

PARLIAMENT OF KENYA
THE NATIONAL ASSEMBLY

THE HANSARD

SPECIAL SITTING

*(Convened vide Gazette Notice
No. 4005 of 26th April, 2021)*

Wednesday, 28th April 2021

The House met at 2.30 p.m.

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

PRAYERS

(Consultations)

Hon. Speaker: Honourable Members, there will be Communication issuing shortly. The Messages will also come shortly after.

PAPERS LAID

Hon. Adan Keynan (Eldas, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Estimates of the Recurrent and Development Expenditure for the Parliamentary Service Commission for the year ending 30th June 2022 and projections for financial years 2022/2023 and 2023/2024.

Thank you, Hon. Speaker. “*Inshallah*” is the right word.

Hon. Speaker: There are some Members who have pressed the intervention button. Hon. Ndindi Nyoro, what is it?

Hon. Ndindi Nyoro (Kiharu, JP): Hon. Speaker, we are queuing to vote “No” on the BBI Bill.

(Laughter)

Hon. Speaker: But you pressed the intervention button.

Hon. Ndindi Nyoro (Kiharu, JP): Hon. Speaker, we are just queuing, so that we get some time to reflect on the will of our people to vote “No” on the BBI Bill.

Hon. Speaker: Hon. Ndindi Nyoro, please, do not press the intervention button. I appreciate the enormity of the debate and I will strive to ensure that as many of you as possible,

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if not each one of you, has a chance to say what you have to say regarding the BBI Bill. Therefore, do not queue on the intervention button.

(Laughter)

You see, when he queues there, it is like he is on a point of order. In addition, the same must never be the case with Hon. Limo, Member for Kipkelion East. It must have been the same reason. Is it? Now you are okay. Hon. Members, the intervention button is for those who have points of order and matters like those. Hon. Duale suggests that that is also a place for emergency matters.

(Laughter)

We have not yet provided for that one in the Standing Orders, but maybe we will get another column for emergency.

Hon. Kareke Mbiuki.

POINT OF ORDER

GUIDANCE ON CONSIDERATION OF PETITIONS ON VARIATION OF BOUNDARIES AND REVOCATION OF PUBLIC FORESTS

Hon. Kareke Mbiuki (Maara, JP): Thank you, Hon. Speaker. I rise on a point of order pursuant to Standing Order No.83 to seek your guidance on the implications of Section 34(2)(a) of the Forest Conservation and Management Act, 2016 on the authority of this House to consider petitions for variation of boundaries or revocation of public forests in terms of Article 199 of the Constitution.

Hon. Speaker, Section 34(1) of the Conservation Management Act, 2016 provides that any person can petition the National Assembly for the variation of boundaries of public forests or the revocation of the registration of public forest or a portion of public forest. A petition, under Section (1), shall demonstrate that the variation of boundaries or revocation of the registration of the public forest or a portion of the public forest does not endanger any rare, threatened or endangered species or adversely affect its value as water catchment area or prejudice the biodiversity, conservation of cultural sites and protection of the forest or its use for educational, recreational, et cetera.

Hon. Speaker, a petition under sub-section (1) shall only be forwarded to the National Assembly on the recommendation of the service. Sub-section (3) says that a petition made under sub-section (1) shall be considered in accordance with the provision of the Petitions to Parliament (Procedure) Act and the Standing Orders of the relevant House. Sub-section (4) provides that the Cabinet Secretary shall, within 30 days of the petition being committed to the relevant Committee, make a recommendation on whether the petition should be approved subject to it being subjected to an independent environmental impact assessment, and public consultation being undertaken. The Act also provides that if the relevant Committee indicates, in its report, that the petition does not disclose ground for variation of the boundary of a public forest or the revocation of registration of a public forest or partitioning of a public forest, no further proceedings shall be taken.

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Finally, disclose a ground for the variation of boundaries of public forests or the revocation of the registration of public forests, or a portion of the public forest, the National Assembly or the Senate shall vote on whether to approve the recommendation.

6. If the resolution under 5(b) is supported by a majority of the Members of the National Assembly present and voting, the Cabinet Secretary shall publish in the gazette.

Hon. Speaker, as you are aware, the following petitions were forwarded to the National Assembly pursuant to Section 34(1) of the Forest Conservation and Management Act 2016 and subsequently committed to the Departmental Committee on Environment and Natural Resources for consideration pursuant to Standing Order No.227:

- (i) Petition regarding the de-gazettement of 400 yard-strip in Ngong Hills Forest for settlement by Hon. George Sunkuiya, MP.
- (ii) Public petition regarding mapping, demarcation and de-gazettement of land within Koderia Forest by Hon. Charles Ong'ondo Were, MP.
- (iii) Public Petition on gazettement of Kitalale Forest Settlement Scheme by Hon. Caleb Hamisi, MP.
- (iv) Public petition regarding settlement and compensation of families, dispossessed of land in Vihiga County by the Hon. Charles Gimose, MP.
- (v) Public alteration of the Marsabit Forest by the de-gazettement of 60 acres and de-gazettement of the entire 112,998.9 acres of the indigenous Mt. Kulal Forest by Captain Abdullah Molu Mamo (Rtd) and 42 others.

Hon. Speaker, the Committee is seized with the public petition on variation of boundaries of Ngong Road Forest to excise 34 acres of the area of land upon which KMA Estate, Langata Garden Estate, Langata View Estate, Sharon Estate and St. Mary's Estate, Forest Edge View Estate, Langata Women's Prison, Police Dog Unit, Bomas of Kenya, Kenya Broadcasting Corporation (KBC), Wildlife Clubs of Kenya and the Insect Physiology and Ecology are located pursuant to Section 34 of the Forest Conservation Management Act, No.34 of 2016 by Hon. Nixon Korir.

Hon. Speaker, allow me to, however, inform this House that to date, the Ministry of Environment and Forestry has been reluctant to respond to the said petitions on the ground that the petitions were forwarded for consideration by the National Assembly without the recommendation of the Kenya Forest Service as required under Section 34(2) (a) of the Forest Conservation and Management Act 2016.

Hon. Speaker, that is why we have a bone of contention because Section 34(2) (a) indicates that for any Member to forward any petition on the variation of boundaries, they must seek the consent and approval from KFS before the House is seized with that particular matter. That is why we are seeking your guidance so that you can guide us accordingly as a Committee on how we need to handle this issue.

A close reading of Section 34(2)(a) indicates that this provision requires all petitions for variation of boundaries or revocation of public forests must be approved by KFS before they can be considered by this House. It appears that subsection 2(a) is couched in mandatory terms to the extent that there is use of words:

“Shall only be forwarded to the National Assembly on the recommendation of KFS.”

Hon. Speaker, Article 25(2) of the Constitution provides that one of the functions of this House is to deliberate and resolve issues of concern to the people. Further, Article 119(1) of the Constitution provides that every person has a right to petition Parliament to consider any matter

within its authority including to enact, amend or repeal any legislation. A reading of Article 95(1) and 119 clearly reveals that the right to petition Parliament may not be stifled.

Hon. Speaker, we further note that Section 34(3) provides that a petition made under subsection 1 shall be considered in accordance with the provision of petitions to Parliament, (Procedure) Act and Standing Orders of the relevant House.

It is in this regard that we observed that neither the Petitions to Parliament (Procedure) Act nor the National Standing Orders of the National Assembly provide for the manner of consideration of petitions to vary boundaries of forests which in our considered opinion are not ordinary petitions and the Standing Orders ought to provide specifically how the House needs to process such petitions.

Hon. Speaker, the question that subsequently arises is: What rules and procedure does the House apply to process such petitions? Hon. Speaker, we know that Standing Order 1(1) provides that the manner with which Standing Orders does not specifically provide for, the Hon. Speaker has the discretion to determine any procedural question on how the matter shall be dealt with.

In this regard, Hon. Speaker, you have the discretion in terms of directing the House on how to discharge such petitions. So, I am standing here seeking your guidance so that you can guide us as a Committee on how we need to prosecute these issues of the petitions before the Committee when it comes to the variation of the various forest boundaries as petitioned by various Members.

I thank you, Hon. Speaker.

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

Hon. Speaker: I appreciate that we have been on some short recess and so you could have forgotten. Hon. Millie Odhiambo, he was on a point of order and so it does not help for you to rise in your place and start shouting point of order. I am sure you may have forgotten because of the few days, but now you can raise your point of order.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Speaker for reminding us that when we have been on recess. At times, we forget. Now that I am fully reminded, I just want to say that my point of order is not in relation to what the Member was saying.

There was a time I was charged almost Kshs500,000 because of a broken desk, but through your intervention, I finally did not get to pay. Where I am sitting, there is a broken desk and I am fearing Parliament might again presume that I am the one who has broken it.

(Laughter)

So, can the House take note that I have just walked in and there is a broken desk? I am not the one responsible, Hon. Speaker. As we are going towards the elections every penny counts and I do not want any of my money to be taken for a broken desk.

I thank you, Hon. Speaker.

Hon. Speaker: Can the Clerk, through the Serjeant-at-Arms, take note of that, so that appropriate remedial action may be taken?

Hon. (Dr.) Pukose, that matter now cannot be part of the debate. Let the Serjeant-at-Arms check and report to the Clerk for appropriate remedial action by this evening. All these are interventions.

Let us have Hon. T.J. Kajwang'.

Hon. T.J. Kajwang' (Ruaraka, ODM): Thank you, Hon. Speaker. I appreciate the point of order that has been brought forward by the Chairperson of that Committee. It is not my place to say because I can see the Hon. Deputy Speaker is in the House. However, I will say it because on behalf of the Rules and Procedure Committee, I need to let the Member know that this is an issue which we have exercised our minds on for a very long time. These are questions to do with petitions generally which would fulfill Article 119 of the Constitution.

Hon. Speaker, let me also tell him that the Committee has looked through Section 34 and the Standing Orders which would require petitioners to bring these matters to the House. Recently, about a month ago, the Committee approved suitable amendments to Section 34 of the Act including various amendments to petitions, Acts, legislation, and several pieces of amendments to the Standing Orders that in the process of time, were it not for the disruption of the COVID-19, it would have been before the House for First Reading.

So, this Committee is chaired by the Speaker himself. Your Committee is on top of this matter and very soon, there will be legislations that will be proposed specifically to deal with the question of Section 34 and how Kenyans can approach the Assembly for petitions under Article 119 and for other legislative purposes.

I thank you, Hon. Speaker.

Hon. Speaker: Very well. Hon. Mutua Barasa.

Hon. Didmus Barasa (Kimilili, JP): Thank you, Hon. Speaker. I just need your guidance. I am a bit worried because Hon. Babu Owino is not wearing a mask and he is sitting next to Hon. Godfrey Osotsi and Hon. Lilian Gogo, whom I have businesses to transact with next week and I do not want her to die. He can die if he becomes reckless. He should put on his mask. He was seen from the University of Nairobi yesterday and he could be a carrier of the virus.

(Laughter)

Hon. Speaker: Hon. Babu Owino is accordingly requested to have his mask on. Member for Ndaragwa.

Hon. Jeremiah Kioni (Ndaragwa, JP): Thank you, Hon. Speaker. I want to thank the Chair of the Departmental Committee on Environment and Natural Resources, for this point of order and point out that earlier on in the term of this Parliament, I filed a petition on behalf of the people of Ndaragwa, who desired a variation of a boundary, so that we can create a headquarters, an area that we have occupied since 1946. The direction that I was given is that I needed to go through the due procedure so that the Kenya Forest Service eventually recommends the petition to the House. I have done all that. We have spent a lot of money to get the documents done and they are now stuck with KFS. They would never recommend anything to this House. As you look at other provisions of law, it is important to know that which is provided for, that KFS must okay these petitions or requests for petitions. They are using that petition to deny us an opportunity to change the boundaries. It is not to change the boundary so that you allocate yourself land, but to change the boundaries so that we can accommodate headquarters, public facilities that Kenyans themselves have allowed.

This is a very crucial thing and if it is not dealt with, we can see a pile up of these issues. I believe if we get that guidance, the Committee can amend that section of the law so that we can ensure the desires of Kenyans are fulfilled. We are a case in point and we have done it the way we were told to do, but we are stuck two years down the line.

I thank you, Hon. Speaker.

Hon. Speaker: Finally, on interventions, Hon. Guyo Wario.

Hon. Ali Guyo (Garsen, JP): Thank you, Hon. Speaker. I also rise to support the point of order by the Chair of the Departmental Committee on Environment and Natural Resources, Hon. Kareke Mbiuki. I happen to be a Member of that Committee. We rely on the Cabinet Secretary to give directions. It is very unfortunate when the public relies on the National Assembly to get relief on public forest, yet the Cabinet Secretary is very arrogant. He does not consider Parliament as an institution. The Cabinet Secretary does not appear before the Committee. He just sends the Chief Administrative Secretary to appear before the Committee. We need your intervention on that.

I thank you, Hon. Speaker.

Hon. Speaker: Yet another intervention on the same, Hon. Nyikal?

Hon. (Dr.) James Nyikal (Seme, ODM): Thank you, Hon. Speaker. I also want to support that. I am not a lawyer, but what I find most interesting is that there is an institution which has to give somebody authority to petition the House. That is what I find most disturbing. I am advised by T.J. Kajwang' that it may be unconstitutional.

Thank you, Hon. Speaker.

Hon. Speaker: Well, I will issue a comprehensive response and guidance to that. Appreciating what Hon. T.J. Kajwang' said, remember it is still within the authority of the House to make and unmake laws. In fact, it sounds a bit tedious that a Member of the House of Parliament can even go to court to seek that a law be nullified when you can do it here yourselves. Be that as it may, you put those provisions in 2015 culminating to 2016. This is just to request Hon. T.J. because I may not be available most of the time, if you could move with speed so that Section 34 does not appear to frustrate the rights given to Kenyans in Article 119 of the Constitution although Article 119 is coached in terms that say, to petition Parliament to do anything within its power including to enact and repeal laws. So, I will request Hon. T.J. Kajwang' and the Deputy Speaker to move with speed and bring that amendment. I am aware of several of those kinds of petitions that are before the House and the Committee. We do not want to appear like the Committee is not working yet the Committee is arm strung by the provisions of the law that this House passed. There will be communication in that regard.

Hon. Members, before we proceed to the business on the Order Paper, allow me to read this Message from His Excellency the President.

MESSAGE

CONSIDERATION OF A NOMINATION FOR APPOINTMENT AS CHIEF JUSTICE

Hon. Speaker: Hon. Members, Standing Order 42(1), relating to Messages from the President provides that "the Speaker shall read to the House any Message from the President delivered to the Speaker for communication to the House."

In this regard, therefore, I wish to inform the House that I have, today, 28th April, 2021 (which happens to be my birthday) received a Message from the His Excellency the President conveying the nomination of the Hon. Lady Justice Martha Karambu Koome for appointment as Chief Justice of the Republic of Kenya and President of the Supreme Court. The Message also includes the Certificate of Presidential Nomination, the Judge's curriculum vitae, testimonial and recommendation of the Judicial Service Commission on the recruitment and selection process for the Chief Justice. This was submitted in line with the provisions of Article 166(1) of the

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Constitution which provides:

“The President shall appoint the Chief Justice and the Deputy Chief Justice, in accordance with the recommendation of the Judicial Service Commission, and subject to the approval of the National Assembly.”

The President therefore seeks the approval of the National Assembly on the said nomination.

Hon. Members, Section 5 of the Public Appointments (Parliamentary Approval) Act, 2011, provides that an appointing authority shall, upon nominating a person for an appointment to which this Act applies, notify the relevant House of Parliament accordingly. Consequently, a proper notification in line with the above provision has been received.

Hon. Members, Section 8 of the Public Appointments (Parliamentary Approval) Act, 2011 further provides that the relevant Committee should table its report for debate and decision within 28 days from when the notification of nomination is given.

Hon. Members, Pursuant to the provisions of Standing Order 42(3)(c), I now refer the Message, including the curriculum vitae of the nominee, to the Departmental Committee on Justice and Legal Affairs to undertake the necessary approval hearings. I wish to guide the Committee and the House as follows:

- (i) The Committee should notify the nominee and the general public of the time and place for holding the approval hearings expeditiously. The notification should, therefore, be made immediately; and,
- (ii) The Committee should thereafter commence the necessary approval hearings and table its report on or before Tuesday, 25th May, 2021 for debate and decision by the House.

Although the Committee and the House have 28 days to consider and make a decision on the nomination, in view of the compelling public interest and the unique place of the office of the Chief Justice within our constitutional and legal order, the Committee is requested to consider the nomination on a priority basis.

I thank you!

SPECIAL MOTIONS

APPROVAL OF APPOINTMENT OF PROF. FATUMA N. CHEGE AS PRINCIPAL SECRETARY

Hon. Speaker: The Chairperson, Departmental Committee on Education and Research, Hon. (Ms.) Florence Mutua.

Hon. (Ms.) Florence Mutua (Busia CWR, ODM): Thank you, Hon. Speaker. I beg to move the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Education and Research on the vetting of Prof. Fatuma N. Chege, PhD, laid on the Table of the House on Wednesday, 28th April 2021.

The Departmental Committee on Education and Research conducted an approval hearing for Prof. Fatuma N. Chege, nominee for appointment to the position of Principal Secretary.

Hon. Speaker: Sorry. Hon. (Ms.) Florence Mutua, do you have the Order Paper?

Hon. (Ms.) Florence Mutua (Busia CWR, ODM): Yes.

Hon. Speaker: We want the *Hansard*, the House being a House of record...

Hon. (Ms.) Florence Mutua (Busia CWR, ODM): Thank you, Hon. Speaker. I beg to move the consideration of a nominee for appointment as Principal Secretary in the State Department for Implementation of Curriculum Reforms.

Hon. Speaker: Hon. (Ms.) Florence Mutua, the format is as follows: 'I beg to move that taking into consideration the findings of...' Then it will flow.

Hon. (Ms.) Florence Mutua (Busia CWR, ODM): Hon. Speaker, I have done that.

Hon. Speaker: Not yet.

Hon. (Ms.) Florence Mutua (Busia CWR, ODM): Okay. Hon. Speaker, I beg to move the following Special Motion:

THAT, taking into consideration the findings of the Departmental Committee on Education and Research in its Report on the vetting of a nominee for appointment as Principal Secretary in the State Department for Implementation of Curriculum Reforms, laid on the Table of the House on Wednesday, 28th April 2021, and pursuant to the provisions of Article 155(3)(b) of the Constitution and Sections 3 and 8 of the Public Appointments (Parliamentary Approval) Act 2011, this House approves the appointment of Prof. Fatuma N. Chege, PhD, as Principal Secretary, State Department for Implementation of Curriculum Reforms.

Hon. Speaker, the Departmental Committee on Education and Research conducted an approval hearing of one Prof. Fatuma N. Chege, nominee for appointment to the position of Principal Secretary State Department for the Implementation of Curriculum Reforms in the Ministry of Education on 1st April 2021. I want to confirm to the House that the Clerk of the National Assembly followed the right procedures, which I will skip here. The Clerk invited the public to submit memoranda by way of written statements on oath affidavits on the suitability of the nominee. I can confirm to the House that by close of the deadline, the Committee had not received any submissions in support or in contention on the suitability of the nominee for appointment as the Principal Secretary for Curriculum Reforms.

Further, in fulfilment of the provisions of Article 118 (1)(b) of the Constitution, Section 6(4) of the Act and Standing Order No.45(3), I confirm that the procedure was fully met. The nominee finally appeared before the Committee on Thursday, 1st April 2021 for the approval hearing in accordance with the provisions of the Constitution. The Committee made the following observations:

The Committee considered the nominee's duly filled questionnaire in accordance with Section 6(8) of the Public Appointments (Parliamentary Approval) Act, Curriculum Vitae's report from relevant authorities, oral submissions during the approval hearing and made the following observations:

1. The nominee has a wide and very rich academic background with a certificate in teacher training, Diploma in Education, Bachelor of Education, Master of Arts Education and PhD in Education with specialisation in gender and education.
2. The nominee has relevant experience and management skills having served in the public service for the last 48 years and, currently, she is the Deputy Vice-Chancellor at Kenyatta University administration.
3. The nominee has 30 years of teaching philosophy and sociology of education and qualitative research methods in the University.
4. She is trained and a certified teacher with five years teaching experience at O-levels of basic education in Kenya and two years tutoring in teacher training colleges.
5. The nominee served as an elected Chairperson of the Department of Education Foundation for four years and was an elected Dean School of Education for six

years, Chairperson of the Kenya Education Management Institute, Chairperson of the Kenya School of Law and a member of several boards.

6. The nominee served as the Chairperson of the Presidential Taskforce on Implementation of Curriculum Reforms.
7. The nominee demonstrated adequate leadership and extensive research skills gained during her long academic period.

The procedure that has been followed to arrive at the nominee is provided for under Article 155(3)(a), read with Section 47(3) of the Public Service Commission Act No.10 of 2007. It was adhered to by the selection panel and a total of three nominees were presented to His Excellency the President by the Public Service Commission.

The President nominated Prof. Fatuma N. Chege for approval by the National Assembly and subsequent appointment as Principal Secretary, State Department for Curriculum Reforms, pursuant to Article 155(3).

Hon. Speaker, we went through the oral submissions and found out, through the evidence submitted by the nominee during the approval hearing, that she met all the constitutional and statutory requirements necessary for appointment as Principal Secretary as provided for under Article 155(a) of the Constitution.

Today, Kenya is developing a new curriculum for the new era. The National Policy on Curriculum Reforms is guided by the vision of nurturing every learner's potential and is championed at the highest political levels by the Kenyan Head of State, His Excellency President Uhuru Kenyatta and the Cabinet Secretary for Education, Prof. George Magoha.

In line with Vision 2030 and the Constitution of Kenya, 2010, the overall aim of the new competency-based curriculum (CBC) is to equip citizens with skills for the 21st Century. The CBC focuses on the global shift towards education programmes that encourage optimal human capital development. *(Technical hitch)*

Hon. (Ms.) Pamela Ochieng (Migori CWR, ODM): Thank you, Hon. Speaker. I rise to second the Motion that Prof. Chege be appointed the Principal Secretary for the newly-created State Department for Implementation of Curriculum Reforms.

As the Chair alluded, the Committee found this lady to be capable of running this department owing to the fact that she convinced us in the way she handled questions that she is mature, composed and able to handle very stressful issues. She also has vast experience owing to the fact that she even worked at lower levels of education all the way to university. She is currently an administrator at a university. All this is complemented by the fact that she chaired the task-force that the President appointed to look into the issue of curriculum reforms and implementation. We found that there would be no better person to implement the recommendations of that Committee.

I would have said more, but reading the mood of the House, it appears like I just have to second and request the House to adopt this Report to approve the appointment of Professor Chege.

I beg to second.

Hon. Speaker: *(Off-record)*. Very well. Member for Mwea, why not finish fetching water?

(Question proposed)

There is an overwhelming demand for an opportunity to contribute. Let us have Hon. Owen Baya.

Hon. Owen Baya (Kilifi North, ODM): Thank you, Hon. Speaker.

Hon. Speaker: As the staff are busy trying to rectify the microphones, we will get back to you, Hon. David Ochieng’.

Proceed, Hon. Baya.

Hon. Owen Baya (Kilifi North, ODM): Hon. Speaker, I support the Report. I also support the appointment of Prof. Fatuma Chege as Principal Secretary in the State Department for Implementation of Curriculum Reforms.

Prof. Fatuma Chege is one of the most knowledgeable educationists in this country. I know her because she was my professor at the university, both at undergraduate and masters’ levels. I know she is a good practitioner. She is not only an administrator and a curriculum developer, but she is also a practitioner in education, having taught from the lowest to the highest level. Her work speaks for itself.

For the first time, I have seen that the President is recognising my *alma mater*, Kenyatta University, as the home of education in this country. We have Dr. Ruto, who is now a Cabinet Secretary, and Prof. Fatuma Chege, who is also an alumnus and a professor at Kenyatta University where a lot of education principles and practices have been developed. This country has the right people to drive education curriculum reform for the betterment of the citizenry. This will drive our country towards industrialisation and using education for development.

Let me take this opportunity to congratulate the Committee for accepting this gallant lady into the Ministry of Education, so that she can bring in her expertise and education to help this country move forward in the education sector. I congratulate Professor Chege.

Hon. Speaker: Let us have Hon. David Ochieng’.

Hon. David Ochieng’ (Ugenya, MDG): Thank you very much, Hon. Speaker. Listening to the Chair of the Committee table the Report and this being a House of records, I was looking forward to seeing this lady’s curriculum vitae and her credentials. However, on the portal, we have the credentials of some other people. If you check through the portal, the documents uploaded with regard to this nomination are of other persons and not of Prof. Fatuma Chege. It is not just us following these proceedings. These are nationwide processes. If you go to that portal, the person whose documents have been given to us is not Fatuma Chege.

This is a House of records. Hon. Junet, you should go to school a bit.

(Laughter)

We are discussing Prof. Fatuma Chege, and not these other people whose names appear on the records. They are Dr. Jamleck Muturi and Mr. Timon Alfred. Can these records be corrected? The only way of reading this document is through this process, but not hard copies anymore. If the records show other people, and not Prof. Fatuma Chege, then we are not debating the right Report.

Thank you very much, Hon. Speaker.

Hon. Speaker: Hon. Chair, what is your reaction to what Hon. David Ochieng’ has raised? Hon. Florence Mutua.

Hon. (Ms.) Florence Mutua (Busia CWR, ODM): Hon. Speaker, I sincerely do not know what *Mheshimiwa* Ochieng’ is talking about. We have the right curriculum vitae and

documentation. Indeed, we are discussing Prof. Fatuma Chege. Maybe, the wrong Report was uploaded in the system. However, we will ensure that the right one is uploaded.

Hon. (Ms.) Pamela Ochieng' (Migori CWR, ODM): Hon. Speaker, on a point of information.

Hon. Speaker: Whom do you want to inform? Hon. Odhiambo, you seconded the Motion. Do you want to provide information to Hon. Ochieng' about what has been uploaded?

Hon. (Ms.) Pamela Ochieng' (Migori CWR, ODM): Yes.

Hon. Speaker: Very well.

Hon. (Ms.) Pamela Ochieng' (Migori CWR, ODM): Hon. Speaker, thank you very much. I want to support what my Chair has said. We have two reports. The names that Hon. Ochieng' has read are for the second Report. I believe he must have opened a different curriculum vitae. There are two different reports that we will present today. There is this appointment of the Principal Secretary and then that of the Teachers Service Commission (TSC) commissioners. So, he has opened the wrong Report.

Hon. Speaker: Hon. Ochieng'.

Hon. David Ochieng' (Ugenya, MDG): Hon. Speaker, what I have on my desk reads the following: The Report of the Vetting of Prof. Fatuma N. Chege, PhD, for Appointment to the position of PS, State Department for Implementation of Curriculum Reforms.

If you go ahead on pages 54 and 55, all the annexed documents relate to other persons other than Prof. Fatuma Chege.

Hon. Speaker: Who are they?

Hon. David Ochieng' (Ugenya, MDG): They are the TSC commissioners. That is what is on the record here.

Hon. Speaker: Maybe, the Report on the lady is where they are dealing with the Report of the TSC commissioners.

Hon. David Ochieng' (Ugenya, MDG): This is a House of records. We, as a House, cannot allow this to stand.

Hon. Speaker: It will be corrected, Hon. Ochieng'. If there is that mix up, it will be corrected.

Hon. David Ochieng' (Ugenya, MDG): I cannot see the documents, Hon. Speaker.

Hon. Speaker: Obviously, that is not the work of the Chair, but the staff.

(Laughter)

Hon. David Ochieng' (Ugenya, MDG): It is not the work of the Chair, Hon. Speaker, but the staff.

Hon. Speaker: It will be corrected. The Clerk undertakes to correct that. Hon. (Dr.) Tuitoek Kamuren.

(Laughter)

Hon. Daniel Tuitoek (Mogotio, JP): Thank you, Hon. Speaker. I also rise to support the candidacy of Prof. Fatuma whose background is very strong. She rose from a humble background. She went through her education up to the highest academic levels. She also practised education as a teacher, as well as teaching at the university. We found her to be quite ready to carry out the implementation of curriculum reforms.

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She was the Chair of the Taskforce on the Implementation of Competency-Based Curriculum (CBC). We support her candidature. Therefore, I request the House to approve her appointment.

I beg to support the Motion. Thank you.

Hon. Speaker: Hon. Mbadi.

Hon. John Mbadi (Suba South, ODM): Thank you, Hon. Speaker. I do not have a problem with Prof. Fatuma Chege. First, I do not know her well. However, I have heard from those who have interacted with her and the Committee that she is qualified for the job.

However, the concern which I have which this Committee can help the House deal with is the tendency of the Executive, particularly the President, to create too many State departments in the ministries. We, as a nation, cannot always complain that we have a bloated wage bill that keeps on increasing. As a House, we keep on approving more appointments and creation of positions without even raising a finger. What is our role as an institution that oversees the Government in this country? If we have agreed that the Government is heavy, then we cannot continue allowing creation of more positions in the Government. This lady does not need a new job. She already has one. We can only create more positions if we need them. If we do not need them, then why do we create them?

The Ministry of Education has too many PSs already. Why are we creating additional PSs? We have five PSs there. On behalf of the people of Suba South who are taxpayers in this country, we do not need another PS in the Ministry of Education. The Executive needs to realign these functions to other existing State Departments, so that we retain the number of PSs which we have. I am saying this convinced that this is the only way, at least, we will say that there is a stop to the way we do things. It is hypocritical for us to go to the media and television talk shows and lament or complain that we have a bloated Executive and that we spend too much money on salaries. Then we come back in this House, receive nominees from the President and create more positions. We ceremoniously, like conveyor belts, just approve them. I am not only opposing the appointment of this lady, but also the creation of a new PS in the Ministry of Education. It is unnecessary and wastage of public resources.

I oppose this Motion, Hon. Speaker.

Hon. Owen Baya (Kilifi North, ODM): On a point of order, Hon. Speaker.

Hon. Speaker: There is a point of order from the Member for Kilifi North.

Hon. Owen Baya (Kilifi North, ODM): Hon. Speaker, I like what the Leader of the Minority Party has said. However, he also contradicts himself because he supports the Building Bridges Initiative which creates more positions. He has said that he opposes the Motion because it will create a new position.

(Loud consultations)

(Laughter)

Hon. Speaker: Are you through, Hon. Baya?

Hon. Owen Baya (Kilifi North, ODM): Yes.

Hon. Speaker: Hon. Mbadi.

Hon. John Mbadi (Suba South, ODM): Thank you very much, Hon. Speaker. Hon. Owen Baya is my friend who sits very close to me. Since he deserted the Orange Democratic Movement (ODM) and went to another wing, which I do not want to mention today, he is so

confused. The BBI has not been costed. If I ask you to present a cost of the positions that are created in BBI today, you may not do it. Those are allegations. We are discussing a substantive issue on whether we should expand the Executive or not.

Hon. Junet Nuh (Suna East, ODM): Thank you, Hon. Speaker. I also stand to oppose this Motion. I want to agree with what my Chairman and my leader has said. I know that curriculum is a very important thing. I also know that we are moving from the 8-4-4 system to the Competency Based Curriculum (CBC). However, that is just one item in the Ministry of Education. Now, if we are going to appoint a Principal Secretary for every item, does that mean that you will appoint a PS when you want to run a school feeding programme? This is not the best way to manage the public service. I think this is just creating a job for someone. This must stop.

Hon. Speaker, how many PSs are there in the Ministry of Education so far? There are around five of them. There is one I know whose title is Post-Training and Skills Development. He is called PS Cheruiyot. That man is doing nothing in that Ministry. Why can you not give this job to that guy? He can do it. Honestly, he is idle. I have visited him and he completely does not have any work to do. Why can you not give that job to that guy for him to do it, as he is already earning a salary as PS in charge of Post-Training and Skills Development?

With those few remarks, I do not want to say I am supporting her. Let us drop this matter. For the first time, let us reject something so that we go on record that there is something that this Parliament has rejected. This is the first opportunity to do it. Let us reject this one.

(Laughter)

Hon. Speaker: Member for Nyeri Town.

Hon. Ngunjiri Wambugu (Nyeri Town, JP): Thank you very much, Hon. Speaker.

(Loud consultations)

Hon. Speaker: Order, Members! Order, Members! I can see those were light moments but let us go back to business.

Hon. Ngunjiri Wambugu (Nyeri Town, JP): Thank you very much, Hon. Speaker. I rise to support this appointment. I had actually raised a point of order on the comments that were made by the Leader of the Minority, Hon. Mbadi. As a Member of the Departmental Committee on Education and Research, one of the things we interrogated was the importance of that particular Department.

Hon. Speaker, curriculum implementation, which is what Dr. Fatuma is coming into the department to do, is important. I do not know whether Hon. Mbadi has children in the lower classes. We are currently going through a transition of curriculum. The transition is affecting millions of children. I wish he was arguing for us to remove another State Department but not this one. This particular department is concerned with millions of children. We have children in primary schools right now who are undergoing learning under two systems, namely, the lower classes under the CBC and the upper classes under the 8-4-4. That transition is a critical part of our education system that needs to be overseen very closely. That is what this State Department is going to be overseeing

In my opinion, it would then be important for Hon. Mbadi and Hon. Junet to interrogate what role this particular State Department is going to be doing. We cannot reject something for

the sake of rejecting it. There has to be context. We cannot make a point of saying that we are going to reject this appointment so that we can make a point. We have to do it based on context. I am a bit disappointed in Hon. Mbadi and Hon. Junet and I want to inform them that this State Department is going to be overseeing work that affects millions of children who are going through a transition in their curriculum.

Thank you very much, Hon. Speaker.

Hon. Speaker: Hon. Members, remember the rules of debate. You could get excited or disappointed, but just make your point. This reference to one another is not helping in debate. I can see many Members who have indicated the desire to speak. I do not know whether all of you want to speak to this one.

Hon. Members: No! Put the Question.

Hon. Speaker: Hon. Mark Nyamita, Member for Uriri.

Hon. Mark Nyamita (Uriri, ODM): Thank you, Hon. Speaker. I also rise to reject this appointment. My reason for the same is very simple. Within the Ministry of Education, we have the Kenya Institute for Curriculum Development (KICD) which is a fully fledged institution that deals with curriculum development of both primary and secondary schools in this country. You might want to know that the current PS for Basic Education came from the KICD. He is already skilled and together with that institute, I am sure issues to do with curriculum development can be handled ably at that particular point.

In any case, the PS is not to work on this State Department alone, but with the technocrats within the Ministry. What we are asking is that the President should consider reorganising the Ministry of Education. Today, if you go to the Ministry of Education, sometimes even when we are following up on matters that affect us in our different schools, you will be tossed back and forth because the departments are too many that sometimes they do not even know who is in charge of what.

In as much as we are encouraging the Government to continue creating employment, the Constitution puts a limit on the number of cabinet secretaries that we are supposed to have. The ordinary thing that should happen is that a Cabinet Secretary should be given people to help them in the name of PSs. They can just be one or two, but we cannot have six people under one Cabinet Secretary. So, I want to urge my colleagues that this appointment is misplaced and we need to reject it in totality.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Duale.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I do not know why people have a problem with Dr. Fatuma because they are the same people who were talking about inclusivity. On the month of *Ramadhan*, I presume Dr. Fatuma is a Muslim and is representing a constituency. I want to bring to the attention of the House that Hon. Junet and I, our children go to Aga Khan. That is why he does not know the new system, but for the benefit of doubt, it is 2-6-3-3-3. The question is whether the whole concept of shifting from 8-4-4 to the new system itself is faulty. You are taking this system which is at per with other international standards to rural schools where there is no electricity, no food and no classrooms. They have nothing.

(Applause)

They do not even have teachers. Some regions like Kapedo and part of North Eastern have no teachers. So, whether we appoint a PS or not, we must evaluate the whole system. This

system cannot work. That is why we are missing the Late Mzee Moi. Even when he brought the 8-4-4 system, he brought it with milk-something to entice us. Now you are bringing a system and you are not even enticing the rural folks. You cannot take a system closer to what is taught at Aga Khan and Braeburn to a school in rural Kenya.

I really want to thank Hon. Mbadi. They might not listen to you on the bloated wage bill, but in a few months' time, they will listen to the International Monetary Fund (IMF) and the World Bank. So, let us just wait. Hold your horses. I have a feeling that even the Cabinet Secretaries will be sacked because they have to reduce and rationalise.

Hon. Speaker, the Departmental Committee on Education and Research, apart from the vetting, should bring a report to the House on the success of the system. The system is not taking place. You cannot introduce this kind of a system. For example, physical education (PE) is supposed to be a very key subject in the system, but some schools do not have fields and classrooms. So, Parliament and its committees must interrogate. I agree with the Member who said that the current Principal Secretary for Basic Education is the father of this system. He is an expert.

(Loud consultations)

You cannot call a public officer who cannot defend himself notorious. That is very un-parliamentary.

As I support Fatuma, I hope it is not the individual we are talking about, but the whole system that is not taking place. I come from a background that promised school children laptops. When some of us at the time asked if we were sure we could deliver the laptops, eight years down the line, there are no laptops because schools have no electricity and no classrooms. There are no teachers. So, how do we take a laptop or an electrical gadget to such schools?

I support, but all stakeholders must interrogate the system.

Hon. Member: Put the Question!

Hon. Member: On a point of order.

(Loud consultations)

Hon. Speaker: Member for Mvita.

Hon. Abdullswamad Nassir (Mvita, ODM): Thank you very much, Hon. Speaker. I would like you to give guidance to my colleagues and myself. The Report that is before us is about nomination of an individual to a certain position and not about creation of that position. As much as I agree with my colleagues and the leadership, Hon. Mbadi and Hon. Junet, I equally need to remind them that this is a House of procedure. What is before us is not an issue of whether the lady should be the one to hold that position or the position should be created.

I find it quite disturbing that a few years ago, my elder brother, Hon. Duale, was clapping and applauding that school children would be getting free laptops. He is the one who promised us whilst we are the ones who asked whether it would be feasible. It is important for you, Hon. Speaker, to give us guidance on this matter.

Thank you very much.

Hon. Speaker: Hon. Kimunya, Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, I can see very clearly that there is some confusion within the House on the Report that has been tabled and on the matter we are

discussing. Because of the seriousness of the matter, pursuant to Standing Order No.96, which basically allows a Member to move that a business being discussed be postponed to another day...

(Loud consultations)

I wish...

An Hon. Member: We are passing it now!

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, I need your protection. There are some questions that have arisen on the Floor that perhaps the Departmental Committee on Education and Research needs to bring more information. Where are we on the curriculum? These matters have not come out hence we might end up making a decision based on the wrong premise. It is important that by the time this House makes a decision, we have all the information on the Floor.

So, I move that the debate on the Motion on the approval of Prof. Fatuma Chege be now adjourned, pursuant to Standing Order No.96.

An Hon. Member: That is it. *Haina* question.

(Loud consultations)

Hon. Speaker: Hon. Members, it is always good to consult the Standing Orders so that what you say is known. The decision is upon the Speaker to make. If in the opinion of the Speaker the dilatory Motion is not one that is an abuse of the process, the Speaker may allow it, without the Question being put. So, I do not know why many of you want to do my work. You just have to allow me to do my work because you know you will do the other one.

(Laughter)

In my opinion, the Motion is proper and in my view it is not an abuse of the process of the House. Therefore, I grant the request without the Question put. Debate will resume at another date when the House resumes.

(Motion deferred)

Next Order.

APPROVAL OF NOMINEES FOR APPOINTMENT
TO TEACHERS SERVICE COMMISSION

Hon. Speaker: The Chairperson, Hon. Florence Mutua.

Hon. (Ms.) Florence Mutua (Busia CWR, ODM): Hon. Speaker, I beg to move the following Motion:

THAT, taking into consideration the findings of the Departmental Committee on Education and Research in its Report on the vetting of nominees for appointment to the Teachers Service Commission, laid on the Table of the House on Wednesday, 28th April 2021, and pursuant to the provisions of Article 250 (2)(b) of the Constitution, Section 8(8) of the Teachers Service Commission Act, 2012 and Sections 3 and 8 of the Public Appointments (Parliamentary

Approval) Act, 2011; this House approves the appointment of the following persons to the Teachers Service Commission:

- (i) Dr. Jamleck Muturi John, PhD – Chairperson.
- (ii) Mr. Timon Alfred Otieno Oyucho – Member.

Hon. Speaker, the Departmental Committee on Education and Research conducted approval hearings for the following nominees for appointment to positions of chairperson and member of the Teachers Service Commission (TSC) on 8th April 2021: Dr. Jamleck Muturi John, for appointment as chairperson of the TSC and Mr. Timon Alfred Ayucho Otieno for appointment as member for the TSC.

Hon. Speaker, the nominees followed due process. The Clerk of the National Assembly also followed the procedure and advertised in the print media on Wednesday, 31st March 2021, inviting the public to submit memoranda by a way of written statements on oath and affidavits on the suitability of the nominees in conformity with Section 6(9) of the Act.

I can confirm that by the close of submission deadline, the Committee had received two memoranda contesting the suitability of one Mr. Timon Alfred Otieno Oyucho for appointment as a member of the Teachers Service Commission (TSC) from the following persons:

The first one is Mr. Eliud Owino of P.O. Box 49300-00100 and telephone number 0722782806. In his submission, Mr. Eliud Owino averred that Mr. Timon Alfred Otieno Oyucho has no regard to the rule of law, thrives on deception and flourishes in the business of deceit through falsehood and manipulation of weak minds. As the Director of Legal, Labour and Industrial Relations at the Commission, he is the chief architect of persistent friction between teachers and their employer, the TSC, through misleading and misadvising the Commission leadership to execute wrong decisions which consequently has led the TSC into gross violation of the Constitution, the TSC Act, the Labour Relations Act, the International Labour Organization (ILO) treaties, conventions, protocols and memoranda of understanding including the United Nations (UN) Chapter.

The second one is Mr. Zablon Mboya of telephone number 0723458772. He submitted that the nominee has consistently and persistently misadvised the Commission as the Director of Legal, Labour and Industrial Relations leading to the breach of the Constitution of Kenya and the TSC Act, 2012. Further, he lacks integrity, empathy and does not believe in the rule of law and transformation of teaching service for quality education.

After consideration and deliberation on the memoranda, the Committee took note of the petitioner's concerns and resolved to make a determination of its own to establish the suitability of the nominee to be appointed as the member of the TSC. The Committee observed that both memoranda did not meet the required threshold as it is provided for under Section 6(9) of the Public Appointments (Parliamentary Approval) Act because they had not been signed under oath by a commissioner of oaths.

Hon. Speaker, all the fulfilments in the due process were followed and the Committee made the following observations:

First, Section 5 of the TSC Act No. 20 of 2012 provides that the Commission shall consist of a chairperson and eight other members appointed in accordance with Article 250 of the Constitution. Currently, the TSC has only two serving commissioners who were appointed in 2020 after the terms of the previous commissioners expired on various dates between 2019 and 2021. The two commissioners are from Central and Nairobi regions. It is apparent that, at the moment, the TSC is not properly constituted.

(Loud consultations)

Hon. Speaker: Hon. Members, we had a lunch break when you could go and do these *kamukunjis*. Please, allow Hon. Florence to prosecute her matter.

Hon. (Ms.) Florence Mutua (Busia CWR, ODM): Thank you, Hon. Speaker. We found that the nominees being considered for approval by the Committee are from Eastern and Nyanza regions for the chairperson and member respectively.

This morning, we had a meeting with the Public Service Commission and the TSC where we requested them that they should advertise for the other regions. The other remaining regions are five and it has been confirmed that within the next 14 days, the vacancies for the five remaining regions are going to be advertised.

To fill the vacant positions, an advertisement was done by the TSC in March 2020, however, only two vacancies were advertised, namely, for chairperson and a member as opposed to advertising all the seven positions. That is why we had a meeting with the PSC to confirm why all the seven positions were not advertised.

The Committee also observed that the procedure to arrive at the nominees for the position of chairperson and member was adhered to by the selection panel. Out of the three nominees presented to His Excellency the President by the selection panel, the President nominated one Dr. Jamleck Muturi John, PhD, and Mr. Timon Alfred Otieno Oyuchó for approval by the National Assembly and subsequent appointment as chairperson and a member of the TSC respectively pursuant to Article 252(b) and (c) of the Constitution.

Hon. Speaker, we made the following general recommendations:

That, the appointing authority, in making subsequent appointments towards attaining the full membership of the TSC, should adhere to the provisions of Section 8(16)(a) and (b) of the TSC Act No.20 of 2012 which provides that:

“In nominating or appointing a person as a member of the Commission, the panel and the President shall—

(a) observe the principle of gender equity, ethnic and other diversities of the people of Kenya, and shall ensure equality of opportunity for persons with disabilities; and

(b) take into account the national values and principles set out in Articles 10, 27 and 232 of the Constitution.”

Further, the appointing authority should place emphasis on age to ascertain whether the youth are represented as provided for under Article 55(c) of the Constitution and nationality to ensure that the nomination is in compliance with Article 78 of the Constitution.

About the nominee for the Chairperson of the TSC, Dr. Jamleck Muturi John, PhD, we made the following observations:

That, the nominee possesses a rich academic background. He holds a PhD qualification in Agricultural Entomology from Kenyatta University, two masters degrees namely, Master’s Degree in Agricultural Entomology from Kenyatta University and a Master of Business Administration Degree in Global Business Management from the United States International University (USIU). He has a Bachelor’s Degree in Education Science from Kenyatta University. In addition, the nominee holds a Higher Diploma in Human Resource Management from the Institute of Personnel Management in Nairobi.

The nominee has a wide experience of 32 years in educational management and training. He has served in various capacities of classroom teacher, high school principal, university

lecturer and County Executive Committee (CEC) member in charge of Education, Science and Technology in Embu County, and he is currently working as the CEC Member in charge of Agriculture, Livestock, Fisheries and Co-operatives in Embu County Government.

During the approval, the nominee exhibited knowledge in matters relating to education, management, leadership skills and human resource management qualities necessary for the position he is being nominated to. Based on the oral submissions during the approval hearing, the nominee demonstrated abilities, knowledge, understanding and experience, qualities necessary for the appointment as Chairperson of the TSC.

Hon. Speaker, I will go straight to Mr. Timon Alfred Otieno. These are the observations that we made as a Committee:

The nominee has a rich academic background. He holds a Master's Degree in Law and Bachelor's Degree in Law, both from the University of Nairobi. In addition, he holds a Postgraduate Diploma of Law from the Kenya School of Law and he is a member of the Law Society of Kenya (LSK). The nominee also holds a Diploma in Education Science majoring in Mathematics and Physics. He has undertaken other short courses, workshops and conferences in education, law and related fields.

Currently, the nominee is pursuing a Master's Degree in Employment and Labour Relations at the University of Turin in Italy. The nominee has 34 years in matters relating to education, training and law. He served under the TSC for the entire period of his public service in different capacities rising from the level of assistant teacher to the Director of Legal, Labour and Industrial Relations Directorate of the Commission. His service under the commission comprises 13 years of classroom teaching in various secondary schools.

To summarise, let me go directly to the recommendations. All the other procedures were followed. Having conducted approval hearings of the nominees, pursuant to Article 250(2)(b) of the Constitution as read with Section 8(8) of the Teachers Service Commission Act No.20 of 2012, Section 3 and Section 8 of the Public Appointments (Parliamentary Approval) Act No.33 of 2011, the Committee recommends that this House approves the nomination of Dr. Jamleck Muturi John for appointment to the position of chairperson of the TSC and approves the nomination of Timon Alfred Otieno Oyicho for appointment to the position of member of the TSC.

It should be noted by the Members that we only have two commissioners in the Commission. They cannot perform any duties because they do not have quorum. So, I kindly beg the House to support the adoption of this Report, so that the TSC can have the required quorum to support it.

It is important for us to know that the current CBA is coming to an end at the end of June. We need this commission in place, so that we can discuss serious matters relating to teachers. It is also upon Members to know that promotion, placement and recruitment can only take place if we have the entire Commission on board.

I, therefore, move and call upon Hon. Ngunjiri Wambugu to second this Motion.

Hon. Speaker: Who is seconding? Hon. Wambugu Martin Deric.

Hon. Ngunjiri Wambugu (Nyeri Town, JP): Thank you very much, Hon. Speaker. I rise to second the Motion on the appointment of Dr. Jamleck Muturi John, PhD, for appointment to the position of chairperson of the TSC and Mr. Timon Alfred Oyicho Otieno for appointment to the position of member of the TSC.

The only thing I would like to emphasise that has come from the substantive presentation by the Chair is the critical role that the TSC plays and the fact that we have a CBA coming up in

a few months. It will require us to have quorum which we do not have at the Commission. We have only two commissioners.

I would also want to emphasise the issue of regional and ethnic diversity. We raised an issue with the TSC when we were interrogating the nominees. It was also raised to the Head of Public Service this morning. There were seven vacancies and only two were advertised. We have been informed that part of this is because there is a structure of ensuring that the commissioners' terms expire in a staggered way so that we do not find ourselves in the situation we find ourselves in now, where we do not have quorum at the Commission. However, we are assured that currently, if the House supports this Report and passes these two nominees, we are advised that an advertisement will be coming up within the next two weeks to ensure that we also have the remaining five positions advertised.

To take cognisance of the need for regional diversification, it has been noted that the commissioners, including the nominees, will be representing North Eastern, Central, Eastern and Nyanza regions. That means that positions of commissioners for the Rift Valley, Western, Nairobi and the Coast regions are the ones that will be advertised in the coming advertisements to ensure that the TSC has regional representation and the voice of every part of this country is represented.

We also urge the Teachers Service Commission to ensure that we have the youth represented in the Commission. We are looking forward to the adverts. We, as a Committee, make a commitment to this House that we will ensure that once the Commission is fully constituted, and has a chairperson and eight commissioners, we will have regional and gender diversification as it operates and heads into the next term.

I second. Thank you.

(Question proposed)

Hon. Members: Put the Question.

Hon. Speaker: Is it the desire of the House that I put the Question?

Hon. Members: Yes.

Hon. Speaker: I, therefore, accordingly do so.

(Question put and agreed to)

BILL

Second Reading

THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2020

Hon. Speaker: Hon. Members, we are now on the business appearing on Order Paper as No. 10, which is the Constitution of Kenya (Amendment) Bill, 2020. As you can see from the Order Paper, it is introduced pursuant to the provisions of Article 257(7) of the Constitution. Again, it is indicated that a Member nominated by the promoters of the Building Bridges Initiative will move. I have since received a letter signed by the two promoters. It has been signed by the two promoters as the Head of the Secretariat of the Building Bridges Initiative indicating a request that they have appointed the Leader of the Majority Party to be the person in

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the House to move the Bill for Second Reading, and the Leader of the Minority Party to be the person to second. The letter is in my office and also deposited with the Clerk. Therefore, the Chairman of the Departmental Committee to which the Bill was referred to will have the first bite of the sharing.

Hon. David ole Sankok (Nominated, JP): On a point of order, Hon. Speaker.

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

Hon. David ole Sankok (Nominated, JP): Thank you, Hon. Speaker, for giving me this opportunity. I rise on a point of order under Standing Order No. 83 to seek your guidance on whether the timelines as posed in Article 256 of the Constitution on amendment by a parliamentary initiative on the 90 days for calling of the Constitution of Kenya (Amendment) Bill for Second reading apply.

Hon. Speaker, as you are aware, Article 257 of the Constitution is silent on timelines and stages for consideration of the Bill. Indeed, Article 57 of the Constitution only applies Article 256(4) in respect to assent of the Bill and hence Article 256(1) may not apply. For clarity purposes, in this case, are we in order to proceed to consider the Bill for Second Reading in light of the timelines as set out in Article 256(1) of 90 days?

Hon. Speaker, I also want to seek your guidance on whether a Bill to amend the Constitution can be amended as seen from the Joint Report of the National Assembly Departmental Committee on Justice and Legal Affairs and the Senate Standing Committee on Justice, Legal Affairs and Human Rights. The Report of the Joint Committee raises serious constitutional issues contained in Clauses 43, 44, 66, 67 and the Second Schedule to the Bill that in view should inform amendments to the Bill. Hon. Speaker, these clauses deal with the offices of the...

Hon. Speaker: Hon. Sankok, you rose on a point of order but you are now debating something that is not even before the House. Until the Bill has been moved, all those clauses you are reading are just for entertaining yourself.

Hon. David ole Sankok (Nominated, JP): Hon. Speaker, I am seeking your guidance.

Hon. Speaker: Order, Hon. Members! Hon. Sankok, you have the Floor but do not refer to a Bill that has not been moved. You are perfectly in order to raise the issues on Article 256.

Hon. Sankok, so that you and other Members do not waste time on this, the issue of 90 days publication period applies to a parliamentary initiative. It does not apply to a popular initiative.

Hon. David ole Sankok (Nominated, JP): I was seeking your guidance because you are intelligent, well informed and a mobile encyclopedia when it comes to the Constitution.

Hon. John Mbadi (Suba South, ODM): *(Spoke off-record)*

Hon. David ole Sankok (Nominated, JP): Hon. Mbadi, shut up!

(Laughter)

Hon. Speaker, I agree and I am well guided.

Hon. Speaker: Hon. Members, as you speak, remember the Bill is not before the House. We have only read the Order. Do not address me on the contents of the Bill.

Hon. Wamalwa, you have the Floor.

Hon. (Dr.) Chris Wamalwa (Kimini, FORD – K): Hon. Speaker, I rise on a point of order regarding your earlier Communication on 4th March regarding Second and Third Readings pertaining the BBI Bill. This being a House of records, you clearly indicated that it will be

moved by the Committee Chair but today you have mentioned a letter from the promoters who are nominating the Leader of the Majority Party and the Leader of the Minority Party respectively, what happens to your ruling of 4th March 2021?

Hon. Speaker: Hon. Wamalwa, that is a valid concern. The promoters are at liberty to change. The communication to the Speaker is the desire of the promoters and it will be unfair for the Speaker to shut them since they have indicated their preference. They can even nominate Hon. Wamalwa and we will still have no option but to have him.

Hon. (Dr.) Robert Pukose (Endebess, JP): They cannot nominate him.

Hon. Speaker: Hon. Pukose, how can you say that they cannot nominate Hon. Wamalwa? If they nominated Hon. Wamalwa, I will not have any issue but to accede to their desire. My earlier Communication was on the basis that there was no indication as to how it was going to be moved. I only came in as an agent of necessity to give a preference of what I felt at the time should be the right way and that is why I had indicated that the Chairman of the Departmental Committee on Justice and Legal Affairs was to move. However, since the promoters have written and clearly indicated their preference, I should accede to their desire.

Hon. Gitonga Murugara.

Hon. George Gitonga (Tharaka, DP): Thank you, Hon. Speaker. I rise on a point of order on the Report that was tabled this morning. We have received an extract of it - 170 pages. I have been approached by several Members and I want to speak as an insider because I sat through the sittings of the Joint Committee in its report writing. The Report is intensive in content and most Members have not had the opportunity to read the 170 pages. When the time comes for us to debate the Bill, we will require to do justice because of the monumental value of the Bill to the citizens of Kenya.

Hon. Speaker, what was tabled this morning is bigger than the Bible, the Bible and the Quran combined, and the Bible, Quran and the vedas combined. We cannot debate and do justice unless we are given time to read the Report to internalise it and ensure that we have quality debate to the Bill.

(Loud consultations)

Therefore, under Standing Order No. 1, I want to beseech you to exercise your discretion and give us not less than seven days to read this Report and debate the Bill.

Hon. Members: No.

(Loud consultations)

Hon. Speaker: Hon. Members, let us treat each other with decorum and with some element of seriousness. Hon. Gitonga Murugara, the Member for Tharaka, said that he speaks as an insider and a Member who sat throughout all the meetings of the two committees sitting together, but still he has not read and understood what he even approved. So, he now wants to be the one interceding on behalf of all the others. Hon. Murugara is saying that he should not be even a Member of the Committee.

(Loud consultations)

If Members of the Committee are the ones who seek to stand here and say that they have not read --- No! Let us have other Members. You know you must weigh your words as you make your interventions. Hon. Ndindi Nyoro.

Hon. Ndindi Nyoro (Kiharu, JP): Thank you, Hon. Speaker. I rise on a slightly different matter. We are in a bicameral Parliament comprising of the National Assembly and the Senate. From where I sit, an affront to one of us is an affront to all of us. I am referring to something that happened this afternoon in the precincts of Parliament. One of our own, the Senator for Meru, Sen. Mithika Linturi, was kidnapped by officers from the Directorate of Criminal Investigations (DCI). We have seen an alarming rate of intimidation by the Executive meted on Members of Parliament. I seek your direction ---

(Loud consultations)

Hon. Speaker: Order, Members! Let him say what he has to say. I am sure maybe more than any of you, I have the answer. So, let him say what he has to say.

Hon. Ndindi Nyoro (Kiharu, JP): Hon. Speaker, we have seen an alarming rate of intimidation meted on Members of Parliament, especially by the Executive. This afternoon, one of us, the Senator for Meru, Mithika Linturi, was kidnapped by some people who are suspected to be DCI officers. That is barbaric especially at such a time that we have come to debate a Bill that ostensibly will bring about good governance to our country. That is diabolic and backward, and it has to be stopped by Members of the National Assembly and the Senate. I want to remind the Executive that they can no longer continue to gag our democracy through the barrel of a gun. Democracy is a matter of debate and opinions. We cannot pretend and purport to be coming here to debate the BBI Report that purports to expand democracy and the voices of all when Members of Parliament are being intimidated on how to debate the Report. I seek your indulgence that we suspend this sitting until we know the welfare of one of us, Sen. Mithika Linturi. We do not know whether he is alive after he was kidnapped by the DCI officers in the precincts of Parliament.

Thank you, I submit.

Hon. Speaker: Hon Members, do not get agitated. If I allow all of you to react to this, I am sure we will ---

(Some Hon. Members raised their hands)

Please, do not raise your hands now. The matter that Hon. Ndindi Nyoro has raised had already been raised with me earlier. As you know, no House commands the other on how to transact its business. The Hon. Sen. Mithika Linturi has since returned to the other House. He is safe. That other House will deal with that matter as appropriate. They have sufficient rules and regulations that govern the protection of Members as appropriated, especially when Members are coming to perform parliamentary duties within the precincts of Parliament. That matter is in safe hands. Hon. Ndindi Nyoro, Sen. Mithika Linturi is safe.

(Applause)

There is no cause for us to suspend the sitting to go and demonstrate on the streets. We are lawmakers, and we do not want to do that. Let us deal with issues. Those responsible will have to

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go and answer before the Senate Committee dealing with issues of privileges of Members. Let us not get excited about it. It is okay. The Member is safe in the precincts of Parliament. Let us now do business.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, I beg to move that the Constitution of Kenya (Amendment) Bill, 2020 be now read a Second Time.

From the outset, I want to thank the promoters of the BBI Bill for this singular honour to me to move this Bill. I am cognisant of the fact that its promoters are represented in this House by Hon. Junet. He signed a letter to assign the responsibility of moving the Bill, on their behalf, to me and the Leader of the Minority Party.

I wish to remind the House about this background. Following the chaos that manifested after the 2017 presidential elections, we had a peace deal that was globally recognised as the March 2018 Handshake between His Excellency President Uhuru Muigai Kenyatta as the President and the Right Hon. Raila Odinga as the Leader of the Opposition Coalition also known as the people's President after being sworn-in by Hon. Kajwang' as the people's Chief Justice.

(Applause)

(Hon. T.J. Kajwang' spoke off-record.)

Thank you, Hon. C.J. That created a moment that crystallised the constitutional imperative to seek peace, security and unity. That is something that we must constantly put at the back of our minds. What we are doing is that we are seeking peace, security and unity. When the two leaders shook hands to create a truly bipartisan opportunity to unite this country – unity that has eluded this country since Independence – they set in motion a process that will identify comprehensive and far-reaching changes that would strengthen the rule of law, unite Kenyans, deepen our constitutionalism and launch a comprehensive process to consolidate this momentous opportunity. So, the handshake was not an end in itself but rather the beginning of a bigger process that will go beyond 2022, 2027 and into the future.

To concretise this initiative, the Building Bridges Advisory Presidential Task Force was appointed by the President in May, 2018, and it submitted its report after consultations with Kenyans. One year later, on 26th November 2019, this document was unveiled and was then taken back to people for validation. Most importantly, we should remind ourselves where we started. During the handshake, the two leaders agreed on a nine-point agenda. They believed addressing the nine points would sort out the long-term issues of this country. Among those issues was the lack of a national ethos—what makes us Kenyan. Why are we shouting at one another? Why do people keep fighting? Can people not have a way they can talk to each other rather than at each other? We believe there is something that binds us as Kenyans. What are your responsibility as a citizen? Members may recall that in the run up to the passage of the Constitution in 2010, part of the agitation for rights was that we need water in sufficient quantities and we need housing. But if you look at the Constitution, apart from the obligation that citizens have a right to defend their Constitution, there is very little in terms of the rights and responsibilities of citizens towards their country.

The other item of the nine points was ethnic antagonism and competition. We fight based on our ethnic backgrounds. The competition at every election means that two years before an election we are fighting and two years after an election we are trying to heal. That costs our economy billions of shillings. Elections have been seen to be divisive. We saw that in 1992 and 1997. There was a lull in 2003 when we did not have any division. But we saw division again in 2005 when we had a very divisive referendum, and 2007 was the climax. In 2013, there was a lull, perhaps because of the International Criminal Court (ICC) cloud. In 2017, the divisions reappeared.

The issue of inclusivity - I had a taste of that even this afternoon - is something that we need to figure out. How do we ensure that the youth, women and all the 47 ethnic groups that constitute Kenya can be included within the governance structures of the country so that

everyone feels part of the country? On shared prosperity, how do we ensure that we do not have feelings that some people get more resources than others or that some people produce less than others? How do we ensure that every Kenyan feels that they have a fair share of the national cake? Most importantly, looking back at what we said about responsibilities and rights, how do we ensure that every Kenyan feels obligated to take their fair share in the baking of the national cake?

The other item that was to be addressed through the BBI was the big issue of corruption. Everyone believes that we waste a lot of resources through corruption. Whether you are talking of who is taking a bribe or who is wasting resources, and you can take this to the bank—it does not matter whether it is KEMSA or elsewhere—but the sheer fact that we have an ethics and anti-corruption commission in the Constitution is a sure admission that corruption is so much in our system. In countries that have sorted out corruption issues, you do not even have an anti-corruption police because they have sorted out the problem through their national ethos. They hate corruption because it is bad; it deprives people of services.

The other issue is devolution. In 2010 we said let us move from decentralisation of services to actual devolution of services. Under decentralisation, you are basically moving government down. You may recall the District Focus for Rural Development Programme, where government services were being taken to the districts. But there was no power at the district level to make decisions. In fact, the first model of devolution was setting up Constituencies Development Fund (CDF), where money was devolved to the constituencies and there was decision-making in terms of what to do with the money at the constituency level. And that seemed to have persuaded people and in 2010 we decided to move most of the funds and functions, which used to be under the old Local Governments Act, which had listed what to be done by local authorities. We shifted the focus from local governments to county governments. We changed the name and assigned functions and powers and we said let the people elect their local representatives other than having appointees of the Minister for Local Government. Eight years down the line, it is time to look at that devolution and ask, has it worked? I will be coming back to that later.

The other issue was safety and security. You cannot have peace unless you can guarantee safety and security. In January 2020, His Excellency the President appointed a steering committee on the implementation of the recommendations of the BBI taskforce, with the following terms of reference: To conduct validation of the taskforce report through consultations with citizens, civil society, faith-based organisations, cultural leaders, the private sector and experts; to propose administrative, policy, statutory and constitutional changes that may be necessary for the implementation of the recommendations contained in the taskforce report and to consider any relevant contribution made during the validation process. The output of that process was this report, which I had the honour of tabling in this House on 3rd November 2020. I hope Members have had the opportunity to look at it. The report contains not just the Bill but also proposes administrative, policy and legislative measures that need to be taken to achieve the nine-point agenda. The report also contains the constitutional issues that need to be addressed. These were contained in a draft Bill that was processed through the provisions of Article 257, which basically outlines what you need to do if you want to convince Kenyans to support your amendment to the Constitution without having to go through the parliamentary route.

On 26th January 2021, the BBI steering committee delivered a draft Bill to amend the Constitution by popular initiative, supported by four million signatures—more than the mandatory one million signatures. The IEBC then submitted the draft Bill to each of the 47

county assemblies for consideration after verification of signatures in support of the initiative. Article 257(7) of the Constitution provides that if a draft Bill has been approved by a majority of county assemblies, it shall be introduced in Parliament without delay.

It is something that we need to have at the back of our minds. In the county assemblies, it was clear that they need to consider within 90 days. In the House, there is no time limit as to what we need to consider except the operating words that it shall be introduced in Parliament without delay. This now brings in the whole issue of urgency. That is why we are having this Special Sitting today because we have no reason to delay the consideration the Committee having finished its Report last Friday.

Having subscribed to the threshold for introduction by the population in Parliament, the Constitution of Kenya (Amendment) Bill was read for the First Time in both Houses on 4th March 2020. It was introduced without delay from the county assemblies but remember we are now two months since it came to this House. It is important we remind ourselves that the clock is ticking and people are looking to see if this House is processing it without delay.

Hon. Speaker, in your Communication dated 4th March 2021 on the Draft Bill, you informed the House that upon reading the Bill, it would be referred to the Departmental Committee on Justice and Legal Affairs to undertake public participation and would be brought back to the two Houses.

Hon. Speaker, you are also aware and you have mentioned this and we have debated this before, that currently we do not have the legal framework or legislation framework within our Statute Law or even within our Standing Orders for processing of an amendment to the Constitution by way of popular initiative. Indeed, this has presented a legal mind field that the House has to consciously navigate.

Indeed, the receipt of a letter today has now made your lives much easier because you would have had to decide who moves a Bill that is promoted by people who are strangers to this House. At least, we now have precedent that even in future, promoters would be requested to nominate who moves on your behalf.

At the very outset, you recognise these challenges. In your earlier Communication dated 4th March 2021, some challenges were referenced which included the issue of publication of the Bill, procedural gap with regard to moving a second Bill which we have now resolved and indeed, what happens on all the various Sittings.

Hon. Speaker, allow me to reiterate the words of General Colin Powell, a former United States of America General and a former Secretary of State. In his famous quotes, he said and I quote “Great leaders are almost always great simplifiers who can cut through argument, debate and doubt, to offer a solution that everybody can understand.”

Hon. Speaker, allow me to congratulate you for exhibiting these great traits as quoted above and providing guidance to us that has assisted the House in discharging its constitutional mandate especially, within the lacuna that we find ourselves in.

At this point, I want to thank the two Co-Chairpersons – Chairperson of the Departmental Committee on Justice and Legal Affairs, Hon. Clement Muturi Kigano and His Co-Chairperson in the Senate, Sen. Omogeni. We gave them the responsibility to safeguard the integrity of the process and they took time to build consensus through giving due regard to every Member to air their views to avoid the pitfalls and vagaries of joint sittings which we have seen in the past even in simple mediations. At least, we avoided potential conflicts that would have subjected a very good report to rejection due to questions of credibility.

I am aware that the process has taken rather long but at the end, they have come to a conclusion that as a Committee, they support the Bill. Never mind the small differences in terms of divisions on some of the paragraphs which I do not want to get into because the Chairman would be presenting those but, the bottom line is that we are all happy that after they took time and having listened to one another and experts, they all agreed that it is important to recommend to the House that we support the Bill. I have also read the Report.

In brief, the object of this Bill is to amend the Constitution of Kenya to address issues arising from its implementation and specifically to resolve issues of divisive elections, promote gender equity in governance which is the issue of inclusivity, strengthen the structure of devolution and increase resource allocation to the counties by strengthening the amount available for devolution.

Hon. Speaker, the other issue is to broaden the mechanisms for all people of Kenya to benefit from economic growth, harmonise certain roles and functions of bicameral legislature, to fortify national ethos by specifying the responsibility of citizens, to strengthen accountability of public resources and the fight against corruption.

Hon. Speaker, the proposed constitutional reforms originate from views of citizens expressed through the (BBI. Through the BBI, citizens from all corners of the country share their concerns and views on issues ranging from responsibilities and rights, national ethos and indeed, all the nine agenda items. This Bill which comprises of 74 clauses addresses each of these issues and those that are not addressed within the Bill are addressed within the 12 pieces of legislation that are proposed. There are several policy and administrative measures that are proposed. The totality of that will then sort out these problems into the long-term.

If I then delve specifically in the matters within the Bill, I have chosen to focus on five key issues which in my opinion were the main focus of the proponents of BBI in line with aspirations of over three million Kenyans who appended their signatures in support of BBI and subsequently, affirmed which was approved by another 43 county assemblies, one abstention and three negatives.

Further, the public participated heavily when our Committee called for public participation and the Chairperson of the Committee will be giving us that issue.

I want to concentrate on five key issues: The need to resolve issues of divisive elections that include harmonisation of certain roles and functions of the bicameral Parliament; promotion of gender equity in governance; strengthening of the structure of devolution; strengthening of accountability of public resources and our future, the youth.

As a matter of national, regional and international notoriety, Kenya has experienced election violence during general elections held in the years of 1992, 1997, 2007 and 2017. The violence that followed the 2007 elections much of which was related to ethnic tensions was serious enough that it led to international mediation and accommodation through a coalition government which ultimately built crucial support for adoption of a new Constitution which was approved in a referendum in 2010. A similar effort had failed in 2005 mainly due to mistrust.

The 2010 Constitution established a presidential republic in which sovereignty is exercised by the people directly or through their democratically elected representatives.

The 2010 Constitution also made a number of key changes. It created a decentralised system. It also limited presidential powers that every appointment needed to come to the House to be approved and hitherto there was no such thing.

It also established devolution in the 47 counties, which replaced the 46 districts plus the capital. There is also the issue of oversight over branches and levels of government through

independent commissions and a more robust chapter on the Bill of rights. This Constitution also highlighted the sovereign power of the people within Article 1 which was not hitherto highlighted. More importantly, it also gave the people, after 20 years of agitating for change of their Constitution... You all know about the *saba saba movements*, the teargas in the streets and so on. People went to Bomas of Kenya after *Ufungamano* and all those issues. Those who were politically active before 2000 you know the struggle that Kenyans went through in an effort to change the Constitution.

Therefore, the 2010 Constitution said Kenyans would never again have to fight in the streets to change their Constitution. All they would need is use a legal route, which was then prescribed within Article 257, also known as 'the popular initiative'. If Parliament or the government of the day are not willing to change the Constitution for the benefit of the people, you now have a route in Article 257 through which you can actually change the Constitution. In addition, this Bill is the first to come to this House through that initiative. Thanks to the efforts of the Constitution 2010. The people of Kenya can now come to this House and ultimately to the other Kenyans to persuade them to change the Constitution whether we as a House support it or not, and whether the Government supports it or not. If the people want a certain change, the Constitution says they will get it.

Hon. Speaker, I did mention that the 2017 General Election, much as Kenyans had hoped that the 2010 Constitution was going to solidify the unity we had and lead us to peace and stability ever after, brought out some simmering issues that unless addressed, we will never reach the nirvana that we hoped our 2010 Constitution would deliver to us. This is because tensions were still there. It is taking this in mind that His Excellency the President, Uhuru Kenyatta, who has committed himself and his Jubilee Party to healing and unifying Kenya, began reaching out to leaders across the political divide, including the opposition, in a lengthy and tedious exercise which culminated in the famous 'Handshake'. Moreover, we must remember that apart from being a Jubilee Party political pledge to unite Kenyans, it is also one of his obligations under Article 131 (2) of the Constitution. The President is required to promote and enhance the unity of Kenya. Therefore, the 'Handshake' is in pursuit of a constitutional obligation by the President to unite, promote, and enhance the unity of Kenyans.

Hon. Speaker, this Bill is proposing to replace this pure presidential system that we adopted. We copied a bit from America, perhaps, without realising we are talking of the federal system in America. Indeed, it is a federal system where resources are resident in the states and only about 30 per cent of the Gross Domestic Product (GDP) is controlled within the federal government system. However, 70 per cent of the resources and service delivery is within the states. We have the opposite where 85 per cent of the resources are in the national government and 15 per cent in the county government and we actually thought we could replicate an American system here.

Therefore, what it is proposing is that let us go back to what we have always known - the Commonwealth system of government - albeit with some modification because we do not have a monarchy. We have a President - something we started with in 1964 when Kenya became a republic. Hon. Speaker, it has always amused me that we are using an American system of government when our own Speaker is the President of the Africa Commonwealth Parliamentary Association. We do agree that we are a commonwealth parliamentary system but Non-Governmental Organisations and other people who agitated for change had convinced us that we need to go through a non-commonwealth system.

The proponents or promoters are then saying that we should go back to having government intertwined within the Legislature like we have always had. This is so that we have a hybrid where much as we have a total separation between the Executive and Legislature, it makes our positions here very difficult when 206 Members of the total 349 Members belong to the Jubilee Coalition under the President. Remember that the President is also the head of Executive. Now, when do they, as a party, ever say, 'We are in parliament and we are going to do our oversight role. We are going to reject what the President says.' How do they do that without being seen to be disobeying? Therefore, we have some unique situations here that the pure presidential system cannot address.

Hon. Speaker, we also know we have problems when Members ask Questions here. The accountability has been so limited because the Cabinet Secretaries will appear in, say, Committee Room No. 4, or somewhere in Protection House, or Continental House to answer a Question raised by one Member. However, that Question might be of interest to the entire House. When Questions are answered on the Floor of this House the accountability is to the entire House and people can then follow up rather than having responses in small bits and pieces. So the Members then said, 'Let us have the Executive back in the House.' When you have that kind of situation where Ministers are in the House then, obviously, you need somebody to coordinate them. It cannot be the Leader of Majority Party. What we used to have in the old days, that is, the Leader of Government Business, is what is now being brought in as the Prime Minister. He or she will be the coordinator of the Cabinet Secretaries in the House assisted by two deputies.

I have heard people saying that there is creation of vacancies or many positions for political reasons. Immediately you introduce Cabinet Secretaries in the House, of necessity, you will need somebody to coordinate them. That person can be the first among them who is the Prime Minister or the Premier Minister, that is, the First Minister, if you like, assisted by two deputies. In addition, the current situation where you have Chief Administrative Secretaries (CASs) who are supposed to be the interlink between Parliament and the Executive, will now be taken over by Assistant Ministers or Deputy Ministers appointed from amongst the Members of Parliament. This is so that business can be conducted here. We can have Members sitting to the right of the Speaker representing the government side and Members to the left representing the Opposition led by the Leader of Official Opposition and the Shadow Cabinet. That system has worked before. We know it can work and it will continue working.

Hon. Speaker, as regards to the second issue on the two-thirds gender rule, we know in 2010 we agreed that Kenyans said that we should have a system of governance that ensures that no more than two-thirds of one gender must represent the elective or even appointive positions. That was contained within Article 27(8) which states that the State shall take legislative measures to implement this principle to ensure that no more than two-thirds of the members of the elective bodies shall be of the same gender.

It has been tried, say, six times in this House and every attempt has flopped, including us being threatened with a dissolution of the House. People went to the Chief Justice to say we have failed hence we should be dissolved.

The President in his wisdom knew that there was an initiative that would come in and hence could be used to solve this problem. So, he does not have to dissolve Parliament but let the people of Kenya decide on how they want to handle this issue. This is because it is the people of Kenya through a referendum in 2010 who put this challenge to Parliament. We are fortunate as Parliament that the promoters of the BBI have taken this challenge from us. We will be taking it to the people to say, "In 2010 you brought in the two-thirds gender rule, can you now make a

decision as to how we constitute Parliament without forcing you to nominate or elect so and so? Article 38 is very clear that people have a choice of who to vote for or where to vie. Due to those issues, the BBI is solving our problem. We are happy and hope that the people of Kenya will make a decision as they did in 2010.

Hon. Speaker, one of the other innovative things that happened in terms of the amendments to Article 97 is that in the event that the public does not elect Members in the proportions envisaged, the two-thirds, political parties will be forced to provide lists that are gender complaint. The top up will also not just be by people picking those who have never participated in an electoral system. The point of topping up is to help people to participate in an election. So, it will be tied to people who virtually participated in an election. As regards the strengthening of the devolution structure...

Hon. Speaker, I wish I could be allowed to do away with the mask, having been vaccinated and nobody is standing before me. I thank you.

As regards the strengthening of the devolution structure and increase in the resources, the Bill proposes to increase the minimum allocation of national revenue from the mandatory 15 per cent to 35 per cent. It is important to note that even as we are discussing the Division of Revenue Bill this afternoon, if you did a quick calculation, you will find that we are not at 15 per cent. It has moved from between 26 to 30 per cent. This is because of the goodwill of the current President. We do not know whether a future President will have the same goodwill or will just say: "The Constitution talks of 15 per cent, here is your 15 per cent. If it is not enough, do what you have to do at the counties." So, to guarantee devolution and ensure the guarantee that devolution works and sort out all the service delivery at local level, this proposal is such that we ensure that we devolve not less than 35 per cent which is estimated as the money you need to ensure health care, better roads and water is provided to the people in sufficient quantities. That is, all the things that are within the 14 services that are scheduled to be delivered by the county governments.

Hon. Speaker, the Bill in Clause 50 also proposes to amend Article 203 on equitable share and other financial laws to expand the criteria for determining the equitable share to include the need to eradicate corrupt practices and wastage of public resources. There is need to ensure the attainment of the economic and social rights that are guaranteed under Article 43 so that money is not just going to the counties but it must be tied to the extent to which they are actually attaining their economic rights. It will aim at ensuring that the average amount of money allocated per person in a county with the highest allocation does not exceed more than three times the one with the lowest.

Hon. Speaker, we said one of the biggest issues has been competition for resources. If people cannot get resources fairly through a distributive formula, they would then want to fight for the top positions so that if they get to State House, they can guarantee resources for their people. Immediately you show fair distribution of money across all the counties and also give people more money by giving 35 per cent and services are delivered at that local level, the competition for positions at the top will diminish because everyone will be getting what they need. That is why you do not find the cut throat competition in the United Kingdom, Europe and the USA. The state provides all the resources fairly across the entire country. Here we believe that unless one of your own is at the top, you will not be guaranteed resources because there is no fair distributive system that is within the law.

Therefore, by increasing the amount of money to 35 per cent you are reducing the power at the center. Let people decide on their governor.

Secondly, we are also devolving this money equitably, when it comes to the amendment that is proposed within Article 89 and others in terms of fair distribution of seats. The voice is also adequately distributed. So, what would people be fighting for, to get to the center to guarantee themselves a piece of the pie when it is already guaranteed by the law? These are some of the things that the BBI... We may not see it that way. However, when you look at the bigger

picture, you would see that those three provisions would mean that people's appetite for fighting at the top would drastically reduce. It would get to a point where we will be looking for a leader going to the top to safeguard Kenya within our international obligations rather than who would bring water to the 47 counties. Not who would do more electrification in the country but who will ensure the Kenyan goods can operate within the African trade framework or open up markets in China. That is the kind of president we will be looking for in the future once we sort out some of these issues where we are seeing the President seen as a provider of basic goods that should be provided by law and through the devolved system.

Hon. Speaker, these amendments obviously mean that we will sort out the issues of underdevelopment and economic empowerment across the different counties. It is part of that sharing of the national prosperity. Hon. Speaker, I also note that some provisions have been brought within Article 11(a) of the Bill. It seeks to anchor within the Constitution the aspiration of a new economic model based on value creation that provides equitable opportunities for all the people. It promotes industrialisation, mainstreams the issue of pastoralism rather than just talking about agriculture. It also brings in the issue of the blue economy, which again is something that was not foreseen in 2010. By bringing to the Floor all these things in the Constitution it means they can now be mainstreamed in all the policy papers.

More importantly for us, I did mention earlier that in 2003 the CDF was introduced which has shown that with limited resources properly focused we can yield a lot of development. However, this has always had challenges especially with the 2010 Constitution in terms of its constitutionality. Our Hon. Speaker has been working hard in terms of some of the laws that were declared and he will report at the appropriate time. However, within our Constitution now, the promoters have said let NG-CDF be an integral part of the Constitution and at the constituency level and also at the ward level, we have a similar fund. This is so that a governor who feels that there is a Member of County Assembly (MCA) who is constantly challenging him on governance and then decides to punish that MCA with no development will now find he cannot do it because there is an amount dedicated to every ward. This means you can now agitate at the county assembly for proper governance of the resources being taken there without risking development in your ward. This is part of the thing that we are talking of that will help eradicate poverty but also strengthen governance.

Hon. Speaker Clause 12 of the Bill also proposes some amendments to Article 96 of the Constitution. You know, Article 96 has basically been giving limited powers to the Senate - to oversee national revenue distributed to the counties. What the promoters have therefore said is that Senate should not just be overseeing national revenue but also oversee the expenditure and the revenue collected by the counties. Now, at least Senate has a role. If you check the proposed amendment to Article 179 it says the governor and the deputy governor are the Chief Executive Officer (CEO) and Deputy CEO respectively of the counties. In the current Constitution, it stopped there. Now the promoters of the BBI are extending that by saying that they are not just CEO and Deputy CEO, but they shall be accountable to the county assembly so that now it is very clear in the Constitution that the governor and his deputy shall be answerable to the county assembly. It is conveniently saying when to be accountable to the Senate and when to be accountable to the county assembly depending on the severity of the matter. This is very important in fighting corruption and enhancing governance because we are giving more monies to the counties. Let them be more accountable to the county assemblies and the Senate.

As I get to the end, there are lot of other changes in terms of elevating the Director of Public Prosecutions (DPP) through strengthening his office. There is a proposal to make it an

independent office, so that the DPP will not be at the beck and call of the Executive. It will operate as an independent office and even the qualifications of the office have been enhanced so that we will have a DPP who will be of help to Kenyans. This goes alongside the elevation of the Director of Criminal Investigations (DCI). When we now look at the changes within the police, the DCI will be at par with the other deputies, that is the deputy of the Inspector General of Police, Administration Police and now the crime unit. We want him to feel facilitated to pursue crime without having to go to the Inspector General of Police to look for police officers to send for arrest missions. He will be able to command his force. This is a notice to all those who are corrupt, that your days are numbered.

There are provisions within the Constitution to create timelines for resolution of corruption cases so that we do not have a case like the Goldenberg case which started in 1992 and is still in court. There are other cases that started in 2003 and are still in court. There has to be a timeline when these things are finalised.

Finally, regarding the issue of youth, the youth are our future but their issues have not been addressed adequately. About 75 per cent of our population falls within this bracket. If we do not include them within the economy then it will be powder keg waiting to explode. The promoters are therefore establishing a youth commission which will advance the youth agenda in all spheres of public and private life.

When you look at all the other Bills that are associated with the BBI in terms of strengthening small and micro-enterprises, the taxation holidays on new startups for the youth and all other bits and pieces that will need to accompany this, you will see the youth have been mainstreamed into this.

One of most revered Presidents of USA, Franklin Roosevelt said: “We cannot always build the future for our youth, but we can always build our youth for the future.”

The proposed amendments are aimed at establishing a youth commission, providing a platform for the youth engagement and participation which without a doubt will positively contribute towards empowering and building these youths for the future, and not us building a future for the youth. You saw that just the other day, His Excellency the President was in Kimathi University launching a company that is doing microchips for Japan in Kenya. In Manyani there are youths doing all manner of digital things for the world. Our future is empowered. We just need to mainstream some of these things and guarantee them in the Constitution.

As I conclude, allow me to reiterate the words of the one of the biggest civil rights movement activists, Dr. Martin Luther King Junior who said:

“One of the great liabilities of history is that too many people fail to remain awake through great periods of social change. Every society has its protectors or status quo and its fraternities of the indifferent who are notorious for sleeping through revolutions. Today, our very survival depends on our ability to stay awake, to adjust to new ideas, to remain vigilant and face the challenge of change.”

In this regard, I wish to ask Members that we are being called upon to join this revolution, to change Kenya to a better place so that our current children and their children and their children’s children can have a place that they will say, “There were people before us who, following in what happened in 2010 took a constitutional moment, which the president has been talking about, and made our Constitution much better and have guaranteed us a future that will ensure that we will be better off than our parents.” In this regard, I wish to urge members to take cognisance of our political and constitutional challenges that we face as a country that have

threatened our national unity in the past and which this Constitution of Kenya (Amendment) Bill of 2020 popularly known as the BBI seeks to address.

Let the Legislature not remain captive to the status quo due to the fear of the unknown. Let us remain steadfast to the issues of the Kenyan public as enumerated in the proposal of the Bill. Hon. Members, as I said earlier, in every election cycle, it is estimated we lose a minimum of one year before and a year after. It was estimated by World Bank that the 2007 clashes cost our GDP Kshs 430 billion and we saw our growth rate go from seven to zero per cent. If we lose Kshs 430 billion in every election, then it is a small price to pay, to even spend another Ksh 20 billion to guarantee that in future, we will not lose all those billions or any life because of things we can resolve by fixing the proposals the promoters of BBI have put before us as the Kenyan people. I wish to request that Members support this Bill and even be the champions and talk to the people as the people who have the knowledge and as their representative and say much as you did not come through us in Parliament, we support you and we will support you through the referendum.

I beg to move and ask the Leader of Minority Party, Hon. John Mbadi to second.

Hon. Speaker: Hon. John Mbadi.

Hon. John Mbadi (Suba South, ODM): Thank you, Hon. Speaker. Indeed, this is a historical moment. This is the first time that this country is facing the most realistic opportunity to implement the first amendment to our 2010 Constitution through a popular initiative. When some of these provisions were put in the Constitution, we never knew that they would be put to practice. I am seeing that we are likely to actualise and implement Article 257 of the Constitution.

Hon. Speaker, while seconding this Motion, allow me to, first, highlight the journey that we have taken so far. As the saying goes, a people without the knowledge of their past history, origin and culture is like a tree without its roots. Hon. Members will recall that sometime in March 2018, I actually stood on the Floor of this House to move a Motion on the BBI to a new Kenyan nation in support of the unity pact that had been cemented on Friday, 9th March 2018 between our leader, His Excellency Raila Odinga and His Excellency President Uhuru Muigai Kenyatta.

This extraordinary opportunity enabled Kenyans to face and address the challenges that have been facing Kenya and openly and honestly discuss successes and failures and, finally, formulate the necessary corrective measures for the country to move forward. This Bill, therefore, that we shall be debating from today, is actually a culmination of this process. In an effort aimed at sparing succeeding generations of Kenyans the scourge of the dilapidating, sickly electoral violence and forging national cohesion, His Excellency the President and the Right Honourable Raila Odinga, who were the foremost protagonists in the 2017 presidential elections, surprised all of us by unveiling the now famous Handshake on 9th March 2018.

It is refreshing to note that there are issues they wanted to be addressed that have continued to occupy the minds of Kenyans from that time to date and which are being addressed through this process of BBI to a new Kenyan nation. They include, but are not limited to, the nine thematic agenda items which I will go through. One is ethnic antagonism and competition, the other one is lack of national ethos, inclusivity, devolution, divisive election, safety and security, off course my pet topic of corruption, shared prosperity and, finally, the responsibilities and rights of Kenyans.

Hon. Speaker, the above issues were identified on the premise that we end tribalism in this country, we end corruption, we end impunity and electoral fraud, and we end nepotism and

politically motivated development and employment. I want to clarify that politically motivated development and employment had taken, and has continued to take root in this country. There is a point in time that we came up with the saying that *siasa mbaya maisha mbaya*, which simply meant that if you were not pushing and supporting a particular political agenda, then you are not supposed to be entitled to development and your area was supposed to be excluded from development.

If these things are addressed, then it is expected that the glass ceiling will be broken for all Kenyans to realise their fullest potential, especially the historically marginalised, namely: women, youth, persons with disabilities, minorities which include the coastal people, the Suba people on the shores of Lake Victoria, the pastoralists majority of whom are in northern Kenya and the expansive Maasailand, the Samburu, the Pokot, and other vulnerable groups like the Ogiek, the Elchamus and others will have a say in this country and should feel included in matters of national development, both political and economic. This will lead to forging a united, just and prosperous nation that we had envisaged when we forced the colonialists to leave this country for Kenyans to govern themselves.

Hon. Speaker, allow me to, first, briefly discuss what we have in mind when it comes to the above issues before I delve into the constitutional Amendment Bill itself. I will not take much time on the constitutional Amendment Bill. The Mover has ably captured most of the areas out of the proposed amendments to the Constitution. On the nine issues that have been addressed, Hon. Members, you will appreciate that Kenya lacks — I want to start with national ethos — a sense of national ethos and is increasingly becoming a nation of distinct individuals instead of an individually distinct nation. We tend to be thinking individualistic instead of thinking of our country as an individually distinct nation. There is, therefore, need for us to define and subscribe to national ethos to foster unity, a sense of belonging, patriotism and pride. We need to take pride in our nation. We need to be patriotic to this nation. We need to have a sense of belonging to this nation. Long gone should be the days when someone leaves one part of this country and moves to another part and says he is going to Kenya. We should feel that we all belong to this nation as a people. Therefore, ethnic antagonism and competition are a major threat to Kenyan success and to the very continuity of our nation.

Talking about inclusivity, Kenyans have for a long time expressed a keen desire for greater political, economic and religious inclusivity. In fact, inclusivity touches on those three distinct areas. We need religious inclusivity. Christians, Muslims, Hindus and even those who do not practise any faith should consider themselves as one nation. When it comes to political inclusivity, we want to see all Kenyans participating in political discourse in this country at the same level and people appointed to positions on merit regardless of which part of the country they come from.

On economic inclusivity, I have just mentioned, and Members will agree with me that up to the advent of devolution, there are certain sections of this country which were receiving peanuts in form of resource allocation from the national Government. Even to date, you find inordinate disparity in allocation of resources to various regions. When people from some regions travel to Nairobi, they say they are coming to Kenya, as I have mentioned, those from the North Eastern region. Sessional Paper No.10 of 1965 marginalized and excluded a huge part of this nation from economic development. That is something that the BBI Bill is addressing. We need to follow it through with action. The mere presence of law in our statute books will not help. We have to act. As a fundamental principle, Kenyans have a right to seek and be protected by the state and by the law in pursuit of prosperity and happiness within our borders. You can

read that from our National Anthem. No Kenyan should ever be victimized or considered a foreigner in their own country.

Hon. Speaker, during the constitution making process, which was concluded in 2010, in our rush to adopt and mimic foreign models, particularly from the democratic West, we forged politics that is a contest of us versus them. We choose us and them on an ethnic basis. So, anyone who does not belong to your ethnic grouping is them. Those who belong to your ethnic grouping become us even when they are not useful and helpful in our lives. We need to ask ourselves whether this is helpful to the progress of this nation.

This has led and contributed to the divisive elections that we have experienced in this country. We have associated progress and development in this country to who occupies the highest office in the land and the ethnic background of that particular individual. This leads to what we see after every election. The violence that is witnessed in this country is a manifestation of that “us versus them” principle which has not worked for this country, and, I dare say, will not help this country even going forward. Those of us who feel that the leaders who come from our areas will make us progress realise when it is too late that that is not the case. You need a leader who has a manifesto, principles and vision. You need a leader who can help bake the “cake” and promote economic progress. You do not need a leader who leads us to economic ruin like it has happened in this country a number of times.

The most important matter facing Kenyans when it comes to shared prosperity - which is one of the items that I have listed above - is generating sufficient jobs and employment, particularly for our young people. Kenyans are frustrated with the lack of sufficient and meaningful job opportunities. Much needs to be done to grow those sectors of our economy that would lead to high employment and promote and develop small-business owners in the country in order to enhance self-employment.

My colleagues will agree with me on the many abusive texts we receive from our unemployed youth who believe that we have a responsibility to give them jobs. Any time there is recruitment in the Kenya Defence Forces (KDF) and the Kenya Police, I receive thousands of texts on my phone asking for employment. When they do not get the jobs, I receive an equal number of abusive texts. You cannot fault those young men and women because they are frustrated. There are no jobs. They have gone to school but they do not know what to do with their lives. They expect us as leaders and policy-makers to come up with solutions. If you cannot come up with that solution in their own estimation, the net effect would be to insult and abuse you and call you names. With social media, you will be surprised at what we see.

Furthermore, corruption, as the principal threat to the existence and well-being of Kenya, has undermined public trust in our institutions and shattered the hopes, dreams and aspirations of entire generations of Kenyans. What amuses me is the ease with which Kenyans have decided to accept corruption as part of life. When you talk about corrupt leaders who should not ascend to certain positions in this country, the next thing you hear is that everybody is a thief. I keep on telling them that I am not a thief. Why do you call all of us thieves? If you are a thief, call yourself a thief, but do not call all of us thieves. You find that it is very normal not to judge leaders on the basis of theft. When the leaders start stealing, Kenyans start complaining again. Kenyans must come out strongly and state that it is wrong to put thieves in positions of leadership. They should act through their vote because that is the most powerful instrument that they have to correct and determine their future.

That is why I am happy that at least the BBI Bill is proposing certain steps to be taken to handle issues of corruption. One of the steps is making it clear that those cases must be

concluded within a certain period of time. If we can conclude presidential and parliamentary elections within a short period of time and put timelines in place, why can we not put timelines for corruption cases to be concluded? This is so that those who are innocent can enjoy and continue with their lives, but those who are corrupt and have stolen public funds should be taken to jail in record time, so that others are discouraged from engaging in corruption. They should be aware that it is very expensive and costly to engage in corrupt activities.

The Constitution of Kenya (Amendment) Bill contains the results of a two-year process in which Kenyans from every walk of life, in almost all our counties, across Government entities, and with a wide variety of expertise, made their views known. I will highlight proposed constitutional reforms as presented in the Bill.

It is important to appreciate that the process has been all-inclusive through public participation where views presented were analysed and validated by Kenyans to initiate a constitutional amendment, through or pursuant to the provisions of Article 257 of the Constitution. That is why I do not agree with those who are questioning the public participation on this Bill. This Bill has come through a process of popular initiative. It is the people themselves who initiated it. Over four million Kenyans appended their signatures. Over three million signatures were verified by the Independent Electoral and Boundaries Commission (IEBC) as correct. This is quite an inclusive process.

The Bill seeks to amend Chapter Two of the Constitution on formative aspects of the Republic to address regional integration, cohesion, shared prosperity and the centrality of the economy. This is in order to harness regional trade, investment and people-to-people links to increase our prosperity, opportunities for investment and enhance our security.

Further, the Bill seeks to amend Chapter Three on citizenship to strengthen the national ethos that I talked about and the responsibilities of citizens. If you look at the current Constitution, it talks about the rights of individuals. It does not address the responsibilities. Rights come with responsibilities. You must also be responsible as a Kenyan. The amendments are informed by the undertaking that the current Constitution has rightly imposed various socio-economic duties on the State but does not envision any responsibility on the part of the citizens.

The Bill also seeks to amend the Chapter Four on the bill of rights to provide a constitutional underpinning for the privacy of citizens' personal data as an emerging area in human rights owing to significant technological developments in this area. Recently, we have had the Huduma Namba. All the information that we provide to the State needs to be protected.

Chapter Six on leadership and integrity is also being amended to intensify the fight against corruption, as I mentioned earlier, by strengthening the relevant institutions. This includes a mechanism for more expeditious conduct of investigations, prosecution and trial of corruption and corruption-related matters.

Further, the Bill seeks to amend Chapter Seven on representation of the people to remove issues of divisive elections arising from electoral processes. One way is to enhance transparency and fairness of representation in the electoral system.

Second, is to promote electoral competition based on ideas, values and our shared humanity rather than the common enemy - identity politics - that have defined our electoral cycle to date.

Third, is to promote gender equity in governance by actualising the constitutional provision of the two-thirds gender principle which has become illusionary all these years. We have attempted many times in this House to actualise the provisions of our Constitution regarding the gender principle.

The Bill seeks to implement the provisions of Articles 1(2) and 89(7) of the Constitution which mandates the electoral system to comply with the universal principles of fair representation, equality of the vote and the requirement that, IEBC, in setting constituency and ward boundaries, should progressively work towards ensuring that the number of inhabitants in each constituency and ward is, nearly as possible, equal to the population quota.

I have heard people fault the 70 constituencies but by 2022, chances are that those constituencies which were protected, including Budalangi and Othaya, are supposed to disappear. How then do you all of a sudden tell people who have been enjoying representation that henceforth, those constituencies do not exist? At the same time, there are constituencies which feel that they are underrepresented in terms of their numerical population and demographics. You must balance all this. It comes with a price.

The Bill seeks to amend Chapter Eight on the Legislature to remodel the parliamentary system by bringing the Government back to the House. We have talked about this. You and the Members agree with me that the current system is not very desirable for our society. We need the Executive in this House to answer questions, address issues and be accountable to the people's representatives. That is something that I want to encourage. Even if you do not see anything positive in this Bill, you should see that as a positive step.

Chapter 9 of the Constitution is on the Executive. We will expand it in order to promote greater inclusivity and mitigate the drawbacks of the winner-takes-all electoral formula. However, many people have said that the creation of the position of a Prime Minister and the deputies will expand the Government and make it very costly. That may be true or untrue because you need to take the Constitution in its totality. As we create those three extra positions, we are also saying that Members of the National Assembly can become Cabinet Secretaries (CSs) which will reduce costs. If the President nominates and appoints majority of the sitting Members of the National Assembly in the Cabinet, the net effect will be reducing the cost of maintaining those CSs out there. We need to do away with the Chief Administrative Secretaries (CASs) and unnecessary Principal Secretaries (PSs). We appoint too many PSs like we almost attempted to do this afternoon. We need to reduce cost at that level and have the Prime Minister and Deputy Prime Minister positions.

I do not want to talk about the Judiciary. The ombudsman is supposed to enhance accountability to the people. As we protect the independence and integrity of the Judiciary, there is also need to call for accountability. The Judiciary also needs to be accountable for some of their actions to the Kenyans. The Constitution talks about the sovereignty of the people. It does not say that the Judiciary is sovereign and other arms of Government are not. People are sovereign. All arms of Government like the Legislature, Executive and Judiciary must be accountable to the people. We must find a formula. If this is not the formula, then which is it?

As I move towards concluding, the Bill seeks to amend Chapter 11 of the Constitution on the devolved government. This has been talked about. I know that this is a very special area for many Members of Parliament. I will not delve into it. We all know that we propose to increase the shareable revenue which goes to the counties to 35 per cent. Those of us who do not want to beg for money from the national Government all the time, this is a blessing to us. We will reduce the begging now. Money will be automatically allocated to our regions whether your person is in power or not.

On the public finance management, there is a proposal to streamline the principle and processes to promote efficiency and ensure expenditure is directed to maximise utility. The

proposals give special attention to the actualisation of the rights which are guaranteed under Article 43 of the Constitution, as well as strengthening devolution.

Finally, the Bill seeks to amend Chapter 13, 14 and 15 of the Constitution to ensure that the public service, national security agencies and commissions and independent offices are not only strengthened but also are accountable to Kenyans. They should have internal accountability systems that clearly and transparently separate the power of appointment and promotion from that of interdiction and censure.

The Bill also helps in carrying out legal process that inquires value for money and ensures that sound principles of public finance management apply to every arm of Government and public institution. Finally, this will facilitate, promote and enable ethical conduct and responsibility in public resources management.

Hon. Speaker, moving on, the biggest question that arises is the Parliament's role in processing the Constitution of Kenya (Amendment) Bill, 2020. That is where I will end. The question is whether our role in processing a popular initiative Bill to amend the constitution is merely perfunctory or ceremonial. As the Departmental Committee on Justice and Legal Affairs has rightly observed, Parliament cannot replace the people's views on a popular initiative with its role. Thus, the ultimate authority regarding a popular initiative Bill rests with the people. That is the direction that we should drive this Bill to. I speak as the national Chairman of Orange Democratic Movement (ODM) which is the Minority Party in this House. As a Party, we have taken a decision on this matter. The Bill should be passed as it is. In a political process like this, you gain some things and lose some. You cannot gain everything. You cannot get everything you want.

If you look at the proposal that ODM presented to the task force and the validating team, a lot of our views were captured. A number of them were also not put into the Bill. That is the game of politics and negotiation. In a scale of 1 to 10, I can say that we are about in 8 about this Bill. That is why the ODM said that this Bill must be supported. We urge our supporters across the country to support it, even at the referendum, because that is where we are heading to. I hope that the Judiciary will dispense with the cases that are before them expeditiously, so that Kenyans know the fate of Building Bridges Initiative (BBI). We want to move forward. We want to finish with this matter, conclude it completely and move to other things of national importance.

There is the issue of unconstitutional amendments. We recognise the Constitution as the supreme law of the land. Constitutionalism is a basic principle of respecting the sovereignty of the people. Therefore, it means that in amending the Constitution and the people ratifying it through the referendum, then you are actually creating a new order to be adhered to. Thus, the issue of unconstitutional amendments should not arise. How can you call the amendment of the Constitution unconstitutional? It cannot be. We can make amendments that are not good for this country but they will be in the Constitution. Kenyans created Constitution 2010. They are the ones who can change it. If they are making it worse, it is their prerogative. You cannot turn around again and say that Kenyans do not know what they are doing. They are making unconstitutional amendments in the Constitution. How can an amendment of the Constitution become unconstitutional? It can only be wrong. It can only be an amendment that does not help the country move forward.

The Committee has also pointed out in their Report that unconstitutional amendment becomes constitutional, if it is approved by the people in a referendum. Therefore, notwithstanding the powers of Parliament on legislation, the Constitution of Kenya

(Amendment) Bill, 2020 should proceed as envisaged for the people to decide whether the amendments are constitutional or not pursuant to the provisions of Article 257 (10) of the Constitution. If Kenyans feel that they do not want those provisions, they will reject them. However, you cannot call what goes to the Kenyans unconstitutional. The Constitution of Kenya (Amendment) Bill, 2020, including its schedules, is one Bill. It has provisions which are contemplated in the Constitution where a referendum is required. What we do not want to hear is that this Bill can be signed into law without going to a referendum. That cannot happen. There are provisions in this Bill which require a referendum. It is one Bill which must go to the Kenyans for validation.

Hon. Speaker, in this regard, I urge this House to approve the Bill which is a decision that will enable the document to be subjected to a referendum. Kenyans will decide on the Constitution of Kenya (Amendment) Bill 2020 as one Bill. There cannot be multiple Bills in one Bill.

With those many remarks, I beg to second the Bill. Thank you.

(Applause)

(Loud consultations)

Hon. Speaker: Member for Emurua Dikirr. Member for Cherangany.

(Question proposed)

Now, Hon. Members, let me just remind you of a resolution that you passed on Tuesday, 23rd March, 2021 to which you limited time as follows: That the Mover is limited to a maximum of one hour in moving and 30 minutes in replying. The Leader of the Majority Party and the Leader of Minority Party in the event that they are not the ones moving or seconding, they were to be limited to a maximum of 30 minutes and so is the Chairperson or the Chairman as the case may be of the Committee. Every other Member speaking on this debate on this Bill shall be limited to a maximum of 15 minutes. Remember you increased the time. It is good.

I know we have come from the short recess. Hon. Millie, you are still in the House. It is now 15 minutes for Members. So, you should prepare properly. Fifteen minutes is not the usual five or 10 minutes. Priority in speaking be accorded to the Leader of the Majority Party and the Leader of the Minority Party and the Chairperson of the relevant Departmental Committee in that order. Therefore, I am reminding you of that resolution because I can see that some of you want to contribute. Unless there are interventions, for contributions after seconding, priority will go to the Chairman of the Departmental Committee on Justice and Legal Affairs Committee before the rest of you. That was your resolution. I hope you remember.

Now, three weeks is a long time when you are in the village and you are dealing with all manner of issues like burials, digging *shambas*, trying to ensure that water flows properly in certain canals and other issues. So, I am sure that you might have forgotten that. It was important that I remind ourselves that those who are going to contribute know that they have a maximum of 15 minutes unlike in other ordinary Motions. For this specific Bill, that is the resolution you passed on 23rd of March, 2021.

Now, what is your point of order Hon. Duale?

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, if you allow me, this is a great moment in the history of Kenya. As one of the best Speakers that I have served under as a Member of Parliament (MP), I rise on a point of order pursuant to Standing Order 83 to seek your guidance on a certain grey area. This is so that as we move on with this Bill, at one point, you can give us a very wise ruling on the matter.

Hon. Speaker, if you allow me, what is the value of public participation process on the Constitution (Amendment) Bill 2021? Secondly, I also want to look at Article 94(4) of the Constitution that allows me as the MP for Garissa Township and it reads: -

“Parliament shall protect this Constitution and promote the democratic governance of the republic.”

I had a chance to peruse the Joint Report of the National Assembly Departmental Committee on Justice and Legal Affairs and the Senate Standing Committee on Justice. I must commend both committees for a job well done.

Hon. Speaker, I also had a chance to look at the specific submissions made by various stakeholders to the Bill. I must admit that they are weighty and also raise serious constitutional issues regarding the Bill, particularly as it relates to the delimitation of additional constituencies, the establishment of the judiciary ombudsman. There is also the amendment relating to the functions of the Judicial Service Commission and the National Police Service Commission, which are provided for in Clauses 43, 44, 66, 67 and the Second Schedule to the Bill.

In my view, the drafters of the Constitution, and I participated in the making of the Constitution in 2010 when I was in this august House, did not formulate Article 118 of the Constitution just for the sake of it. Public participation is key towards promoting good governance and the national values and principles.

It is for this reason that the courts defined the parameters of what is the acceptable threshold of public participation. In a number of cases, during my time as the Leader of the Majority Party, the courts offered guidance. Allow me to highlight two: they said that public participation is not a cosmetic process. Public participation needs to be meaningful and not perfunctory. Public participation ought to be real and not an illusion. Public participation needs to be qualitative and not quantitative. We must, therefore, be very careful, as a House, not to land in the same ditch that the County assembly of Tana River, in amending this Bill, fell into.

Finally, Hon. Speaker, if you allow me, public participation as a process should, in my view, be one that helps the House to make an informed decision on whether to pass or reject a Bill that is before the House. In this regard, I wish to seek your guidance on the following:

- a. What is the value of public participation that was conducted by the joint Committees of Parliament?
- b. Should the submission of the public be thrown in a file cabinet and be put away to gather dust or should they have any meaningful use or purpose?
- c. Should the submission of the public inform the debate at the Second Reading of this House?
- d. Should the submission of the public inform any proposal for amendments?
- e. Should the submission of the public inform voting at the Third Reading?
- f. Should the submission during public participation inform the decision of the House to either pass or reject this Bill?

Hon. Speaker, I want to make it very clear that when it comes to the debate, I have my position on the BBI. There are a number of areas I agree with the Bill; they might be two areas.

Hon. Speaker, I want to go on record, and I am sure you have made several rulings even to improve on the Legislature. I seek your guidance. So, either tomorrow or on another Sitting you make a guided ruling to the House. I will be very happy and I am sure so will be the generations to come. Sometimes I go to the Hansard Room to listen to what Tom Mboya said in the 1960s or what Jaramogi Odinga and Mzee Kenyatta said. I also want to go into history that as we discuss these matters as the Legislature, we must make sure that everything we do is articulate and is in conformity with Article 94(4) of the Constitution, which says that Parliament is under obligation to protect the Constitution and promote the democratic governance of the Republic.

Hon. Speaker, I rest my case. Thank you.

Hon. Speaker: Very well. Is there any other person who has an issue?

Proceed, Hon. Ochieng'

Hon. David Ochieng' (Ugenya, MDG): Thank you, Hon. Speaker. I congratulate the persons who have come up with this particular Bill. They have done a lot of work. This is not just historical. This is the first time that this House is seized of a Bill of this nature – a Bill to amend the Constitution that does not originate from any of us, but from an initiative called popular initiative. That is why it is important that you lay down some basic rules on how, not just this Bill, but similar bills in future will be handled.

I would like to direct you to Article 94 of the Constitution in terms of the role of this House when dealing with this Bill. This House, under the law, is a House that can make the laws for this country. So, when dealing with this Bill, would you please help us with the ruling on: Can this House amend the Bill? Can we introduce new clauses or make certain changes to this Bill? What is the effect?

If you look at this Bill, the Committees concerned had to deal with so many issues that are legal. They looked at issues such as whether this Bill is a popular initiative as well as whether Parliament can amend or deal with what Hon. Leader of the Minority Party was talking about, that is, constitutional amendments or unconstitutional amendments. Would you guide us on the extent of our powers under Article 94 of the Constitution when dealing with this Bill? How far can I go with the amendments that I am going to propose? How far can I go in deleting? Would you guide us on that so that we are able to know how far we can go with this Bill as a House with caution.

The Committee says that our role is not ceremonial, therefore, we must have a role that goes beyond being perfunctory that we sit here and be a conveyor belt. Please guide us in that regard.

The other issue that also arose through the Committee is whether the process that led to this Bill is a popular initiative. The Committee took a lot of time looking at that issue as to whether this is an Executive driven Bill, and therefore, not a popular initiative Bill. We also want your guidance as to whether the Bill before us today fits within the four corners of what Article 257 of the Constitution defines as a popular initiative because, as you would know, this Bill did not just come from two Kenyans.

This Bill came from two Kenyans who are not just ordinary Kenyans. One of them is the President of the country. Public money was spent in coming up with this Bill, and therefore, this Bill did not come through a process that any other Kenyan has access to. We saw a gazette notice of the people being appointed to the BBI Taskforce and public money being used around the country. Would you define this as a popular initiative or an Executive initiative? What is the nature of this particular Bill? Would you guide the House with regard to that?

As we sit today, the Committee notes that there are more than six cases going on in the courts. I have perused the Report and the nature of these cases because they are summarised for us there. The result of all of these cases is that the courts may actually find that the whole process from day one was a nullity. The courts have said so in their ruling. They have said that they will not stop us from looking at this Bill. I agree with them because of the principle of restraint.

Even us, because there are more than six cases in the court and knowing that that is the state of affairs, why would we waste time, as Parliament, to go through a process that can easily be challenged by some of the players in those cases – and they are in this Report – that would lead to the effect that the whole process that led to this Bill was a nullity, and therefore, the Bill is improperly before this House? It would have wasted Parliament's time, and therefore, would you guide us in that regard. Do we wait for the cases to be finished so that then we come here knowing what we are dealing with as the Bill? What is the reason of us looking at the Bill and then pass it, but we cannot take it to the President for assent? This is because the courts have said that we will finish this today or tomorrow and then we keep it in our offices until they decide maybe in July or August or even next year. That is when we can take it to the President or elsewhere. They may say that what we went through that afternoon of 28th April 2021 or the morning of 29th April 2021 was useless. So, Hon. Speaker, please, could you guide us in this regard?

Number four, what about if some of the proposals in the promoters' Bill have the effect of upsetting the Constitution? We are having a coup. We cannot have two people in the whole country promoting a constitutional coup. Some of the proposals being made there are akin to uprooting a constitution and replacing it with a new one. Can promoters of popular initiative come up with proposals that have the effect of easily torpedoing our Constitution?

Finally, as they considered these proposals—I agree with Hon. Duale on this matter—did the Committee have access to the records of public participation of the BBI taskforce? Is there any Kenyan who asked for 70 new constituencies? If there is not, what will be your ruling in that regard?

I rest my case and request your ruling on these matters. Thank you so much.

Hon. Speaker: Raise matters only with regard to those preliminary issues. You would be saying “preliminary objections” if you were in a court of law. Do not use them as the occasion for debate. Raise things that require a considered ruling only because there are so many. If you say they will help the Chair then somebody raises the same constitutional issues at some other point, it is not right. I want to hear all the constitutional issues that you have now so that I can address them. I will give direction as to how we are going to proceed. Are they all constitutional matters?

Hon. Members: Yes.

Hon. Speaker: Please, let them be. Hon. Junet, do you also have a constitutional issue?

(Laughter)

Hon. Junet Nuh (Suna East, ODM): Hon. Speaker, unfortunately or fortunately, I am the promoter of the Bill. I get a bit alarmed when I hear Members poking holes on my Bill on constitutional grounds. I want you to make a considered ruling at your own time on the matters the Members are raising. I would like to say that this is not a process that began today or yesterday. This is a process that began with the people of Kenya. I wish Hon. Duale was here, because he mainly spoke about public participation. He presented his views as a person.

Secondly, I want to bring to your attention the fact that there is no more public participation than collecting four million signatures. There is no more public participation than the process of a referendum, if this Bill goes through. Every Kenyan will have an opportunity to participate in the best way they know.

In conclusion, I listened to my colleague, Hon. David Ochieng'. If the Kenyan people decide to do a coup with this country by changing the Constitution, you cannot stop them. The Constitution allows them, through Article 257, to do anything they feel in terms of changing this Constitution through a popular initiative. So, everyone has a right, through a public initiative and as a Kenyan, to initiate any constitutional change that they deem fit, including scrapping Parliament. Kenyans can collect a million signatures and say that they do not need Parliament any more. They can say, "Let us stay without a parliament. Let us stay with the Judiciary and the Executive." If that successfully goes through a referendum, it becomes part of the Constitution.

If you look at the Report of the Committee, you will see that many of the issues being raised as constitutional issues have been addressed. I know you are a man of wisdom. I know you are a good lawyer and you will give a very good ruling. I do not want my Bill to be mutilated in this House. I belaboured as a promoter to collect 4 million signatures. None of these Members can achieve that. I went round the whole country to get 4 million signatures. After that, I got the services of experts to formulate a Constitutional Bill in accordance with my aspirations on how I want to change the Constitution. I took the Bill plus the signatures to the Independent Electoral and Boundaries Commission (IEBC) which verified and got over 2 million people. The Bill was later taken to 47 counties and as a promoter, I managed to convince 43 counties to support the Bill. After that, the Bill found itself here and a Member has the boldness to stand here to talk about amendments. Let us not mutilate this Bill in this House because we are doing this Bill for posterity. I am a promoter and the owner of the Bill. I am not a small man in this country because I am doing a constitutional change that affects 73 Articles of the Constitution. Nobody else could attempt to do that and people here want to filibuster yet they cannot even collect 100,000 signatures.

With those few remarks, I beseech you that my destiny is in your hands. If you give a ruling that my Bill is bad, God is watching you.

Thank you, Hon. Speaker

Hon. Speaker: It is good because God watches over all of us. Let us have Hon. T. J. Kajwang'.

Hon. T.J. Kajwang' (Ruaraka, ODM): Thank you, Hon. Speaker. As a point of order, I want to state that we are moving in a good direction. We are handling issues that are in people's minds before we debate the Bill. I want to plead with you to collect information from those who want to raise constitutional issues and then come to those who want to respond to the issues raised. When you make a ruling, it will be guided by the submissions of these people who are raising constitutional issues and some of us who have responded to the points that they have brought. The promoter of the Bill would have the last bite of the cherry and state what he thinks of the issues raised.

Hon. Speaker, as I sit down, I want to ask you to take as many as they are but also give us opportunity to respond to the issues raised.

Thank you, Hon. Speaker.

Hon. Speaker: Very well. Without any particular order, I will only allow those who are raising constitutional issues requiring some direction. Do not contribute to the Bill.

Hon. Members, because you are so many, I will start with the Member for Chepalungu, Hon. Koske, then the Members for Endebess and Emurua Dikirr. After we finish with those ones, we will have Hon. Ichung'wah, Hon. Otiende Amollo, and Hon. Jared Okelo.

(Hon. (Ms.) Odhiambo Mabona raised her hand)

Hon. Millie, you are seated in a strategic point. You do not have to raise your hand because you are in the league.

Hon. Koske, you have the Floor.

Hon. Gideon Koske (Chepalungu, CCM): Hon. Speaker, I wish to give my opinion on this...

Hon. Speaker: Not an opinion.

Hon. Gideon Koske (Chepalungu, CCM): I am taking you there.

The Constitution clearly stipulates that the people are sovereign. Therefore, their power over constitutional organs created by the Constitution is not limited. They can rewrite the Constitution as it happened in 2010 or amend any Article as they so wish. In the process of amending the Constitution through a popular initiative, Parliament is a little more than a conveyer belt between county assemblies and the plebiscite. Our role is to give opinions that will further inform debate among people to reject or approve the proposed constitutional amendment Bill. The only thing that can be unconstitutional in a referendum is its procedure and not what the people want to change. The aspirations of the people supersede any organ created by the constitution. Let us pass this Bill to its rightful owners, the people of Kenya. Let it die or survive in their hands.

Thank you.

Hon. Speaker: Hon. Members, let us agree. That is a good contribution, but please, let it be something that requires ---

(An Hon. Member spoke off record)

Yes. Hon. Pukose.

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Speaker. The issue I want to raise is on procedure. The Constitution requires that at least 24 counties pass the Bill in the county assemblies for the Bill to proceed to this House. Initially we had information that only 13 counties received the correct version of the Bill that was submitted to the counties. I have tried to look into the Committee Report and it has not talked about that. The information out there is that 13 counties received the correct Report. I seek your guidance as to whether the correct threshold was met by the counties in passing the correct Bill to this House and whether we are discussing the correct Bill or not? That is what I seek to understand.

Thank you.

Hon. Speaker: Member for Emurua Dikiir.

Hon. Kipyegon Ng'eno (Emurua Dikirr, KANU): Thank you, Hon. Speaker. First, I want to state that I am a Kenyan by birth, blood, spirit and by everything else. I have a right like anybody else to delve into this constitutional making process and to give my thinking on it. I want you to look at Article 89 of the Constitution. It gives IEBC the mandate to delimit the constituencies and wards. When you look at this BBI Bill, it proposes to delimit certain constituencies in certain counties without amending the Article that mandates IEBC to delimit.

One, I am seeking your guidance if it is constitutional for the BBI proponents to delimit constituencies without amending that Article of the Constitution that gives IEBC the mandate to do delimitation.

Two, there is also a proposal to make NG-CDF legal by having it as part the Constitution. If you can remember, NG-CDF was annulled by the courts based on Article 95 of the Constitution.

Hon. Speaker, I seek your indulgence, not the indulgence of Members. The court based its annulment on Article 95 of the Constitution. It gave Members of Parliament oversight roles. This Bill has also proposed the creation of NG-CDF without amending Article 95 of the Constitution to allow Members of Parliament to perform oversight roles and at the same time act as the Executive.

Three, this Bill seeks to make this country a parliamentary system. There is separation of powers. If we want to have ministers in this House, that means we are making this country a parliamentary system. The proponents of BBI never proposed amendments to Article 95 of the Constitution, which also talks about separation of power. Will it be constitutional to create a parliamentary system without amending the parts that speak to separation of power?

I thank you, Hon. Speaker.

Hon. Speaker: If it was not for the fact that I want to consolidate all the issues, the issues you have raised are so easy that I would have dealt with them immediately. I will consolidate everything for response. They are very simple issues.

Hon. Ichung'wah.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Speaker, for this opportunity. I do not want to repeat some of the issues that I had in mind but have been raised. I will dwell on simple issues. One is voting threshold. You are aware that this being a popular initiative, Article 257(8) of the Constitution gives us thresholds as to how we will vote in this House. It is by a majority of Members of each House. Considering COVID-19 guidelines and only 112 Members are allowed to sit in this Chamber, I wanted to know the measures you may have put in place to ensure that a majority of Members are able to contribute and for how long we are going to debate this Bill. Is it just in this sitting that ends in a few minutes and tomorrow the whole day? Are we going to proceed with debate beyond tomorrow to allow as many Members to contribute? You appreciate our numbers and the 15 minutes each Member has to contribute.

Two is on the threshold in voting. As much as it is provided as a majority of Members in each House, I would want you to guide us on what constitutes this majority. Is it a majority of the Members that will be present on the particular day of voting or is it the 112 Members that will be in the Chamber? Are we voting electronically?

(Hon. Amos Kimunya spoke off record)

I am not asking you, Leader of the Majority Party. You better keep your cool. I am addressing the Speaker. Hon. Speaker, you may protect me from the Leader of the Majority Party. You know he is used to swearing. Let me not even look at him, he might swear that he would rather die than listen to me.

(Laughter)

Hon. Speaker, you need to define for us the threshold. Will it be 50 per cent plus one of the 349 Members of this House or a simple majority of the quorum present? You can hear the promoter is shouting “quorum”. And are you going to provide mechanisms of how we will vote from the tents?

The other critical issue I wanted to raise has been raised. It has been alluded to and we cannot be blind to media reports, rumours (if you want to call them so, as I have heard my colleagues do), innuendos, gossip, or whatever you want to call it. However, it has been mentioned that there were errors that may have been deliberate and they came from saboteurs of this process. If I had the ability, and I will be expressing my views when we come to debate, you know I will be a saboteur of this process because I truly do not believe in it.

We cannot ignore those reports and talks that there have been errors in terms of what is in the Bill; that there have been different versions of the Bill going to different county assemblies as alluded to by the Member for Endebess. There is even an allusion in the Report, if you read Paragraph 360, it says that the Committee observed the copies of the Bill submitted by IEBC and introduced in the Houses had the inadvertent errors to clauses 13 and 48 and Paragraph 1 of the Second Schedule.

The fact that that has been alluded to by a Report done by a Committee of this House, we cannot then belittle the matter to be rumours, innuendos, gossip and media reports. It is now a record of this House. How then do we address those issues? How do we correct those errors if they exist as has been alluded to in the Report?

Hon. Speaker, we would want to know what Bill is before this House. Is it the one that went to County A, 10 or 20? Is it among the 11 or 13 counties that were said to have received the correct Bills or those that were not? Between the two Bills that went to this House and the Senate, which Bill is this House considering?

(Hon. Junet Nuh spoke off - record)

Hon. Junet, relax. Does the Bill have errors as has been alluded to by the Report and the Chair of the Committee? Those who sit in that Committee will be speaking to those issues. How then do we cure those issues? What shall be the implication of the two Houses considering different versions of the Bill if, indeed, there are two different versions, that is, one in the National Assembly and another in the Senate? Irrespective of whether it is subject to the entire Bill or versions of the Bill in terms of errors in one Bill versus the other, what is the implication if you are seen to be considering two different versions of the Bill? And, of course, there are questions that Hon. Ochieng was alluding to. Can these errors be corrected? How will they be corrected? Are there ways in which we can amend? Those are the issues that were addressed by Hon. Ochieng substantively in terms of amendments and I do not want to repeat. With that, I beg for your guidance, especially now that we have COVID-19 protocols. We adjourned this House a month ago because of the COVID-19 pandemic.

Hon. Speaker, we have been recalled to deliberate on the business that you addressed of the Principal Secretary, which could be important or not since we have other Principal Secretaries, and the issue of TSC which is very important because of teachers and our children who will be going to school in a week’s time. However, we are recalled to also look into this Bill and, of course, the Division of Revenue (Amendment) Bill from the Senate, which is important for us. I think the Senate always has issues amending the Division of Revenue (Amendment) Bill. I am saying that because we have been recalled to come and consider this Bill as part of the

business of the House. I would be constrained not to speak about other issues that may be in my thinking. I would have expected the Leader of the Majority Party to have recalled the House if, indeed, the COVID-19 pandemic had gone down, to come and address issues to do with vaccination of Kenyans and those who are suffering.

(Loud consultations)

Those are issues that in as much as they are not constitutional, relate to the sovereignty of the people, something which we are talking about. If the people are sovereign, we must also be able to speak on their behalf.

Hon. Speaker: Member for Nyando. Please, Hon. Members, if you want to go and discuss those other issues out there, you can do so. You have seen that we have started setting up the tents. We are alive to the fact that the requirement is a majority of the Members of each House. A majority of the Members of this House is 175. I am sure Hon. Ichung'wah knows that because he is an expert in that area of mathematics and arithmetic.

(Several Members spoke off record)

No! No! No! The number is 349. Forget about the vacancies. So, please, let us not deal with vaccination. Hon. Ichung'wah, about vaccination, I am sure you got vaccinated.

Hon. Kimani Ichung'wah (Kikuyu, JP): Not yet.

Hon. Speaker: Okay, you are still waiting but if you have already been infected in the past, it is just as good as having been vaccinated.

We need to clear quickly.

Hon. Jared Okello (Nyando, ODM): I thank you very much, Hon. Speaker. I have a mandate but I am quite considerate in nature concerns. The Constitution in Article 95(2) gives this House the powers to deliberate on and resolve any matters of concern to our people. One matter of fundamental concern to me is not about going into the body of the Bill but just about the typographical errors or making references to wrong Articles and sub-articles of the Constitution. I am seeking a ruling from you because we also understand the limitation of this House as far as getting into the body is concerned that may tinker with the will of the originators of the Bill. We are not the promoters or the owners of this Bill and, therefore, we are agreed to that extent. However, where typographical errors together with making reference to wrong Articles do occur, will it be in order to give this House the latitude to make those necessary changes so that we do not take to Kenyans, through the IEBC, a document that is quite untidy and may not be reflective of the wishes and aspirations of the promoters and Kenyans, who will birth this document at the end of the day?

I thank you, Hon. Speaker.

Hon. Speaker: Member for Rarieda.

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Thank you, Hon. Speaker. In moving this Bill, the Leader of Majority, being seconded by the Leader of Minority, did a good job in terms of elucidating the contents of the Bill. For obvious reasons, they could not have gone to some of the issues that are being raised because they were not Members of the Committee. Most of the issues being raised were actually considered by the Committee. I want to suggest that if we were to be given the opportunity as you had suggested, for the Chairman to take the first opportunity

and if you permit, at some point I would be happy to supplement, 90 per cent of these questions are already answered in the Report.

I also want to suggest that because this is a constitutional amendment Bill, virtually every provision is a constitutional issue. Therefore, the line between constitutional questions and substantive debate is very thin. Although you have been invited to make a preliminary ruling on some of these things, I am inviting you to defer your ruling, so that as many things as possible can be raised in the course of debate because some of them will actually be answered in the course of that very debate. This will make your work a lot easier.

Thank you, Hon. Speaker.

An Hon. Member: On a point of order.

Hon. Speaker: Hon. (Ms.) Millie Odhiambo. All of these issues are coming by way of points of order.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Speaker. Hon. K.J. is just being a little impatient but we are all on points of order.

What Hon. David Ochieng' and others have raised are very important because this is the first time we have come up with a popular initiative that has reached this level. I am glad to hear from Hon. Otiende saying that the Joint Committee has looked into it but because of lack of time, we have not had an opportunity to read. I am sure we will read. I hope that the Committee will address them. Even if we do not address them as Parliament, they will be addressed elsewhere. So, it would be very foolhardy as Parliament to leave out responsibility or raise the issues substantively either through the Report or through the House.

Based on what they have stated and giving cognisance of the fact that I have not yet had the opportunity to read the Report of the Joint Committee, I would seek forgiveness if I repeat some of the things raised which will be okay anyway.

My first issue is that everyone has agreed that it is a popular initiative under Article 257 of the Constitution. Is there an Executive Initiative? That is something I would like the Speaker to respond to whether there is an Executive Initiative. There has been a reference to an Executive Initiative. Does the Constitution, and not our conjecture, make a reference to an Executive Initiative?

Secondly, is there a ranking of rights by positions? For instance, do I have a greater right to life than a fishmonger in Rusinga Island? Is there ranking of rights in the Constitution and again not by my subjective thoughts? Constitutionally, is there a ranking of rights? Does the President have a greater right to life than I do? Does another citizen holding, either now or in the past, a senior political position have a higher ranking of rights than I do?

Third, is on the issue of popular initiative, I seek your guidance that if during public participation people give different views, say during the period the promoters have gone around seeking views and we have 100 different views in regard to this, do we then take all their views and bring them to Parliament? Will there be a framing of 100 view questions? Who then becomes the promoter? Is it the 100 people with different views or the original promoters? In that sense, how do we deal with the issue that has emanated from the courts about public participation being quantitative and not qualitative? When does qualitative work and when does quantitative work come in especially in regard to this issue?

The other issue is, can a constitutional provision that has been moved by Kenyans, that Kenyans have desired, in itself be considered unconstitutional? Hon. Speaker, I hope you are getting me.

Hon. Speaker: Absolutely.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Can a constitutional provision moved by Kenyans on their own be considered unconstitutional?

Hon. Speaker: When you talk about being moved, are you suggesting, can a constitutional amendment or a proposal to amend a provision of the Constitution be unconstitutional?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Speaker, I can actually put it in three levels. One, can a proposed amendment be unconstitutional?

Hon. Speaker: Absolutely.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): That is a different thing. However, once it is passed, can a constitutional provision be considered unconstitutional? I am not talking about where there is a clash. Can a substantive passing in the Constitution be unconstitutional?

My other issue is that can Kenyans... Somebody is saying that lawyers are asking very strange issues. The Speaker is a lawyer. He understands me. It is not a House of lawyers, but a House of passing laws. I would want to encourage those who are worried... Let me not encourage. Hon. Speaker, I thank you. I can see my sister, Hon. Janet, who understands what I am doing, is encouraging me. Thank you. Those who do not understand should ask me to unpackage for them because I know the Speaker understands what I am doing.

Hon. Speaker, can Kenyans pass a system of law or constitutional law that is *sui generis* for Kenyans, and that may be a departure from other practices, but is very *sui generis* for Kenya? Is there something that has stopped Kenyans from passing a system? Maybe I can give an example. When we were passing the Sexual Offences Act, we were told that the minimum sentences are not practised in the Commonwealth. However, we told them that in the Commonwealth, people were not raping two-year olds. So, can we pass a *sui generis* system that recognises our realities?

Finally, when there is an error that is noticed after the passage, how do we balance the role of Parliament *vis-à-vis* the constitutional interpretation role of the Supreme Court?

Thank you, Hon. Speaker.

(Applause)

Hon. Speaker: Member for Soy. Raise only those issues that require my considered ruling.

Hon. Caleb Kositany (Soy, JP): Thank you, Hon. Speaker. I will stick to...

Hon. Speaker: You can leave the time for contribution at some other time.

Hon. Caleb Kositany (Soy, JP): Thank you, Hon. Speaker. You know I am very obedient unlike somebody else. I have just two issues. First, I have seen Hon. Junet being very passionate about this being his Bill. When I look at the promoter of the Bill... This is the BBI. To the best of my knowledge, the BBI was never gazetted. What was gazetted was the BBI taskforce and the BBI Steering Committee. So, it will be nice if you give a ruling to tell us whether the promoter of the Bill is actually recognised in law in Kenya.

The second issue that I really want to know is the time when... Hon. Ichung'wah raised it. This is a constitution-making process. We are seeking to amend the Constitution of Kenya. You have called a Special Sitting for today and tomorrow. Does that mean that this process ends tomorrow? Will it be people-driven? Will it be satisfactory to the people of Kenya that a serious matter like a constitutional amendment will be debated for only two days? I am not saying that that is what you have decided, but it is good that you give a ruling on how long we can debate so

that every Kenyan who is represented in this House can have their views heard. Many Kenyans are now sending text messages, emails and *WhatsApp* messages to us telling us to ask various questions. So, we beg you to...

Hon. Speaker: Let me comment on the latter one so that you have some comfort, Hon. Kositany. Debate on this Bill will continue as long as there are Members desirous of contributing.

(Applause)

Remember that is one of the reconsiderations we gave even for increasing the time for contributions.

Hon. Member for Baringo North, you walked out and there are some Members you left behind, and some are seated next to you. They will have to speak before you because you had gone to loiter a bit outside there. We will have the Member for Samburu North first.

(Hon. William Cheptumo spoke off record)

It is only fair when you have taken some time to go and walk a bit out there to allow the others who have been here the chance to contribute.

Hon. Alois Lentoimaga (Samburu North, JP): Thank you, Hon. Speaker. I just wanted to ask you to make a ruling on the issue of delineation of constituencies or electoral boundaries.

Hon. Speaker: Do not say something that has already been raised. Hon. Ngeno raised it. It is addressing Article 89. Hon. Ngeno prosecuted that matter very well. Okay, what is the other issue?

Hon. Alois Lentoimaga (Samburu North, JP): The other issue is whether they considered the other factors: geographical conditions, urban centres, community of interest, and means of communication? In my opinion, review of constituencies or boundaries would have been done in 2024. Will it happen again at that time?

Hon. Speaker: Hon. Sankok.

Hon. David ole Sankok (Nominated, JP): I really want to ask you and seek your guidance if indeed this Bill is in this House through the front door or the back door. In a popular initiative, it is assumed that it is an initiative from the ordinary Kenyan citizen, from Wanjiku. From all description, the Handshake brothers, even Junet and whoever is promoting this Bill is not Wanjiku, is not an ordinary Kenyan. They had an opportunity. If it is my President and my party leader, he had a representative in this House in the name of the Leader of the Majority Party, that is Amos Kimunya. If it is....

Hon. Speaker: Now, Hon. Sankok, you know that issue is what has been raised. If you listen to what the Hon. Millie Odhiambo was raising....

Hon. David ole Sankok (Nominated, JP): She used a lot of English.

Hon. Speaker: She said there is popular initiative and a parliamentary initiative. She asks whether there is an Executive Initiative. So, the long and short is that I will respond to that. It is straightforward. Even you have a right to begin a popular initiative, not a parliamentary initiative. If I may say that pronto. If you decide to go out there and collect signatures from a million people, you have chosen not to use the institution where you work in. Nothing prevents you from doing that.

Hon. David ole Sankok (Nominated, JP): Do you mean any Kenyan, including the President and the Rt. Hon. Raila Odinga who is the former Prime Minister, is an ordinary Kenyan? Even army officers are ordinary Kenyans. I am learning now, today. From all description I thought they are not ordinary Kenyans. They had an opportunity. Hon. Mbadi is here to stand in for Raila Odinga. Thank you for your guidance.

Hon. Speaker: Hon. Gikaria. Now we want to finish this.

Hon. David Gikaria (Nakuru Town East, JP): Thank you, Hon. Speaker. Mine is only one. When Hon. Kabinga wa Thayu was asking that question about a 176-page Report that people had not read, I was the first person to dismiss him. But, going by what has been said....

(Hon. Josphat Kabinga moved in his place)

Hon. Speaker: You do not have to speak, Hon. Kabinga Wachira. He made a mistake. It was Hon. Murugara.

Hon. David Gikaria (Nakuru Town East, JP): Yes. It is Murugara. I am sorry. When Hon. Murugara rose and requested for time to be given, in your ruling, can you rule that if a Report of say 200 pages is tabled in the morning, should we debate it in the next two hours or so? Maybe you could give us a ruling on that so that we also have time on when we should read or we should not.

Hon. Speaker: Except that, of course, in the course of today, a Report by the Budget and Appropriations Committee was tabled and you, not me, dealt with it in Second Reading, the Committee of the whole House and Third Reading. So, I do not know. A Report is a Report. It does not matter whether it is 1,000 pages or two pages. It is a Report. So, Hon. Gikaria, you cannot eat your cake and have it. You passed the Division of Revenue Bill this morning and its Report, again, was tabled this morning. Hon. Members, you have proved that you can do a lot of things.

Hon. Lessonet, you have the Floor. We need to finish this.

Hon. Moses Lessonet (Eldama Ravine, JP): Thank you, Hon. Speaker. I want to invite your ruling on the issue that the 47 County Assemblies went through various documents with the errors that have been alluded to. We can call them typographical errors but we must remain alive to the fact that they have gone through Assemblies like this one. The County Assembly of Baringo in Kabarnet is as good as the National Assembly of Kenya. In your ruling, I want you to address the reason why we cannot send the correct document to those assemblies for processing yet we still have enough time.

Secondly, I want to talk about the independence of this House, the Judiciary and the Executive. In Clause 61, there is a presidential prerogative on the Salaries and Remuneration Commission (SRC). Currently, the composition of the SRC requires the President to nominate one person while the Parliamentary Service Commission (PSC), the Public Service Commission, the Judicial Service Commission (JSC) and the Teachers Service Commission (TSC) are each required to nominate one person. Fourteen nominees are currently appointed by various organs but more importantly the PSC and the JSC being the other arms of Government. In this Building Bridges Initiative proposal, there will be seven commissioners appointed by one arm of the Government, the presidency. The import of the current Constitution is the independence of the Legislature, Judiciary and Executive. It is not right to give only one arm of the Government responsibility over SRC because it will affect the independence of the other arms. In a nutshell, I am saying that this constitutional amendment Bill might be unconstitutional. As you make your ruling, I hope you will not be the Speaker who will have made this House redundant and diluted its independence through the SRC.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Lessonet, that is going to the substance. You are at liberty to express whatever view about any proposal in the Bill. At the end of the day, you must appreciate the provisions of Article 257, Clauses 8 and 10. Clause 10 is very informative that if either House of Parliament fails to pass the Bill, it goes straight to the referendum. You know that so well. You need to read the Constitution like your Bible.

I will give a minute to each one of you. Hon. K.J.

Hon. John Kiarie (Dagoretti South, JP): Thank you, Hon. Speaker. I understand that quite a number of the issues I had have been raised. So, I will not go back to them. Mine is on the preliminary direction that I want to seek. I want to be informed by science and not to gloss over the issue of time. Scientifically, I understand that an individual reading at normal speed can only read four pages in 16 minutes. The time that we received this Report is this afternoon. I know that you have already commented on this, but we are running into a problem like what the county governments did by discussing and passing...

Hon. Speaker: Hon. Members, the debate in the House is about the Bill. You have been on recess for almost a month. If you have not read and reread the Bill, you must have been in some other part of the universe. Hon. Savula. Is that Hon. Savula? The Member right at the back, I cannot see you. It is too dark. Is it Hon. Tonui? Very well. You have one minute

Hon. Ronald Tonui (Bomet Central, JP): Thank you, Hon. Speaker. I may not call mine a constitutional question. I am just seeking your guidance on the issue of popular initiative. If some Members of this House were part of the taskforce that collected views, does the Bill qualify to have been originated by popular initiative? If some Members of this House and the Senate – in fact a Senator chaired the task force – were part of the task force, I seek to get your direction on whether that makes the proposed amendment Bill to be by popular initiative or parliamentary initiative?

On SRC, these are people who collected views. We followed on television because they were covered by television stations. We never saw any contribution that SRC...

Hon. Speaker: Hon. Kaluma.

Hon. Peter Kaluma (Homa Bay Town, ODM): Thank you, Hon. Speaker. Indeed, most of these questions are in the Committee Report. I have three questions that I am seeking your direction on. One, whether a Bill to amend the Constitution by popular initiative can be amended by the promoters through the Mover before Parliament finally decides on it? That is important to me. Two, whether a Bill to amend the Constitution by popular initiative can be amended by Parliament and if so, to what extent? If you look at our schedule we are saying this Act. Can we not just say this Constitution? Lastly, how should Parliament treat a clearly unconstitutional provision proposed to amend the Constitution? I am only looking at the proposed Clause 43. I am worried it could be interfering with the security of tenure of judges or judicial independence. If Parliament was to find that indeed that is a problem, do we just leave it to the...

Hon. Speaker: Hon. Wamunyinyi.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Thank you, Hon. Speaker. An amendment to this Constitution is under Article 255 which has provisions that guide the process. Article 256 is clear if the initiative is by Parliament. However, I want to draw your attention to Article 257, particularly on sub-articles 7, 8, 9 and 10. Sub-Article 7 talks about when a draft Bill has been passed by a majority of the county assemblies and Sub-Article 10 says if either House of Parliament fails to pass the Bill, or the Bill relates to matter specified in article 255, the proposed amendment shall be submitted to the people in a referendum. That gives...

Hon. Speaker: Order! Hon. Members. The Member for Samburu North, hold on for just a minute. You will agree that you have raised quite a number of issues. Some of them are light while others are weighty and they will require a considered ruling. I gave this opportunity to hear what issues Members may have that may touch on the law, procedure and the Constitution. I make this initial determination. The issues raised are not sufficient for me to order that debate on this Bill stops.

(Applause)

So, debate on this Bill will proceed tomorrow and any other time should there still be Members desirous of contributing. In the meantime, I will check the *Hansard* to get all the issues that you have raised, consolidate them and give some way forward. It does not matter whether it will be at the tail end of tomorrow or any other day. It is important that at some point we make some determination on the various issues that you have raised. Debate will continue those points notwithstanding. The misgivings or the anxieties notwithstanding, we will continue with debate on the Bill. Those of you who have read the Bill will obviously be dealing with it; those of you who have been reading *Twitter*, *WhatsApp* and *Instagram* will be dealing with that.

As we said earlier on and following your own resolution, when we resume tomorrow the Chairman of the Committee will have the first chance. I believe he will take us not just through the Bill but also the report which many of you have referred to so that debate after that will be accordingly informed. The Chairman, the Vice-Chairman and several members of that Committee will be here to contribute. Hon. Murugara, sorry. Now you may have to burn the midnight oil reading the Report. Hon. Kiarie, the Member for Dagoretti South, has left. You see this is the problem. He is a member of the Committee and he has not even read the Report.

Again, there will be sufficient time for all of you. Those who have not read the Report and the Bill, please read them so that tomorrow we make informed contributions. It does not matter what views one has but let the views be informed both by the Bill and the Report so that we can accommodate one another in a decorous manner.

ADJOURNMENT

Hon. Speaker: Hon. Members, the time being 7.03 p.m., the House stands adjourned until tomorrow, Thursday, 29th April 2021, at 10.00 a.m.

The House rose at 7.03 p.m.