slot, do you forget all the good qualities about her including her education and only want to see her gender and extraneous issues? We nominated Dennitah Ghati because she is a very strong lady who has been campaigning for ODM in a very difficult constituency in Kuria Region. We know Dennitah Ghati would not have needed nomination probably if she had not been involved in an accident. It is through nomination that we have Hon. Millie Odhiambo here today in Parliament. We need to respect nominated Members. There are also isolated cases of people who have not merited nomination, but we should not collectively say that those who are nominated do not merit nomination. Some seriously merit nominations. I wish we had more slots. We would nominate more. In fact, through nomination, we may get some quality that

voters may not give you. For voters, it is about who garners the highest number of votes. Sometimes, voters vote for various reasons some of which include who attends most funerals in the constituencies or who is giving more money or who comes from the biggest clan in the constituency. But through nomination, you can identify some quality, someone who has competence, someone who can contribute to debates in the House as Hon. Jacqueline Oduol has been doing for ODM and as Dennitah Ghati has been doing for us.

To conclude, I am not persuaded with the argument that one of the reasons why the marginalised groups fail to win seats is because of financial capacity. We need to advocate for proper and organised campaigns and an agenda to the people. Let us not assume that our people do not consume information. They do. But, sometimes, we bring candidates who cannot win just because they are women. Sometimes, you bring a woman who cannot even get 200 votes and just because she is a woman, she masquerades all over the place that she can win. I have seen it even in my constituency. You bring someone whom in the polling station she and her husband vote and she gets 15 votes. That is not someone to bring around just because she is a woman. Then you scandalise and spoil the good name of women that they lose.

Finally, on the issue of money, if it were the determinant, in 2007, I would not have won my seat. I was campaigning against very wealthy and moneyed individuals. But I defeated them because of the agenda I had. So, let us advise the marginalised groups to focus on the message they give to the electorate and they will find themselves elected. In a very short time, we may start crying as men that we need affirmative action. See what is happening in our education system. The girls are overtaking boys. But it is just the other day we were complaining. The same thing may happen here if we give women support and the other marginalised groups.

Thank you, Hon. Speaker. I support.

Hon. Speaker: I just heard some whisper from the Floor that when you raised the issue of violence and insults, but you qualified it that it is not a preserve of men. As you said that, there was some refrain or mantra that what a man can do, a woman can do better. So, I suspect Hon. John Mbadi needed to have heard that.

Hon. Wanyonyi.

Hon. Tim Wanyonyi (Westlands, ODM): Thank you, Hon. Speaker. I also want to support this Bill. This is a very important Bill. It is an affirmative action Bill that proposes to amend various legislations to actualise the realization of Article 100 of the Constitution. I remember very well when we had our induction in Mombasa as Kenya Disability Parliament Association (KEDIPA). One of the things you challenged us about was Article 100 of the Constitution. You mentioned that it is the Article we need to look into to bring out affirmative action for people mentioned in it. Those are women, persons with disabilities, youth, ethnic minorities and marginalised groups.

This is a very important Bill. Having been out there, I have campaigned the hard way. I know what it means. People with disabilities are disadvantaged. I know why women are still disadvantaged. It is because of some cultural practices in various communities that do not allow women to participate in some activities. With this legislation, it will actually try to highlight and compel political parties to provide funds for publicity to the marginalised people, women and persons with disabilities because we struggle. Hon. Mbadi says that they do not need to be given funds. The wearer of the shoe knows where it pinches. We know where we have been. I know

what I have gone through and I know what other people who have tried it have gone through because of the marginalisation.

This exercise is very expensive and comes with stigmatisation. When people profile you, it is very difficult to go out there and convince people to vote for you. This is a milestone and I am very sure that with proper civic education and information, our society will change for the better. This legislation is going to improve some of the ideals in our own society. In our political party, ODM, we are already doing the disability league. We also have youth and women leagues. This is the way to go. Other political parties must follow suit because we are doing it to make sure that the people in those groups have a voice in the decision-making in the political party. This is one way of bringing them on board. I have realised that when it comes to the time of nomination after elections, some political parties start grappling saying they do not have in their membership people with disabilities or they do not have any marginalised group in their list. So, they end up nominating other people who do not need nomination.

This legislation to bring out this Article 100 is going to improve the representation of the groups mentioned here. Most of the time, because of lack of information, there is cultural profiling and considerations. Violence also scares the people off. When you go out there, if you are not ready, sometimes it will wear you out. I know very well what it means. Sometimes, when you go out and campaign against people whose intention is only to make sure that they win by all means, they will try to do everything to discourage you so that you are not able to represent them.

I remember during the first election, on the eve of election, my opponent sent a bulk SMS around saying I have been nominated and, therefore, I will not be on the ballot paper. The people should elect him instead of me. Such things happen and, sometimes, we do not have any answers for them. But we want to make sure that when this legislation comes into force, that kind of behavior is stopped. I know of other countries that have tried this and have succeeded. I am sure with this Bill, even what our lady colleagues have been trying to do with regard to the two-thirds gender rule but have never worked, will make them realise that representation is in this House. This should have been done way back in 2016 but it has been delayed. But it is better late than never. We are now legislating on this.

The Committee has done a very good job on this Bill. I am sure that at the Committee of the whole House, we will bring amendments that will bring out some improvement on this Bill. On the National Council of Persons with Disabilities, it is now provided here that they will provide funds to promote inclusion of people with disabilities. That is very important because that is one way of trying to create awareness and also to bring out people with disabilities to participate in civic exercises. Many times, we have had people with disabilities, who do not even participate, come out to register as voters or participate in elections because of obvious things. Sometimes, they are so disadvantaged and we are trying to make sure that those things do not disadvantage them anymore.

Thank you. I support this Bill.

Hon. Speaker: The Member for Funyula, you have the Floor.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Speaker, thank you for giving me this opportunity to make some comments on this Bill. I suppose this is a Bill that people have clamoured for in this country for many years. It has come in many shapes and different styles. Nevertheless, it has never crossed the hurdle. Even though the present Bill has got shortcomings

and issues that require sober and serious discussion, probably this is the right direction towards fulfilling some of the requirements under Article 100 of the Constitution of Kenya, and probably aspects of Article 27 of the Constitution.

This Bill intends to amend roughly seven statutes that exist in law at the moment. Most of the statutes being amended generally relate to election and related matters because it is intended to effect Article 100 that talks about a process where we ensure that the mentioned categories have access to Parliament and be elected. However, it raises two fundamental issues that require sober discussion devoid of any emotions and other external pressure.

One is the issue of women. This is a debate we have had in this country for a long time. I am at pains to understand, believe or to be convinced that women can fall into the group of special interests. Indeed, in a population where they are the majority, it beats logic to assume that they require special attention. The contributors before me have railed on this issue and it is becoming apparent that we have to relook at this particular matter. It is a fallacy, unprofessional and unethical to believe that all women are homogenous in characteristics and economic status to a point that all of them have no muscles to move anywhere. It is, therefore, important that when we are talking about women, it might be necessary to break down the various categories of women in terms of cultural issues, socio-economic activities and the rest of those issues to enable us know which ones require special attention. A millionaire woman cannot be considered to be a special group or marginalised compared to a pauper man in the villages all over this country. It is important that, as a community, we give this discussion a sober debate to avoid a situation where we legislate where it is not possible to implement.

I am also at pains to understand why the Persons with Disabilities Act of 2003 is included in this matter. The object of Article 100 of the Constitution deals with Parliament and the election process. Defining, including or expanding the mandate of the commission that deals with disabilities to include public decision making bodies is beyond the mandate or the intention of the Constitution. We need to look at those issues.

The Bill might have very progressive views but I just want to pick one or two issues that require serious interrogation. Clause 10 of the Bill as presented to us today seeks to amend Section 26(1) of the Political Parties Act of 2011. It provides as follows: “Promoting the representation in Parliament and the county assemblies of special groups through civic education, capacity building, and facilitating party candidates in campaigns, publicity and such other measures as may be approved by the Registrar.”

Hon. Speaker, those particular provisions have serious political implications which in my view are discriminatory and might be a breach of Article 27(4) of the Constitution. Providing special treatment to a particular political participant in a political race is essentially creating an uneven field that will not result into a democratic society. In this country, when you talk about facilitating party candidates in campaigns, what is the operative word here? It could actually mean financing, giving them undue security arrangement by the police, undue advantage on the voting day and anything that pertains in tilting the playing ground in favor of a particular person. That is discrimination and is a breach of the Constitution of Kenya. I would ask the Constitutional Implementation Oversight Committee (CIOOC) to seriously re-look that particular provision. When it comes to the Committee of the whole House we must re-look that particular position.

Providing publicity is so blanket. It can mean giving undue publicity to other categories of contestants contrary to the provisions of the law. It is a matter that we must debate so that we are not seen to be discriminating against other people.

Hon. Speaker, on the issue of minority numbers as provided for in the Constitution, I want to join my colleagues who said that some provisions in this Constitution are contradictory and not in keeping with our culture. When we went for the 2010 Referendum, we were told that 20 per cent of the Constitution is bad and so we take the 80 per cent. Probably, as we make laws to effect the Constitution, we must make efforts to cure the so-called 20 per cent. The only procedure of increasing your numbers in a society is well known and there can never be any other. If you are unwilling to labor to increase your number, then you should not become a cry baby and generally stifle the growth of this country. Just ask those communities to encourage their young men and women to engage vigorously and consistently so that they increase their numbers without really looking for legislation to legislate a natural process which somebody can chose to participate or not. We will seriously have to have this debate. Otherwise, it means I can simply stay back, hold back my energy and allege that I am marginalised or I am minority and so I require a special treatment. That is a matter that we must debate.

Hon. Speaker, I have difficulties in implementing what is required under Clause 17 of this Bill. It requires a political party to present candidates in a certain manner: one-third of its nominees for parliamentary and county assembly elections are either gender, and 5 per cent of its nominees for parliamentary and county assembly elections are persons with disability.

Article 38 of the Constitution of Kenya provides for universal suffrage. As you have clearly said, first on the post is declared the winner. Even if you lost by a vote or even half a vote, you will have lost. The winner who got a vote more than you will be declared the winner. I can see the difficulties political parties are going to have. What if the candidates who win in party primaries are of one gender? Does it mean that political party will be barred from presenting candidates? It is not their choice. It is the voters who have decided how they want to go. It is obviously, therefore, impossible to implement and it will make it difficult because you will basically be killing political parties. You will be killing internal democracy – we should never allow internal democracy to be killed. This is a country built on democratic principles and we must, therefore, protect those principles. As the late Kenneth Matiba used to say, let the people decide who their leaders are going to be. You cannot legislate a political process. My free advice to the Committee, and we will be moving there, where the problem lies and where the solutions lie is in the Elections Campaign Financing Act, Elections Offences Act and the Elections Act. That is where the focus of the Committee should be. It should make sure that the special interest groups, as they are being branded, have got an equal opportunity to participate in the elections. I will move the amendments at that particular time, but for now...

Hon. Speaker: I think you have pointed out something of interest even as we give chance to the next speaker. A few Members have raised that issue of Clause 17 of this Bill in so far as it makes reference to what should happen in county assemblies. What should happen is already provided for under Article 177. Article 100 is specific about representation in parliament and not any other place. I hope Hon. Kioni's attention has been drawn to that particular contradiction.

The Member for North Horr, the Floor is yours.

Hon. Chachu Ganya (North Horr, FAP): Thank you, Hon. Speaker. I rise to support this Bill, the Representation of Special Interest Groups Laws (Amendment Bill) National Assembly Bill No.59 of 2019. As I support, I really want thank the Committee for the good work they have done. This is the only Bill that we actually failed to implement in the last Parliament and yet it is very important. It focusses on the special interest groups, marginalised communities, minorities, youth, women and persons with disabilities. These are the most marginal groups in our society. The law that is supposed to enable them represent the interests of those groups in our Parliament; is the last law that we are enacting having enacted all other laws that we were conditioned to implement by the Constitution. However, it is better late than never. It is here with us now. I really want to thank the Committee for having looked at the spirit and the letter of the Constitution. It is a very thorough Bill and almost all issues or the groups that were defined clearly in the Constitution have been taken care of. The relevant laws that need to be amended have all clearly been identified. The necessary sections that needed to be dealt with have also clearly been articulated in the Bill. So, I really want to appreciate Hon. Kioni's Committee for a very good job that they have done.

Hon. Speaker, as I mentioned earlier, this Bill, once enacted into law, will give effect to Article 100 of the Constitution. This is a special Article in the Constitution because it enables special interest groups to have representation in this House. As I said, I really want to salute the Members who belong to these special interest groups for being elected to this Parliament. They are role models to these groups. They are Hon. Wanyonyi, who is serving his second term; the first Senator for Samburu County; and few others who have actually graced this House. They were elected. I hope this law will even enable more of them to be nominated if not elected to serve the interests of the special interest groups.

I also want to appreciate you this afternoon because you have guided this House very well in terms of what the Constitution dictates and in terms of how the Constitution defines those groups. It is so that we remain focused and relevant. So, even as we go about doing our amendments, we are well guided. I want to observe that this afternoon.

Hon. Speaker, this Bill will come to the aid of some ethnic minorities, who due to their numbers, would never have made it to this House. They include the El Molos of Marsabit County where I come from. At least, the passage of this law will grant them a possibility to represent the special interest groups in this House.

Hon. Speaker, a great nation is known by how well it is able to take care of the most vulnerable groups in the society. That is an indicator to measure the greatness of nation. We have a progressive Constitution. Article 100 is in our Constitution. That was thoughtful from the framers of the constitution. I happened to be one of them and I am glad that, eventually, this law is seeing the light of the day. I am sure Members will pass it in this House and it will go to the Senate and the President will sign it into law.

I am glad to see that when it comes to nomination, there are clear definitions of who those special interest groups are for them to be nominated by political parties. I disagree with Members who have argued that, in the past, whenever Members were nominated to this august House, it was done on the basis of merit. I have had a chance to serve in this House for three terms and I know that many nominated members who came here; it was because they were relatives and friends of the party leaders. They came from the same community with party leaders or other reasons other than merit or representation of the minority groups in this House.

Once this Bill is enacted, that will be a thing of the past. Our Constitution is clear that political parties must deal with those provisions of the law as they make those registrations. Otherwise, anybody can go to court and challenge their decision. Because of that, I want to appreciate the Committee for its efforts.

It is important that all the laws that need to be amended are clearly amended. The beauty of this is that it provides for a monitoring mechanism that will ensure that, 10 years from today, we will be able to gauge whether we have achieved what Article 100 of the Constitution intended this nation to achieve. I like that proposal of monitoring by the council that has been incorporated in this Bill. I hope that once this Bill is passed, all the issues that have been raised here, especially on nomination of Members to Parliament and the county assemblies, will be sorted out and will be followed. Special interest groups will have rightful representation of their interest in the two Houses of Parliament.

Thank you.

Hon. Speaker: The Member for Rarieda, you have the Floor.

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Thank you, Hon. Speaker. I will start by commending the Constitutional Implementation Oversight Committee for coming up with this Bill, which is timely and useful in many ways. However, I find myself constrained to oppose it. Whereas it has so many positive provisions, it also has a number of suggestions that are not positive. First, as noted by the Committee in its Report, it is not entirely true that no legislation has been enacted under Article 100. What is true – as it was indicated to the Committee by the Office of the Attorney-General and other relevant offices – is that Parliament, in its wisdom, chose to go to different pieces of legislation and amended them. Many of them are already outlined. Therefore, the Office of the Attorney-General and the former Constitution Implementation Commission (CIC) saw no need of doing an independent stand-alone legislation on Article 100. So, it is not that Parliament failed previously, but Parliament chose a different route. Whether now we should sustain that different route or come to a consolidated legislation, it is a matter of debate.

There are six reasons why I am opposed to this Bill. First, in the definition section, Clause 4 adopts the definition in Article 100 of marginalised groups word for word. It, therefore, conflates the definition of marginalised groups and the definition of special interest groups. The two are not necessarily the same. Therefore, to take the definition in Article 100 and adopt it as the definition of special interest groups is a conflation that is dangerous.

Second, in Clause 5(c), it purports to give Independent Electoral and Boundaries Commission (IEBC) and the Registrar some say on the process of regulating how parties make their party lists. So far, the Constitution gives IEBC the mandate to regulate the process by which parties conduct their nominations. To date, IEBC has not been able to undertake that. It is dangerous to give IEBC an additional jurisdiction to even determine how you arrive at the party lists. That is intrusion.

Third, it defines in Clause 7(2) what is meant by ethnic and other minorities. These are difficult terms. It then says it means a group that is not the dominant in a given society. “Given society” means what? Is it a village, a location, a ward, a constituency, a county or the whole continent? Instead of that definition helping to define, it is widening it to an amorphous situation. It can mean anything or everything. Given that this is a definition that entitles a person to certain

advantages under this Act, it is dangerous. Any one person will not be dominant depending on what you define society as, whether it is Parliament or otherwise.

Four, in Clause 10(a)(iii), the Bill proposes the idea that the political parties fund once given to political parties will be used in a certain way. It reads: “Facilitating party candidates in campaigns.” Can we now start asking the parties to fund our campaigns, especially the campaigns of those who belong to the special interest groups? In other words, shall we now be asking parties to fund candidates who are either under youths, women or special minorities? I find that unacceptable.

Five, in Clause 17, it proposes an impractical thing. It is fundamental, but impractical. Clause 17 captures the essence of what has been spoken about and what the Hon. John Mbadi spoke to. I wish he was here, I would have told him the history of how the Constitution came to have provisions requiring one third and provisions prescribing the number and the inconsistency. I can tell you without fear of contradiction – and Hon. Jeremiah Kioni is here – that, that problem was caused by Members of Parliament (MPs) who were then in charge of the Constitution drafting. We in the Committee of Experts on Constitutional Review (CoE) resolved that problem, but MPs went and increased the numbers of constituencies from 210 to 290 which was a good thing, but it was not based on any formulae. So, we asked them now that they had increased the number of constituencies and yet we had put a formula that will achieve one third, how shall we achieve that formula? They told us, including Members who are now not here, in their words: “Otiende, we will cross that bridge when we come to it.” So, we put that baby back to them. They never crossed that bridge. That bridge is a big and fundamental bridge that is not possible to cross without revisiting the Constitution. All the options – and we can look at them – are highly impractical. One of them is this, if I may demonstrate ---

Hon. Chachu Ganya (North Horr, FAP): On a point of Order, Hon. Speaker.

Hon. Speaker: What is your point of order Hon. Chachu? Or is it a point of argument?

Hon. Chachu Ganya (North Horr, FAP): Hon. Speaker, is it in order for my very good friend to state that those Members of Parliament who were in Naivasha and charged with the task of negotiating the Constitution came up with the idea of one-third gender rule? Yes, we increased the number of constituencies using the formula under Article 89 of the Constitution. The issue of the two-third gender rule – and Hon. Kioni, the Chairman, is here and we were together in that Committee - was never an issue that we discussed. I do not remember debating those issues. The HANSARD is there to bear me out. It was actually done by the CoE and the activists around them to push for the gender issues in this country. It is totally not in order for him to state that Members of Parliament who had the mandate of negotiating the Constitution inserted that particular element in our Constitution.

I beg to differ.

Hon. Speaker: There is really nothing out of order. He made his claim that it was the members of the parliamentary select committee on the Constitution and then you are saying, no, it was the CoE. So, you see it is back and forth.

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Thank you. In any event, Hon. Speaker, the Member did not listen to me clearly.

Hon. Speaker: In fact, Hon. Otiende, I will give you some extra time because of the time taken. There is a clause of the Bill which you picked issue with. Because you were a member of the CoE, I want you to address the House on this. You picked an issue with the role given to

IEBC in the Bill with regard to party lists. Also remember, Hon. Otiende Amollo, Article 90(2) of the Constitution itself gives the IEBC the responsibility of ensuring the lists referred to in Article 90(1) are in a particular format. So, IEBC has been given a responsibility. It is important for me, because I come from the position that Article 90 is at the tail end of that part of the Constitution which deals with the IEBC, from Article 88 to Article 89, on the formula for delimiting boundaries. The House would benefit a great deal from your comments on what is provided under Article 90 of the Constitution on party lists.

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Thank you, Hon. Speaker. I am going to address that. But first, let me just say that the intervention by my learned brother is actually not inconsistent with what I said. I think he did not just get what I said clearly. I said the Members of Parliament interfered with the number of constituencies, not that they introduced the idea of one-third gender rule. The idea of one-third gender rule came from public participation and it was in the Bomas Draft and all the subsequent drafts and we adopted it. So, we are actually on the same page.

On that question, before I revert to my original question, my understanding of the provisions of Articles 88 through to 90 is that we introduced something that was unique by recognizing that in many parts of this country, the nomination process essentially becomes the election depending on the party and the area. Therefore, it was very important that the nominations are conducted credibly. In fact, the initial proposal was that the IEBC would conduct nominations for parties. But the IEBC came and said that it might be quite expensive because parties might not be conducting them on the same day. Therefore, we changed the terminology and said that the IEBC will regulate the process of nominations. To date, they have not regulated it. Therefore, the extent that the Constitution goes to is to regulate the process of actual nomination. But the Constitution does not purport to regulate how the IEBC arrives at the party list. That is entirely left to the party. Whether it is done democratically as Hon. John Mbadhi sought to say or whether it is not democratic as my brother sought to say is a different matter. It is just that the Constitution does not go as far as the Bill proposes to go. In my view, to go that far is to overreach. Not just to overreach, it even becomes impractical to ask a party to tell you the process of arriving at the name of Hon. Jimmy Angwenyi as a possible nominee or otherwise. That is overreaching.

Let me come back to Clause 17. The clause requires that every political party will ensure that, at least, one-third of its nominees for parliamentary and county assembly elections are of either gender and that 5 per cent are persons with disabilities. It is prospective; it is admirable, but it is impractical. It is impractical because it runs contrary to Article 38. Article 38 gives any person and every person who is interested in vying, provided that they are qualified, the right to stand as a candidate. As long as we maintain our system of government, where it is constituency based and where it is first-past-the-post, how will you tell the people of Rarieda that Rarieda is reserved for a person with disability? How will you tell the people of Kisumu Town West or the people of Seme that we have agreed that this particular constituency is reserved for a woman? If you will not tell them, then how else will you implement this? It is impractical.

Therefore, my submission is that it is a problem we have. It is a problem we have to live with. The solution does not lie in this kind of contribution. The solution must lie in going back to the Constitution and asking ourselves hard questions. We must ask ourselves the very hard questions: Is it true that the idea of one-third gender principle is a principle we want or it is just

for activists as some Members have said? I am happy to be one of those activists. But if the other Members believe it is not, then they must have the courage to say we do not want that principle. But if we want the principle, then we must bite the bullet. We must have provisions similar to what we have at the county assemblies, for the National Assembly and at the Senate. Those are questions we cannot answer in legislation. We must answer them in the Constitution. And I think the ideal time to answer them is in the context of the Building Bridges Initiative (BBI).

My last contribution is in respect of Clause 20. It requires a political party to give access to the media for those special interest groups. First of all, it goes beyond the legislation. The legislation requires access to public media. This one does not restrict. So, it is supposed that it includes private media. What business would the party have in ensuring that a candidate I am running against has access to the media merely because they are women, youth or they are from a minority? That is not the business of a political party.

So, for all the good provisions that the Bill has, I find it has very fundamental questions which, unless properly answered, I find myself unable to support it.

Thank you, Hon. Speaker.

Hon. Speaker: Well, that is from a former member of the CoE. Is it the defunct CoE? It is no longer there. It is *functus officio*.

Hon. (Dr.) Otiende Amollo spoke off record

The former CoE. Very well, Hon. Otiende. Hon. Katoo, you have the Floor.

Hon. Katoo ole Metito (Kajiado South, JP): Thank you, Hon. Speaker. I rise to support this Bill. It has a lot of issues that I am sure the Committee will clean up when it comes to the Committee of the whole House stage.

First of all, I really want to thank this committee for bringing this Bill at this time. It is good that Members of this House get to know that this is all about elections. And I think it will be good for them to take keen interest. For those of us who have been in this House before, such matters that pertain to elections always come at the tail-end of the term of Parliament. At that particular time, there is always the issue of campaigns and always very few Members are in the House to take interest.

Hon. Speaker, immediately you get to the field, you realise that the laws you have just passed are acting against you. Therefore, we are now in good time and that is why I appreciate the efforts of the Committee. They have brought the Bill when we can find time to discuss it soberly and ensure that what we legislate is not going to act against us because we would be the players and end users of this Bill.

Hon. Speaker, if Members want to know that this is all about elections, the statutes that are proposed for amendment by this Bill are seven and only about two are not expressly about elections. This Bill proposes to amend the Election Offences Act and when we look around and see what is happening now in the by-elections in the country, Members of this House, as we speak, are in courts because of the Election Offences Act. Therefore, we should be very careful about it. The Election Campaign Financing Act talks about voter bribery and the like. It is high time that political parties met the campaign costs for Members of this House and other assemblies. There is the Election Offences Act, the Political Parties Act, the Independent Electoral and Boundaries Commission (IEBC) Act and then you are left with two which are the

National Gender and Equality Commission Act and the Persons with Disabilities Act. Those two are not substantive elections Acts.

In Clause 2(e) of the Bill, there is the issue of funding which Hon. Otiende Amollo has spoken about. Why meet the cost of elections for only some certain groups of candidates - the special interest groups (SIGs)? If that has to be done using the Political Parties Fund, then we should do it for all candidates in all categories which is not possible and may not be practical. We need to do something about that. The next one is 2(b) that is still on campaign financing. This financing is coming from the Political Parties Fund. We need to agree on that. Do we even need to be contributing monthly payments to those political parties? This is because, as we speak now, all political parties are being funded partly by the members of those political parties. Do we need to do it or we leave it to political parties to receive funds from the Political Parties Fund? I am made to understand that payment for party membership is even optional. In my party, I hear there are members who do not do the check-off system monthly since it is voluntary.

However, it is another way of bringing some unfairness when it comes to election time. That is because you find sitting Members in some political parties, be they at the county level or a national level, not being cleared because they have not paid their contributions for some time. They are in arrears. So, this needs to be agreed upon.

In Clause 2 (e), the Bill talks about the elective bodies. That they will ensure that their nomination lists will comply with the provisions of Article 54(2). However, Clause 54(2) is about special interest groups; that, at least, in every party list, there should be 5 per cent of PLWDs in that party list. Article 54(2) of the Constitution states thus:

“The State shall ensure the progressive implementation of the principle that, at least, five per cent of the members of the public in elective and appointive bodies are persons with disabilities.”

Therefore, the Chair of the Committee that brought this Bill needs to check whether this will be in line with the Constitution because it states that the five per cent requirement for PLWDs is progressive.

Article 81(b) of the Constitution has been spoken about. Section 7 of the Political Parties Act 2011 is envisioned for amendment. The definition for special interest groups, ethnic groups and other minorities is fake! But you need to do some cleaning. What is bringing some issues here is the issue of a given society because when it is said “ethnic or minority” it means a group that is not dominant in a given society”. Then you need to define it. We would like to see that it is not dominant in a certain geographical area like whether it is in a certain ward or constituency. I have seen people who have gone to court because some individuals have been nominated under the group of minorities and some voters or interest groups thought they are not people from a minority group and they have won those cases in courts. So, the definition of society needs to be clarified.

Hon. Temporary Deputy Speaker, Members need to check Clause 9, which is about amending Section 25 of the Political Parties Act 2011. This is to do with how the Political Parties Fund should be distributed because it talks about 53 per cent proportionately shared between the largest party, coalition parties and the second largest. There is 20 per cent to be shared among all other political parties. There is another 20 per cent proposed to be shared by political parties based on the candidates of the party from SIGs in the preceding election year and the 5 per cent. So, that needs to be looked into. Members need to be very clear because if you go to Clause 2 of

Section 9, it says that a party must have, at least, five elected MPs, one elected governor and 12 elected members of the county assembly. Clause 30(a) is on the issue of reporting to the Registrar by a political party within 30 days on how they have been promoting the SIGs in Parliament. I also want to say that Clause 17 has been talked about...

Hon. Speaker: Let us have the Member for Kitui Central.

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Speaker for giving me this chance to also add my voice to this interesting debate. I believe it will cause no harm to continue thanking the Committee for this good work to ensure that Article 100 of our Constitution is implemented. Former speakers have said many things about this Bill. I am supporting it although, at the outset, it is clear that there are some areas which need to be worked on.

Hon. Speaker, I want to start from where Hon. Katoo has left on the issue of the Political Parties Act, 2011, and more specifically, on the issue of sharing the Political Parties Fund released to political parties. Looking at the relevant clause, there is 53 percent, 20 percent for all other parties and 20 per cent for the SIGs and this amount is tied to the number of MPs, governors and members of county assemblies (MCAs).

I think this is an area I will request the Chair of the Committee to do a bit of work. Currently, there is confusion and this arises more in coalitions. I am just imagining what would happen if only one party qualifies for the 20 per cent for the other parties based on the issue of governors, MPs and MCAs. We will find one party, which is not the majority or minority, getting a very huge share based on this legislation.

The other issue concerns coalitions. For example, there is the NASA coalition, where the Wiper Democratic Movement (WDM-K) - which I belong to - is a member. Currently, Wiper, FORD-K and Amani National Congress (ANC) do not benefit from this Fund because they have not met the threshold in terms of governors, MPs and MCAs. There is an argument which is being pushed forward that we cannot benefit from the allocation which goes to ODM, that is our big brother. The question is: Would ODM have managed to achieve that threshold if these other partner parties were not participating in the election? The answer is no.

For example, if you take the South Eastern region and look at the number of MPs who come from that area, they are all purely Wiper MPs. Implying that, if Wiper was not participating in the elections, most likely, even the vote for the presidency would have gone to another individual and not ODM. To me, this is a grey area and if it is not properly structured in terms of legislation, it can cause a lot of problems in political parties. This law is meant to ensure that there is proper representation in Parliament and this cannot be effective if political parties are not effective. This is an area I would urge the Chairman to ensure that whatever legislation comes out is very clear.

The other area is definitions and I like the proposal that they should be clear. Looking at Article 100 of the Constitution, there are people who are categorised as Special Interest Groups (SIGs). It is very important that we get the definitions correctly. As Hon. Oundo has said, when you talk about women in this country, there are those who are economically empowered more than the men in the country. The question is: When you group them together, what is the implication? My proposal is: It would be wise under the category of women; we find a way of stating which group is marginalised so that they can benefit from nominations or the special treatment when it comes to elections.

Otherwise, people can take advantage of this. More so, our sisters can take advantage of this grouping of women and the special group that is being targeted will never realise the dream of being in this House. For the marginalised areas or groups, we need to be very clear, although it is defined in the Constitution. But there is no harm if we repeat this definition so that people do not take advantage of it. We have seen people who want to take advantage of these general terminologies so that they can benefit.

Another area of interest to me is the amendment to the Election Offences Act. I am happy with this because in this country, politicians take advantage of elections and engage in serious offences to stop people from participating in fair elections. We need to be very strict when it comes to election offences. If anybody is caught engaging in those offences, then the penalties should be tough to a level that you might be barred from contesting. This should be applied to both women and men. I have realised the reason why most of our sisters do not participate in elections. Any time you engage them in a discussion, they will tell you that elections are very violent and they cannot participate in them because they do not want to die in the process.

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

*[Hon. Temporary Deputy Speaker
(Hon. (Ms.) Jessica Mbalu) took the Chair]*

We need to come up with legislation that will ensure that nobody says they cannot participate in an election because people are violent. If we get this right, then more of our sisters will participate in elections. This will stop us from thinking about giving them special seats through nomination. I want to congratulate our sisters from Ukambani. We do not just elect them because they are our sisters, but because they go the extra mile to campaign. As you can see, the Temporary Deputy Speaker has won two times and she campaigned seriously to get that seat.

I do not want our sisters to assume they will be getting these seats for free or offered to them on a silver platter. The thing is that they must go out there and fight like our sisters from Ukambani. I want to thank my community because we believe in our sisters and we have so many of them who have been elected and not nominated. As we move forward, it is time other communities in this country started believing in their sisters so that we can have more of them coming to this House, other than pleading for those special seats. This will help.

Another issue I want to raise is the proposal on the Election Campaign Financing Act. To me, this is historical to some extent. If you look at issues of land tenure in this country, wealth and sharing of assets... It is only about four or five years ago when fathers started thinking about giving their daughters a share of their wealth. In the past, the assumption was that a girl should not inherit anything from the father. That is why most women are disadvantaged financially. In other communities, they are not even allowed to work. They stay in the house taking care of the family.

Elections in this country are very expensive and we must think of a way of ensuring the playing ground is fair for everybody. That way, when it comes to finances, nobody will be disadvantaged by the fact that you are either male or female. At the end of the day, if we support our sisters, they will come out in larger numbers and compete like anybody else to be voted in. I want to agree with those who said earlier that women are the majority in this country. But,

nobody can explain why they lose elections. Being the majority, they should be able to vote for their own to come to this House. But this is a topic for debate on another day. For now, we should make the playing ground level for everybody in terms of financing. We should not expose our sisters to violence and thus making them to run away from contesting. If we go this way, we will be helping them.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Member, please note that you are not addressing the Speaker. The Chair has changed.

Hon. Makali Mulu (Kitui Central, WDM-K): Noted, Hon. Temporary Deputy Speaker. In terms of areas where we need to improve, we will recommend amendments in the Third Reading but, generally, this is a good initiative...

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Is the Member for Baringo North in the House?

Hon. William Cheptumo (Baringo North, JP): Thank you, Hon. Temporary Deputy Speaker. I would like to start by thanking my learned colleague the Chair of the Constitutional Implementation Oversight Committee (CIOC) for the wonderful job he has done. The truth of the matter is that this House has laboured for a long time on how to fulfil the provisions of Article 81 of the Constitution. Several Bills have been brought before the House, but they have been defeated by the same House because they did not receive support. The route now taken by the Committee is, in my view, the solution to the challenge that the country faces. I am aware that there is already a court order directing the Chief Justice to write to the President that this House has not been able to pass the law as required under this Constitution. I think we will run out of that problem because if you look at Article 81 of the Constitution, that is, Part 1 in Chapter Seven, it deals with general principles of the electoral system. Article 81(b) says:

“Not more than two-thirds of the members of elective public bodies shall be of the same gender.”

However, you realise the same Article does not provide for a way out of that situation. Article 100 says Parliament shall enact legislation to promote the representation in Parliament of... You now read the four sets of groups, that is, women, persons with disabilities, youth, ethnic and other minorities and marginalised communities. This is now where I would want to submit and say that it is this House that is mandated to enact a law that can fulfill what is being stipulated by Article 81 of the Constitution. The Bill before the House today is, indeed, the law that is going to enable this country and this House to achieve the provisions of Article 81(b). If you look at the various proposals in this Bill, you will see that it is amending seven statutes. If you look at those proposed amendments, they actually tend to achieve the same goal that we are addressing in the House. It is my appeal to all of us in this House that this is our time. The new Constitution came to force in 2010, that is, in the 10th Parliament. I was in the 11th Parliament. We were not able to pass this law. Now we are in the 12th Parliament. I want the 12th Parliament to be counted as the House that was able to achieve this particular provision of passing a law that is going to implement Article 81 of the Constitution.

I heard Hon. Otiende talking about the fact that IEBC cannot be given additional responsibility of determining the nature of list. If you look at the clause of this Bill referred to by Hon. Otiende... If I am not wrong, it is Clause 17(a). It is important for Members to note this because it is very important. It says:

“Every political party participating in an election shall, during party nomination, ensure that, at least, one third of its nominees for parliamentary and county assembly elections are of either gender”

The political parties are critical in the election process in our country. They are actually the institutions we use to cause the process of elections in nominating members in the political parties. So, it is for this House to facilitate so that a political party is mandated in law to ensure that during the nomination process – not during the election – that one-third of the nominees for parliamentary and county assembly elections are of either gender. The process begins from there so that out of the number of nominated members, we are able to, at least, ensure that not more than one-third of those members are of one gender. We want to look at this in terms of that. We are passing legislation enabling institutions of governance in our country, whether through the IEBC to ensure that we facilitate this. I really support that Clause 17 in terms of enabling...

Clause 17(b) says: “five per cent of the nominees for parliamentary and county assembly elections are persons with disabilities.”

If you look at the gender issue, the person with disabilities is actually in Article 100(b) of the Constitution. The others are youth, ethnic and marginalised groups. Therefore, I support that particular issue. Clause 4 of the Bill says:

“Section 2(1) of the Independent Electoral and Boundaries Act 2011 is amended by inserting the following definition in proper alphabetical sequence.”

It goes ahead to give what is in Article 100. Clause 5 says:

“Section 4 of the IEBC Act 2011 is amended in paragraph (a) by inserting the words ‘and disaggregation of the data and voters roll on the basis of all categories of special interest groups’ immediately after the word ‘voters’”

How then do we isolate those special groups, whether marginalised groups or people with disabilities? In Baringo, we have a very small group called Elchamus. In a whole county of over 700,000 people, we have a population living in one ward. How do you assist that group to achieve... It is only by putting legislation. Others are the Sengwar in Elgeyo Marakwet or small group which lives in Nakuru.

This House has the power and the constitutional responsibility to ensure that we pass legislation that will enable the implementation of Article 81. I agree with Members that, indeed, the nomination of members to this House sometimes has been misused. I would like to appreciate those who have come out like you, Hon. Temporary Deputy Speaker. You have been able, through your own efforts, to come to the House twice. But that is in the Kamba nation. There are other areas where the society and the culture do not allow women to take elective positions. This is the only way we are going to ensure that those kinds of societies are actually enabled so that we have representation from all groups of women, especially in a place like where I come from.

I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let me have the Member for Emuhaya, Hon. Omboko Milemba.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Temporary Deputy Speaker, for giving me this chance to make a comment on this very good Bill and also thank the Chair and the Committee for having been brave to actually bring the Bill forth. As stated clearly, it is our responsibility as Parliament. When the Constitution was being made, we were there in

many different ways. Most of the responsibility would be given to Parliament to actualise the final details of every law. Article 100 of the Constitution requires that Parliament enacts legislation to promote the representation in Parliament of women, persons with disabilities, the youth, ethnic and other minority groups. This Bill has been put before us in the correct way and the right perspective because it is our business.

As we do this business, speaking after many other experts and contributors, I find it necessary to say, at the outset, that we need to be brave over what we are about to go through. This is so that we can bite the bullet and take care of the mandate that we have been given. We cannot run away from it. The question becomes how we implement this. The Committee has been very good in trying to amend seven statutes to try and achieve this.

Like the Speaker said earlier, this country operates under an electoral system that is first-past-the-post. First-past-the-post is a system whereby the winner has it with whatever margin. Having taught history, the first-past-the-post has the disadvantage of sometimes giving it to the winner yet he has a very small margin as compared to the people who are opposing him, especially in cases where we have many candidates or other factors which influence elections. Therefore, it is important that affirmative action be taken to bring to the fore those who are marginalised.

I also want to thank the Committee for the definitions we were given of marginalised groups. We also risk getting into a situation where people who are not marginalised will rush to be included on the list of marginalised groups and, therefore, benefit unfairly from a list that they should not be on in the first place. The Speaker directed that the definition of the marginalised is found in Article 260 of the Constitution. It is ring-fenced. The language used there does not allow for the addition of other people. They are defined from a perspective of where they come from, how they have been living, their culture, their ways of life and even economic status for instance, the hunters and gatherers that we have in this country.

As we do this, we need to look at certain contradictions that may lead us to favouring a group against others. One such area would be the election campaigns financing. We must tackle that as a House and not the Committee alone. We finance the marginalised using political parties. One way of enhancing their participation in democracy would be financing. But to what level? That level must be defined in law. The urge of a political party is not usually to give a balance of the law that those are the marginalised, the women and the youth. A political party goes to an election with the intention of winning. They want to win, get more seats of whatever percentage in respect of this particular law. Therefore, we have to look at that with the Committee very clearly to see how we shall mitigate that *vis a vis* the interest of political parties.

The history of marginalization in Kenya and its perpetuation during the colonial period was because Africans were not represented in Parliament. They were not allowed to vote in the earlier stages. The earliest attempt to include them came in the form of nomination. That is how Eliud Mathu came to this House. Later on, it expanded slowly. As the Committee retreats, it should look at how to combine the issue of nomination or inclusion of the marginalised groups with a competitive election in this country that is in law and the fact that we are following the universal suffrage as a way of electing our people into Parliament. It is not only the Committee, but all of us who should look into that. In so doing, we can again favour certain political parties that come from areas... I have been told, Hon. Temporary Deputy Speaker, with due respect, that

where you come from in Ukambani, they tend to respect the election of ladies and women. Look at western for instance... Let me just state this because it will benefit this House.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): I can tell you we fight!

Hon. Omboko Milemba (Emuhaya, ANC): In Western Kenya for instance, if I look at the entire Bungoma since its inception in 1963 and even before in Kakamega, Vihiga and its environs... That is why I congratulate the people of Rift Valley. They have never elected a female representative to this House. We thank Busia that gave us a few ladies like Julia Ojiambo. As we mitigate that area, it would be very important that we see how this financing will go against the cultures and beliefs of people. I do not mean that there are certain people who do not believe. It is a cultural practice, but I had to bring it out as clearly as I have done.

I wish to comment on the issue of how the law proposes to distribute funds to political parties. The law states that we shall give 50 per cent of the funds to the two largest political parties. With due respect, Chair and the Committee, you were influenced by the circumstances of the times whereby we have the two largest political parties or coalitions. This may not be the case forever. The definition of the word "largest" is infinity itself. How shall we define properly and quantitatively the largest party or coalition? We have to redefine it based on what this political party would have achieved and not just the word "largest". It is fairly simplistic, easy and casual. We have to define it in the perspective of how many seats it has or what percentage of the voters the political party would have achieved to benefit from the 50 per cent of the funds. Do they then deserve that lion's share? We are talking about first-past-the-post. We may have a situation whereby the two largest political parties control only a majority that is less than or just about a third of the votes in Kenya. That can arise. I am happy the Chair of this Committee is a lawyer and, therefore, I thought I should bring that out.

I am brave enough to think that apart from the issue of women, because they are very strong people in the society, especially from where I come from among the Banyore and Maragoli communities, without women...

Hon. Temporary Deputy Speaker, I can see my time is almost up. I support the Bill but will be proposing several amendments to help make the law stronger.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well, Hon. Member for Emuhaya. Your amendments are welcome within the procedures of the House. Let me hear from the Member for Kisumu County and know whether the women are given positions for free or they fight. Where I come from – and I thank you for mentioning my name - I fought for the position.

Hon. (Ms.) Rozaah Buyu (Kisumu CWR, ODM): Thank you, Hon. Temporary Deputy Speaker. At the outset, as I support this Bill, this amendment to Article 100 does not in any way replace the dictates of the Constitution under Articles 27 and 81. Article 27 of the Constitution deals with gender parity in all general aspects, both in elective positions at whatever level and appointive positions in whatever sector. However, the amendment to Article 100 of the Constitution that we are discussing today zeroes in only on representation in Parliament. Having said that, the amendment to Article 100 of the Constitution helps us to move towards the achievement of what Article 27 of the Constitution dictates. It offers different areas that we can look at in order to get to Article 27, which this House has tried several times to achieve, but has still not achieved. In that respect, I support the amendment we are discussing this afternoon.

The other reason why I support the amendment is because of the widespread consultations the Committee has had before proposing the amendment they have brought. They have consulted stakeholders like the IEBC, the Law Reform Commission and the Attorney-General. So, what they have come up with today is something that is well informed and worthy of support. For that reason, I support it.

I have tried to contest in a single constituency in two elections. First of all, Hon. Temporary Deputy Speaker, I would like to congratulate you. I have heard you being commended for having come back a second time yet you are a woman. I commend you because I know exactly what you went through.

(Applause)

In the two attempts that I made, I noted that the biggest problem women candidates face is violence. I am a strong woman and when I set out to campaign - I was hoping Hon. Olago Aluoch would be here to confirm that - he loses almost 20 kilogrammes each time we contest for an election because Hon. Rozaah Akinyi Buyu gives him sleepless nights.

(Applause)

But I would like to confirm that the violence women face is almost impossible to surmount and this Bill tries to curb it. This Bill tries to shield the marginalised groups like women from the abuses and derogatory names they are called during such contests. As I stand here today, I am a mother of three grown up children, but during elections, like many other women, I have endured being called names that I cannot mention and it happened in front of my children. Many women who might not be as strong as I am will shy away in order to protect their families. This amendment now strongly criminalises any use of derogatory words. It will encourage many women to contest by giving them confidence that as they come out in the political arena, they will still protect their families from hearing nasty words.

I am also happy that the amendment recognises the fact that political parties have a key responsibility in helping us achieve parity or helping us to bring marginalised groups to the fore. It compels political parties to ensure that at the nomination level, at least, one-third of the nominees the party puts forward to contest in the general elections are of either gender. This is great because many times, if you look at the list of Members the party has put through to contest on their ticket in the general elections, you will find very few women. This still does not solve the problem because political parties that are largely run and owned by our male colleagues are naughty. They are naughty because with this requirement that one-third of the Members should be of either gender, I can bet my life on it that most political parties will choose the areas in which they are not competitive at all to field women candidates as long as they achieve the one-third gender rule. In doing that, political parties will not have helped us achieve what the spirit of this amendment seeks to do. The spirit of this amendment seeks to ensure that nominees of political parties can actually campaign and win elections and in effect, increase the numbers of the marginalised groups. But if political parties are left to field women candidates in any place they like, they will definitely choose constituencies where they have no influence or where they have very minimal influence. I am going to bring an amendment to tighten this, so that we can

know that we are compelling them and tying it to something to ensure that they do not kill what the amendment seeks to do.

I also like what the amendment has attempted to do in terms of security of marginalised groups. Security is an important issue, but I would like it tightened a little because saying that political parties or the IEBC will “require”, “require” does not compel political parties well enough to ensure that security is offered to the candidates. We need to use a stronger word than “require” because if you “require”, you do not compel me. What if I do not do what you require me to do? What happens? So, these are the things we need to tighten just to ensure that the Bill effects the spirit it intends to bring into our electioneering process.

Before I sit, I am happy about the amendment to the Election Offences Act, 2011. The proposed amendment is a strong one and I know it is going to help a lot of women to come forth and succeed. I have also looked at the proposed amendment on the media. We know that if you are campaigning, you cannot be everywhere every time and publicity is a strong thing in campaigns. If parties are compelled to ensure that the weak or the marginalised candidates are well facilitated in terms of publicity, it will go a long way in helping them secure their seats.

I thank the Committee and as much as we failed in the past to enact or come up with laws that will make the one-third gender rule effected by Parliament, this is a great opportunity and a great step towards that. If Parliament believes in bringing up the weaker sex, in this case the women, this is a good opportunity for it to pass this and move to ensuring that we achieve gender parity.

With those remarks, I support.

(An Hon. Member clapped)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): I see a Member clapping. You know how we do it, but I can tell he is so moved by the contribution by the Member for Kisumu.

Let me have the Member for Dagoretti South, Hon. Waweru Kiarie.

Hon. John Kiarie (Dagoretti South, JP): Thank you very much, Hon. Temporary Deputy Speaker. I also join other Members in congratulating you as an amazing Kenyan lady who has been able to make it through the election process in this country and get elected twice to this House.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Thank you.

Hon. John Kiarie (Dagoretti South, JP): The Constitution we gave ourselves as a country in 2010 is actually a living document. It is a living document in the sense that it is not cast in stone. It is a document that we have to keep relooking at, improving and making sure that it is responsive to the issues of the day. At the core of the Constitution is the belief that there cannot be real progress in this country if all members of the society do not participate fully in their governance. This is found in Article 100 of our Constitution where we seek to find representation of all Kenyans up to and including the special interest groups, which are listed as women, youth, people living with disabilities, marginalised and minority groups.

The journey that we have taken with this Constitution since 2010 has been a good one. We have been able as Parliament to put in place pieces of legislation that have made the Constitution robust just as we wanted it to be. The issue of representation of gender has been a

sore one. I congratulate the Committee under the able leadership of the Chairman, Hon. Kioni, for the work they have done in seeking to remedy this very sore issue that has been one of the problems this Parliament has not been able to deal with accordingly. The Committee has burnt the midnight oil. They have gone out there and sought as much consultations as possible. I believe they have brought to us good amendments. I stand to support it with two reservations, which I will get to.

This proposal is not an issue of gender. It is, in fact, an issue of representation. We know there are principles that speak to representation. One such principle is the principle of ensuring that no one is left behind. This is one of the mischiefs that this proposal seeks to remedy. In the history of agitation, we know there was a time when Kenyans were agitating that there shall be no taxation without representation. I have to speak to this House and say that the matter of representation in itself is not an event. It is a progress. When you think about it, even the representation of Kenyans in this House has been progressive and long coming to get to where we are. We started without any representation in this House. We ended up with the few people representing us through the Legislative Council (LEGCO) and eventually we can proudly say that every Member of this House today represents Kenyan interests.

I would like to put it clearly that even as we pursue the issue of equity, it is not a gender issue. It is an issue of representation - the representation of our women, men, youth, PWDs, minority and marginalised groups and all Kenyans to find their place in the table where decisions are made. On the issue of gender, a lot has been said and even examples given of countries that are within our region of Sub-Saharan Africa. One example that everyone keeps repeating is the issue of representation of women in Rwandan Parliament. We have to understand that every country has its history. How women ended up being a majority in the Rwandan Parliament is not a journey we would like to walk as Kenya. We know the atrocities that led to fewer men representing people in Rwanda. It is not a journey we would want to go through. For Kenya, I must say we are making good progress. This progressive incremental growth in representation of women will eventually help us achieve a two-thirds gender representation in this House. That is my dream.

My two reservations to this proposal are on the amendment to the Elections Act, where this Bill is proposing that each political party ensures that, at least, one-third of its candidates for nomination are of either gender. This is an amazing proposal. However, as people say, the situation on the ground is different. To do this, we would require mechanisms that we do not have. This is practically impractical. How are we going to define the constituencies where nominations of a certain gender are going to be assured and nominations of another gender are going to be restricted? Even as we seek to heal some mischief, we should not introduce another mischief in our laws. When you think about it, if you compel political parties to nominate a third of either gender, the practicability of it on the ground might be very difficult. There is still an opportunity as we work on this Bill, especially when we get to the Committee of the whole House, for amendments to be made on this proposal.

My other reservation is on the Election Campaign Financing Act. We have special interest groups defined here and one of those is women. I come from a constituency where I have lost to a woman. I also come from a constituency where I have won an election against women. When we define special interest groups and one of them is women, and we go into the business of assisting one gender against the other, we will end up creating an inequality while trying to

heal an inequality. If we talk of the issue of PWDs, that one is agreeable. We can try to level the playing field between an able-bodied person and a PWD. Good examples arise and some of them come to the top of my head. For example, if we are going to go to a campaign rally and a dais is constructed it will, of course, require a ramp for a PWD to access it. However, if we try to make the level playing field unfair to the gender of men because they are the majority in the House, we shall be losing it. We shall be according an unfair advantage to one gender against the other. This is an issue that we need to revisit on this proposal.

With those two reservations, I am in support of the proposal. One of the things that make me happy supporting this is how they seek to make Election Offences Act a bit more robust. They seek to do this by introducing an amendment that seeks to criminalise the use of demeaning or derogatory language targeted at special interest groups in the election process. In our politics, so much untidy language is used. Some of us can survive it. I have been called a cartoon because of my history. I have also been called a comedian because of my history not taking into account that I am a graduate, not only a graduate, but also a candidate for a master's degree. However, I can manage that. If you insult a disabled person, that is not fair. One of the reasons I support this is because of that.

Hon. Temporary Deputy Speaker, allow me this last minute.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): I will allow you one minute.

Hon. John Kiarie (Dagoretti South, JP): I am humbled and thankful for this one minute. I will use it to say that we are not here as a House to make perfect laws because we will not be able to make them. As a House, we can make progressive laws.

For that reason, I support because I believe this is extending goodness to more people in the country. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let me have the Member for Tiaty, Hon. Kamket William.

Hon. Kassait Kamket (Tiaty, KANU): Thank you, Hon. Temporary Deputy Speaker, for this opportunity to speak to this Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Order! The Member for Bomachoge Borabu, your microphone is on. Hon. Lentoimaga, I saw you walking in. You were here early enough. Your card has been indicating that you want to speak, but you will have to allow me to give other Members a chance first. I noticed you were here early.

Hon. Kamket, Member for Tiaty.

Hon. Kassait Kamket (Tiaty, KANU): Thank you, Hon. Temporary Deputy Speaker. I have looked at this Bill and I support it, but with a lot of difficulty. What one can discern from the beginning is that the Committee has tried to legislate beyond the call of duty. Indeed, they are trying to do a very difficult job. They are trying to deal with very difficult provisions of the Constitution. Therefore, they have tried to redeem the irredeemable. For that effort, I support them.

Hon. Temporary Deputy Speaker, many colleagues spoke ahead of me and said very important things about this Bill. If you look at most sections of the Bill, for instance, Clause 4, it talks about the issue of special interest groups. The special interest groups refer to women, persons with disabilities, youth, ethnic and other minorities and marginalised communities. I have a lot of problems with trying to legislate to help women. This fallacy that women are the

weaker gender has lived with us for so long and our sisters have taken advantage of it to the exclusion of the male members of the society.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Kamket, we have intervention from the Member for Ijara.

Hon. (Ms.) Sophia Noor (Ijara, PDR): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. Is the Member in order to say that women are weaker? We are not weak and we are not asking for any weakness. We are not begging anything. It is not right and he is not in order to say that.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Your point has been passed across.

Hon. (Ms.) Sophia Noor (Ijara, PDR): We must respect both genders. I respect the Member who is contributing. We will not take it lightly when he talks with ill intention on issues of women.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. Hon. Wang, you cannot be on a point of order because the Member for Ijara was on one. Unless you want to say you are speaking on a point of information.

Hon. Kassait Kamket (Tiaty, KANU): I am speaking very positively about women. It is only that she is not patient enough to listen. The fallacy that is being spread that women are the weaker gender is something that has been misused. It is a fallacy to say that women are the weaker gender. That is what I am saying.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): There is a point of order by Hon. Wang.

Hon. (Ms.) Gladys Wang (Homa Bay CWR, ODM): On a point of information. Thank you, Hon. Temporary Deputy Speaker for indulging me. Is the Member in order to insinuate...

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Which Member?

Hon. (Ms.) Gladys Wang (Homa Bay CWR, ODM): The Member for Tiaty, Hon. Kamket Kassait. This tall man from Pokot, is he in order to insinuate that women have been taking advantage of a fallacy that they are the weaker gender when, indeed, women are greatly disadvantaged by the placing of society as far as politics is concerned? We know that in other spheres of society, women are equally disadvantaged. Women have to leave their homes and run to other places. So, insinuating that women take advantage of a situation is wrong. I urge that he withdraws that very blasphemous statement and apologise to the great women in this House and the women of Kenya.

(Laughter)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Wang, you were doing very well until it became a point of argument. This is a House of debate and as a Member, you are free to debate freely. Hon. Kamket, carry on.

Hon. Kassait Kamket (Tiaty, KANU): *(Technical Hitch)* They have sabotaged my microphone.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Nobody can sabotage your microphone. You are out of order.

Hon. Kassait Kamket (Tiaty, KANU): Please, add me more time. I do not even want to say a lot.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): You called for the points of order. So just proceed.

Hon. Kassait Kamket (Tiaty, KANU): Women are actually the stronger gender and to go ahead and legislate further and further for them is what constrains me even as much as I support the Bill.

One of the reasons I support this Bill is that when we speak about marginalised communities, ethnic and other minorities, I realise something. I come from the great County of Baringo and we have a very small community called Ilchamus made up of very beautiful women. I think they have some of the most beautiful women in this country. They have some of the brightest professionals wherever they have served. They have done so well in the Government. However, they have not had the chance, for instance, to be represented in Parliament by one of their own. They have had the unfortunate situation of being represented by very incompetent people just because of tribe like the current Member of Parliament. So, if we pass this Bill, we will have such people represented in this very august House of the Republic of Kenya.

Clause 20(2A) of the Bill states that a political party participating in an election shall procure and fund the access of its special interest groups' candidates to media coverage. This is what I was saying earlier that the Committee is trying to legislate beyond the call of duty. Really, this is going beyond. It is proposing to give the special interest groups media coverage beyond the other candidates.

In short, the problem with this country currently is the Constitution that we gave ourselves. However much we try to bring pieces of legislations like these one, the biggest problem is the Constitution of Kenya, 2010. The constitution-making process was hijacked by activists, lobbyists, busy-bodies and other characters who wanted to participate in governance through the backdoor. We are lucky that one of the people who sat in the making of the Constitution is the Chairman of the CIOC, who is now bringing a Bill to re-write the wrongs they made. We are lucky because they are here with us. In my view, we will try. We will go ahead with these Bills, but ultimately, we must go back to the Constitution. We must relook at the Constitution that we gave ourselves. I am happy the Building Bridges Initiative (BBI) process is coming to a close soon and we will have their report. Therein is the place where we will right the wrongs that were put in the Constitution of Kenya, 2010.

I beg to support.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. I am wondering how you measure beauty. I thought all women are beautiful. Member for Seme.

Hon. (Dr.) James Nyikal (Seme, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to contribute. Like everybody else, I want to congratulate the Committee for the work it did. It recognised that Article 100 of the Constitution has not been implemented and went ahead to bring this Bill. The Fifth Schedule of the Constitution provides for dutiful implementation of the representation of special interest groups laws. That was to be overseen by the Commission for the Implementation of the Constitution (CIC). When it ceased to be, we did not look deeper into the Constitution.

(Hon. Jeremiah Kioni consulted with two Hon. Members)

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Hon. Temporary Deputy Speaker, I want the Chairperson of the Committee to listen to this.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): The Chairperson is listening. I must congratulate him. He has been here since 2.30 p.m.

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Temporary Deputy Speaker, I congratulate him as well. He was distracted. After the CIC ceased to be, nobody looked at the Constitution. This is the first time the Committee is dealing with it. I want to encourage this hardworking Committee to look at other parts of the Constitution that need enactment of laws like Articles 27 and 81 although in these cases, they do not say “Parliament shall.” It is the State that is supposed to take measures, legislative or otherwise. If that is done, it will make the Constitution a more progressive document.

There are two basic issues that are coming out. These issues come from what could be a defect in the Constitution. This Committee has come up with a Bill and we have no option, but to live with it. One of them is the definition of “special interest groups”. As everybody has said, the inclusion of women has a problem. Women are 51 per cent of the population. Within the youth, women are half. So, if you take a quarter and a half of women, you will only have one quarter of the population that is not in the “special interest groups.” That is not to say that affirmative action is not needed for women, it is needed but if you look at, for example, Article 27 of the Constitution, it is clear. It has provided for affirmative action. It has stated clearly that women and men shall be treated in the same way. I do not think it was necessary to bring women into the special interest groups. That is what is bringing a challenge. It has been repeated all through in the Constitution.

The other basic issue from the Constitution is inclusion of numbers to be achieved through an electoral process. There is no way you can predict a number through an elective process. The third issue that we must accept is that once we agree that we are going to give affirmative action to a group, particularly if the group is defined as small, we cannot turn around and say, for example, if you give them finances, we are discriminative. Affirmative action by itself is discriminative in favour of an identified group. If we look at those three issues, we will find it easy to deal with this Bill. Some of the issues cannot be dealt with through the Bill. We will have to go back to the Constitution. We cannot achieve the two-thirds gender rule because it is a number that you cannot get through an elective process. You must institute an administrative process like in Article 177 of the Constitution that deals with the membership of county assembly. So, if those three issues will be taken into consideration, I will support the Bill.

There are a few things that I will point out from the Bill. Clause 5 says that you will have disaggregation of data on the voters roll on the basis of all categories of special interest groups. What I am wondering is whether we are going to look at the voters register and say, for example, that these are women or these are people with disability. Of what use will that be? They are not going to vote for themselves. They are voters like anybody else. So, that is something that we need to correct. Under the same clause, there are proposals that I like, for example, sub-clause (d) that says communication modes should be accessible to persons with disabilities. That is important. If you put out materials in one format, they may not communicate to persons with disabilities. So, you may need braille, sign language and talking machines. The same is provided in Clause 8(a) which talks about posting information on websites in a manner and form that is accessible to all persons including special interest groups. However, there is a problem in the

same clause. If you say: “all persons including special interest groups,” the aspect of disability disappears. You are also including women there. There is nothing special in publishing materials in a way that is accessible to women. They do not have physical disability. Those are the few areas that we need to look at.

Clause 9 addresses the Political Parties Fund. Clause 9(1)(a) talks about 20 per cent of the Fund being distributed proportionately to political parties based on the number of candidates of the party from the special interest groups elected. That is acceptable. It will be done after elections. You can work out what proportion that is in that group. In Clause 9(2)(a), it says that a political party shall be entitled to receive funding from the Fund if not more than two-thirds of its registered office bearers are of the same gender. The office bearers are elected. The parties will have a lot of difficulty in ensuring that they are two-thirds. If you include governors and MCAs, they are all elected. How will you, as a party, ensure that you have such a ratio?

If you go to the Elections Act, you will get the same thing on numbers. One-third of its nominees for parliamentary and county assembly elections are supposed to be of either gender. What nomination process are you going to use? You cannot get such a ratio through an elective process in nomination.

I support the Bill. The Committee has done a lot of work, but it is suffering from defects that arise from the Constitution. The Committee can, as this process continues, help this House by going through the Constitution and getting areas that need to be corrected, so that they are made part of this Bill. Everyone has agreed on the clause on violence. There is no doubt that when violence occurs during elections, women are disadvantaged. We agree on that. I support that bit.

With those remarks, I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Sophia Noor.

Hon. (Ms.) Sophia Noor (Ijara, PDR): Thank you, Hon. Temporary Deputy Speaker, for giving me a chance to contribute to this very important Bill. I want to first thank the Committee, more so, the Chair, Hon. Kioni. Hon. Kioni knows when we were doing the final touches on the Constitution, being one of the framers of this Constitution, we worked with him. We were 27 Members of that Committee. When we were putting this particular Article in the Constitution, we knew what we were doing. We knew if the 27 of us would not come back to the House, then we would have people who would implement it and pass legislation that would back up the Constitution.

Article 100 of the Constitution requires enactment of legislation to promote representation of women, PWDs, youth, minorities and marginalised communities. According to the Fifth Schedule, legislation is required to implement Article 100 of the Constitution in order to promote representation of special interest groups. This was supposed to be enacted by 2015. Look at the time we have taken. The Constitution has given us a timeframe for every Article that is in the Constitution. We have taken so long. About 2015 was the right time we were supposed to have this piece of legislation, but because of people who did not understand the treatment of Article 100, they delayed and opposed the enactment of the legislation.

One thing that I want to correct is what Hon. KJ said about his reservations particularly on the issue of which constituency will be reserved for special interest groups. This legislation is not saying that there will be a special constituency reserved for special interest groups. The Bill is talking about special interest groups who are not represented in this House, just the way the

parties nominate 12 Members to this House. This is to treat the problem that we have with minority groups, PWDs, women and youth so that we have adequate representation of these groups. This legislation is not saying that we will reserve Dagoretti South Constituency for either a woman or a PWD. So, when you have reservations on the legislation because you fear your constituency will be reserved for either a woman or a PWD, then you have not gone through this legislation properly.

When the Committee is amending the Persons with Disabilities Act of 2003, it is talking about promotion of PWDs for inclusion in decision-making bodies. The council can promote, through civic education, sensitise communities and mobilise. That is what we want to see in the legislation, so that they can promote properly.

The other thing is where they say that we need to put in place communication systems for PWDs, particularly the hearing and visually impaired, so that we can have proper communication systems within the electoral system to encourage and promote participation of PWDs. In the amendment of the IEBC Act of 2011, interest groups are well defined in the Constitution. Article 100 has already defined them. Why do we need to redefine it? If we let another body to redefine them, they may use their own language. The Constitution is the supreme law of this country and it has given a clear definition. Who are these people? They are women, PWDs, youth and minority communities. This is what it says. So, the Committee needs to relook at that.

The proposal that requires voter education is perfect and in order. For people to participate properly, there needs to be a lot of civic education, so that people can be reached through social media, mainstream media and through public participation. Public participation is a key principle in our Constitution. The Constitution says that we must give people a chance to contribute to anything that concerns their lives and livelihoods and the decisions that are going to be made within the political arena. Public participation is key. So, I agree with the Committee in having civic education.

The other important provision is on political parties. Political parties are the small animals that mess up the election process in this country. They are owned by individuals who have the capacity and resources and can manipulate party nominations the way they want. We have seen the problems women have gone through in political party nominations. We have seen what happens. We know the calibre of women who are qualified, who are experts, who you know are on top of everything, but when it comes to political party nominations, they get challenged. So, we need to have tough laws on political parties, so that we can create an enabling environment for women within those political parties. If we do not have laws that will promote the interest of women within political parties, then it is going to be a problem. Some of us miss nomination by our political parties and have to use small parties at the end of the day. My political party was two months old when I joined it. So, what I am saying is that women are disadvantaged at all levels of political parties. I ask my brother with whom we worked together in the 10th Parliament and we have done a lot in terms of advancing the interests of women in this country, to relook at the provisions. I am going to do my research and bring amendments, so that we can tighten the provisions on political parties, so that political parties can have discipline.

The other issue is election campaign financing. People have different capacities of financing their campaigns. We must have a competitive platform, so that everybody has equal

platform to use resources that are limited and capped. Every political party or individual can use resources with certain limits, so that you have equal platform to compete.

On election offences, the Committee has done a good job and I want to thank them very much for bringing this amendment, which is strong.

The Temporary Deputy Speaker (Hon. Jessica Mbalu): Your time is over. I give the Floor to the Member for Bomachoge Borabu.

Hon. (Prof.) Zadoc Ogutu (Bomachoge Borabu, Independent): Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity to contribute to this amendment on the implementation of Article 100 of the Constitution. I begin by saying that this is a very important step by the Committee to bring these kinds of guidelines on how best this Article can be implemented. The suggested amendments bring a lot of opportunities for us to reflect on the realities of how this Article can be implemented. Having listened to the Members, I want to make some comments.

First, I am very positive about the issues of discipline that the amendments will bring and the responsibility that has been given to parties to ensure that discipline is maintained by the various candidates for them to be allowed to participate in elections. I have a number of reservations. I start my reservations from what the Committee has presented as special interest groups. I find a disconnect when you look at the Constitution at Articles 95 and 97 which talk of special interests and here, we are talking of special interest groups. That allows for a new dimension of definition. In the definition of special interest groups, about six categories have been identified where we have women, persons living with disabilities, youth, ethnic and other minorities and marginalised communities.

The first question I ask is: When you look at the proposal in Section 17 of the Elections Act, which has been well put by the Members, how are you going to ensure that at the end of the day, the five groups that have been identified as special interest groups are represented proportionally in Parliament? We are talking of an elective process that will be used for nomination. What of a situation where you find consistently only women are nominated when parties put proper mechanisms in place? What about a situation where you may have women and youth nominated consistently, so that the two-thirds of the nominees through an elective process from the five groups is a big dream? The requirement of the 5 per cent of nominees from the five groups is also a tall order. So, we need further thought on how to ensure that the elective process in nomination picks the various groups for representation in this House.

The other problem I have is funding. I am very happy that political parties are required to support special interests. What will be the criteria and at what stage will the political parties begin to fund special interest groups? Is it at the preliminaries or after the preliminaries? It needs to be clear. Otherwise, there stands a chance for political parties to abuse these sections of the amendment.

Hon. Temporary Deputy Speaker, I support these amendments for giving us opportunity to engage and reflect on how it is difficult for us to implement Article 100 of our Constitution.

I thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let us have the Hon. Member for Samburu North.

Hon. Alois Lentoimaga (Samburu North, JP): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. I also want to contribute and support the Bill. I thank the

Committee for coming up with this Bill which has taken so long since we could have done this long time ago, probably a year after the promulgation of the Constitution. Nevertheless, it is not too late. We will still go through it and support it.

For the last seven years, we have just been talking about gender balance. It was important for our sisters to be included. It is all about interest. To me, gender balance is crucial because every gender has their own interest and they know themselves better. For example, women have their own special roles. They have a special role and they know it better. For example, the activities they do are different from those of men. So, they would like to get a position where their voices are heard and they can make decisions for the particular activities that matter to them.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Member for Samburu, this Bill is about representation.

Hon. Alois Lentoimaga (Samburu North, JP): I am coming there. So, the issue of representation is about voices such that someone has to be positioned to represent certain groups, so that they can make decisions on behalf of those groups. I support this Bill because it supports the representation of women and youth.

We have also talked about marginalised groups. This country is divided into various categories. There are people such as the Ilchamus, Elmolo and Ogieks who have never been represented in decision-making positions. They are represented by other people. There are also communities which live in inaccessible places and they are also not represented. Sometimes when you look at the pastoralist communities living in northern Kenya, even if they are represented in Parliament and also in counties, we still have a lot of issues that are not managed through political representation because of our nature. For areas such as Samburu, Marsabit, Isiolo and North Eastern, although we have representation, other Kenyans do not understand us well. We would like to be represented more.

For example, because of lack of representation and lack of our voices being heard, they brought the Equalisation Fund because we were neglected by the previous Governments especially by the colonial Government. We were neglected and most of our counties were closed. So, even during the LEGCO, the first political arrangement in this country, those counties never benefited from representation as well as from resources of this country. Some people are not counted well just because their voices are not heard. There is also the issue of perception where our people are considered as just existing for the sake of it. They can kill themselves, raid and do cattle rustling among themselves because it is their culture. So, if we have proper representation, people can explain themselves better. I was worried the other day about the *Punguza Mzigo* Bill since it would have marginalised us more. It would have marginalised us more by having one woman and one male Member of Parliament representing the entire of Marsabit or Samburu counties. We would have gone back to where we were before. It is good the Bill is dying because it would have marginalised us in terms of representation more than it is at the moment.

Our cultures are diverse and we need representation, so that we can fit in like other parts of the country. Certain areas are not accessible especially during the rainy season. So, representation will help the marginalised to be known in this country. Although youth has been represented in the Senate, their population in this country is so huge. So, this Bill should focus on how we can turn around and ensure the youth are represented more than other groups since their population is higher compared to other age sets in this country.

With those few remarks, I support this Bill. When it comes for Third Reading, we will scrutinise it more and make amendments where necessary. Thank you, so much.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well, Member for Samburu North. Let me have the Member for Kiambu County, Hon. Wamuchomba Gathoni.

Hon. (Ms.) Gathoni Wamuchomba (Kiambu CWR, JP): Thank you, Hon. Temporary Deputy Speaker. Indeed, I have waited to give my weight to the amendments in this Bill. I want to congratulate the Committee through the Chair who is present for the efforts to fill the gaps identified in their proposed amendments. They are quite weighty and are deemed to bring a lot of change to the way we handle political processes touching on the special groups in Kenya.

As a woman, I must confess that the weight of political violence and use of derogative language during political competitions in this country is something we cannot ignore. I am a victim and I must confess it is not a good feeling. Some of us are known to wear a thick skin when it comes to some of these processes. So, it is our duty to ensure that we protect the weaker ones who are known to give in to the language and violence meted out on women especially during political competitions.

As I support the amendments, I will be keener to know how the Bill will protect women politicians especially when they are elected. This is not just about when there is political competition, but when they are elected. Recently, we witnessed some Members of Parliament using vulgar language against elected women who have political space in leadership. We all look at the courts waiting for them to protect women. Also, on our social media platforms, a lot of bad language is used especially on women in politics and political leadership spaces.

I would be very much interested to know how the amendments in the Bill will cushion women in politics against such kinds of attacks. I come from a background or region where women's space is mostly equated to the kitchen or household and is not expected to overflow to political leadership. In fact, in my backyard, a woman never arrives. A woman is always on the move. Where she is born, she does not belong in that home, culturally, and where she is married, she neither belongs there culturally. In fact, many proverbs are used to insinuate that a woman never arrives.

Women are victims of what I call infantilisation. They are always graded like children or infants. We hear so often women being referred to as infants in the way we categorise them. For example, when you talk about special groups, they are women and children. Why do we not say men and children? Women are grouped with children even when we have political activities like food rationing in villages. They are grouped with children and that is called infantilisation. I am privy to this kind of information because in as much as people do not think politicians are scholars, I am a scholar and I am pursuing my Doctor of Philosophy (PhD) on women issues. We need to speak out on what is happening on the spaces of women, not only in the political field, but also in our cultural setting.

Women are victims of what I call objectivation. Women are given value on the basis of how many cows were paid for their dowry or how many goats are going to be paid for their dowry in future. When they get into the homesteads of their husbands, they are viewed as objects based on the price that was paid. Therefore, their space even in politics is viewed through the same lenses. Their space for political activations is limited.

As I support this Bill, I want to urge the House, especially when it comes to the Third Reading, to allow the Bill to give space to how we can protect women in politics. In as much as

we say that women are part of special interest groups, as a scholar, I want to say something which is a bit controversial, but is the truth. Women are the majority when it comes to the Kenyan population, but it is not convincing enough that even with the huge population, women do not occupy many political leadership slots. That is a problem without a name.

Historically, we had a feminist called Betty Friedan who wrote a very popular book known as: *The Problem That Has No Name*. This was during the women's suffrage movement in the United Kingdom (UK) and the United States of America (USA). She said that women were many and they provided labour in the plantations and upcoming industries and could not vote. She started a movement that gave women the right to vote. In Kenya, we have so many women in our backyards. In fact, they are the majority of the population, but they have not achieved the political threshold that we would expect from them.

We still cannot identify one single problem that makes women not to occupy the spaces. Therefore, I say this is a problem we have not been able to identify by name. Please allow me to ask the Chair of the Committee that has done this work to try and give women more cushion especially when it comes to the names and branding we give them in political leadership. Like I said, I am a victim. Women are not supposed to know anything in politics and this is the cultural lenses through which we see them. When you speak loudly and boldly like some of us do, we are called names. I am a victim and I do not shy away from saying what I know or believe in.

With the backlash that I get sometimes, I am ready for it because I know if I do not do it, there are women who have aspired to become what I have become with my little achievements, but they are kept off because of the kind of attacks we are receiving.

With those very many remarks, please, allow me to support and congratulate the team for the wonderful and amazing work they have done. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): That was very moving. Women are always moving. They do not arrive. Next is the Member for Mathare, Hon. Oluoch.

Hon. Anthony Oluoch (Mathare, ODM): Thank you very much, Hon. Temporary Deputy Speaker for giving me the opportunity to lend my support to this very crucial Bill. I am a Member of this Committee and I sat here very patiently to listen to some of the issues that have been raised. As I make my contribution, allow me to begin by trying to respond or to disabuse some of the notions that have been advanced in opposition to this Bill.

I listened to the Member for Rarieda, Hon. Otiende Omollo. His concern has been repeated in different ways by Hon. Kamket about the possibility of over-legislating in respect to women. In respect to Hon. Otiende Amollo, he raised the issue about the possibility of this Bill flying against the provisions of Article 27(4) of the Constitution, in particular the possibility that we could be discriminating other persons in the process of trying to legislate to provide or make dispensation for certain groups. I also heard him saying that in respect of Article 38 of the Constitution, this would disenfranchise voters in respect of the ability to choose persons of their choice.

I begin by saying that it is the duty of CIOC. If you read Sections 4 and 5 of the Sixth Schedule, one of the roles of the CIC was to consider and look at the problematic aspects of implementation of the Constitution. Listening to the debate, I think we will all agree that we inherited a very good Constitution, but with a lot of problematic if not contradictory provisions. Article 27 of the Constitution will tell you that you cannot discriminate persons on the grounds that are set therein. Age relates to youth. The question of gender relates to women. The question

of persons of ethnic and other minorities relates to persons with disabilities that we are speaking to. Article 54 speaks to the questions of persons with disabilities. Sub-Article (2) sets a certain threshold and says that 5 per cent of that has to be allocated to persons with disabilities.

I want to restrict myself, in respect to the first concern, to the issue about the gender question. I agree with the Members who have said that the Bill under Article 100 is not about women. It is not a gender Bill. This Bill is about representation of the categories of people that have been placed in that specific category. In respect of that, I also want to respond to the persons saying that we are over-legislating in respect of women. I think it is Hon. (Dr.) Nyikal who said that we did not have to mention women because they are already under Article 81(b) and other provisions. The responsible response that I have to that is that we are effecting legislation to put into effect Article 100, which specifically highlights the names of the persons or categories that are under that category. Women happen to be one of those.

I also want to bring to your attention the issue of women. Notwithstanding the fact that I have said that this Bill is not about women, let us consider that provision for a moment. The 11th Parliament attempted to do two pieces of legislations to put into place the two-thirds gender rule and we failed. The 12th Parliament, recently, I think in the Second Session, attempted to do this and we failed. Now the question arises. I am going back to the concerns about Hon. Otiende Amollo that we may need to bite the bullet and go back to the Constitution itself and confront the questions and contradictions that are there. I want to bring to the attention of the House that as we wait to confront that which is in the Constitution in terms of contraction, remember that we have tried a constitutional amendment in respect of the two-thirds gender rule that was brought by the Leader of the Majority Party and you needed to raise two-thirds in order to meet that threshold. So, the questions that this House has to deal with against a petition and a possible writ by the Chief Justice for the dissolution of this House is whether we should wait. Article 100 provided us with the opportunity to deal with it. As we deal with other minorities and other categories in that provision, we should also sanitise and deal with the question and the deficit on the issue of the two-thirds gender rule.

I also want to deal with the concern that has been raised here on the issue of access to media. Let me admit that there may be discussions and a debate to the extent to which we want to cover the question of women. That concern has been raised here. Specifically, it has been raised in the context of whether all women are so marginalised or are in that category of special cases that they need to be covered under this. That is a debate that we can have. We can talk about either tightening this or putting in place regulations so that this is not just an open *carte blanche* that may allow women to sit back and wait for the opportunity to be covered under the special interest groups. That is a discussion we are open to. It may be dealt with either by way of regulations or some amendments at the Third Reading.

There has been concerns about financing. Again, this is a debate that we can have. When you are talking about lifting people who have been marginalised or left behind for certain historical reasons, one of the ways that was open to us in which you are able to encourage these people to participate and sit in the same place in terms of representation was to use the question of election financing. You will see that we have extended that argument in respect of political parties. Political parties that encourage representation of women that may help us to draw closer to the two-thirds gender rule or to fill that gap are then able to share a certain percentage in terms of the political parties funding. There may be need for us to tighten the question as to whether

money should be specifically directed to pay them. That may be abused, but you cannot rule out and throw away the fact that that incentive to political parties and the need to uplift women who are in that special interest category in terms of financing is something that we need to completely embrace.

There is the issue about access to media. This has raised problems in terms of how you deal with an opponent of yours that has been exposed to media to your disadvantage. Again, those are things that you can qualify in terms of who exactly would be entitled to this access to the media, what extent of the access to media and at what point that will become a disadvantage to the other members who are also participating in elections.

Having said that, I want to make a few comments in respect to what the Bill is trying to do. The Persons with Disabilities Act is one of the Acts, among other Acts, the Bill proposes to deal with. It may interest us to know that it is seeking to make amendments to the Persons with Disabilities Act, so that persons with disabilities are considered as one of the persons that are considered in terms of Article 100 of the Constitution. It seeks to promote the inclusion of persons with disabilities in decision-making.

One of the other things that this Bill seeks to do in terms of persons with disabilities - which is an obligation of the IEBC in terms of the Elections Act - is to ensure that the voter register has desegregated data that will help in planning for elections, nominations, activities and functions that bring persons with disabilities up to speed in terms of their ability to compete.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let us have the Member for Ainabkoi, Hon. Chepkut.

Hon. William Chepkut (Ainabkoi, Independent): Hon. Temporary Deputy Speaker, I will be very brief. The Representation of Special Interest Groups Laws (Amendment) Bill is great. In the spirit of this amendment Bill, the deficits should be addressed. At the same time, we should seek progressive laws. Article 100 of the Constitution addresses the youth, persons with disabilities, ethnic minorities and marginalised communities. Marginalised communities are like the Sengwer in Elgeyo Marakwet County, the Ogiek in Nakuru and the Ilchamus in Baringo, to mention a few.

The youth, who constitute 70 per cent of the total population of this country, must be taken into consideration when it comes to laws. The great athlete, Eliud Kipchoge, trains in Chirchir Centre, Kaptagat in Ainabkoi Constituency. As much as he resides in Nandi, he trains in my constituency. I tabled a Motion in Parliament that athletes who bring glory, honour and recognition to our country must be rewarded and remunerated. Having said that, Kipchoge is a great man. When it comes to rewarding athletes, they have been appointed as ambassadors, but I want Kenya to make history by nominating him as a Member of Parliament. It is true he is part of the special interest groups.

Hon. Temporary Deputy Speaker, you are a great person. Members have talked about political parties funding. They have talked about women. Women constitute 52 per cent of the total population of this country whereas men constitute 48 per cent. I have listened very carefully. It is all about globalisation, civility and civilisation. There is no violence. I do not agree because the long arm of the Government is there to protect us as per the Constitution. We, as Members of Parliament, respect and uphold the supremacy of our constitutional institutions.

When it comes to finances, it should not be that the two big parties are the ones which are funded. We want fairness and equality in distribution of resources. Again, through the Chair, I

want us to have a progressive tax regime that can be enhanced, so that the poor can come up. Those who have a lot must pay a lot, so that the Government can move forward.

Having said that, I subscribe to unity in diversity. We love women because they are great people in the world. All of us, even presidents, cherish, value and respect women. What issues are you crying about? We respect you. We honour you. Even Eliud was born by a woman. Women are great leaders. We respect you. When competing for seats, Hon. Alice, we want fairness. Anyway, I have finished.

I support the amendment Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Alice, what is your point of order?

Hon. (Ms.) Alice Wahome (Kandara, JP): Hon. Temporary Deputy Speaker, the time is over, but I was raising an intervention to the mention that women are crying. I do not know what he means when he says that women are crying. He has forgotten that the Chair at this moment is a woman. His statement is demeaning. I ask that he withdraws that statement. I know the Speaker has no gender, but we must recognise you.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Wahome, you are right, but at the point of intervention, the Member had already completed his contribution. It is good that you said that you intended to raise an intervention.

Let us have the Member for Wajir South.

Hon. Mohamed Mohamud (Wajir South, JP): Thank you, Hon. Temporary Deputy Speaker. I appreciate that I have the time to support the Bill. Our Constitution is clear and wholesome. Therefore, Article 100 of the Constitution requires Parliament to enact legislation that promotes the representation in Parliament of minority groups, in particular, people with disabilities, the youth, ethnic minorities and marginalised communities as well as women. Given that that Article is already in provision, it is way overdue. The year 2015 was the expected date within the five years that this Bill should have been proposed and legislation put in place.

I have a very short time to speak on this. Ethnic minorities will be considered in our Constitution.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Member for Wajir South, we will have resumption of debate on the Bill in the next sitting when it will be slotted on the Order Paper. You will have nine minutes to debate. Allow me to appreciate the Chairman. He has been here since 2.30 p.m. taking notes. We thank him for that.

Hon. Wahome, I see your request to speak. However, we are guided by procedures. The Members for Laisamis, Central Immenti and Kandara also want to contribute, but this is a House of procedure. Debate on the Representation of Special Interest Groups Laws (Amendment) Bill (National Assembly Bill No.52 of 2019) will continue.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Members, the time being 7.01 p.m., the House stands adjourned until tomorrow, Thursday, 17th October 2019 at 2.30 p.m.

The House rose at 7.01 p.m.