

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

Thursday, 18<sup>th</sup> November 2021

The House met at 7.00 p.m.

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

**PRAYERS****QUORUM**

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order, Members! Let us have the Members who are getting in take their seats. Hon. Members, I have no requisite quorum to start the business. So, I do order the Quorum Bell to be rung for 10 minutes.

*(Quorum Bell was rung)*

Order, Members! Order! Hon. Members, I now confirm we have the requisite numbers for us to start the business of day, that is, the Evening Sitting.

Very well. On Order No.5, we have the Leader of the Majority Party to lay Papers.

**PAPERS LAID**

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

Reports of the Auditor-General and Financial Statements on the following donor-funded projects for the year ended 30<sup>th</sup> June 2020 and the corresponding implementing agencies:

- (i) Multi-National Arusha-Holili/Taveta-Voi Road Project by Kenya National Highways Authority;
- (ii) Nairobi Missing Link Roads and Non-Motorised Transport Facilities by Kenya Urban Roads Authority;
- (iii) Mombasa Port Area Road Development Project by Kenya National Highways Authority;
- (iv) Regional Roads Component (Merille-Marsabit Road) Project by Kenya National Highways Authority;
- (v) Mombasa-Nairobi-Addis Ababa Road Corridor Project Phase II (Marsabit-Turbi Road) by Kenya National Highways Authority;

- (vi) Northern Corridor Rehabilitation Programme Phase III (Eldoret-Turbo-Webuye-Malaba Road Improvement Project) by Kenya National Highways Authority;
- (vii) Northern Corridor Transport Improvement Project by Kenya National Highways Authority;
- (viii) Nuno-Modogashe Road Project by the Kenya National Highways Authority;
- (ix) Nairobi Outer Ring Road Improvement Project by Kenya Urban Roads Authority;
- (x) Kenya Nairobi Southern Bypass Project by the Kenya National Highways Authority;
- (xi) Kenya Nairobi-Thika Highway Improvement Project (Lot 3) Government Concessional Loan Agreement by Kenya National Highways Authority;
- (xii) Nairobi-Thika Highway Improvement Project Lots I and II by Kenya National Highways Authority;
- (xiii) National Urban Transport Improvement Project by Kenya National Highways Authority;
- (xiv) National Urban Transport Improvement Project by Kenya Urban Roads Authority;
- (xv) Port Reitz/Moi International Airport Access (C110) Road (FIDIC EPC/Turnkey Based) by Kenya National Highways Authority;
- (xvi) Timboroa- Eldoret Road Rehabilitation Project by Kenya National Highways Authority;
- (xvii) Mombasa-Nairobi-Addis Ababa Road Corridor Project Phase III (Turbi-Moyale) by Kenya National Highways Authority;
- (xviii) Kenya Aviation Modernization Project (Preparation Advance No.V0440) by Kenya Airports Authority;
- (xix) Kenya Transport Sector Support Project by Kenya Airports Authority;
- (xx) Kenya Transport Sector Support Project by the Kenya Civil Aviation Authority;
- (xxi) National Urban Transport Improvement Project (KRC Component) by Kenya Railways Corporation;
- (xxii) Mombasa West Integrated Roads Network Programme Phase II dueling of Magongo Road and expansion of Kipevu Road by the Kenya National Highways Authority;
- (xxiii) Sirari Corridor Accessibility and Road Safety Improvement Project (Isebania-Kisii-Ahero (A1) Road Rehabilitation Project by Kenya National Highways Authority;
- (xxiv) Kapchorwa-Suam-Kitale and Eldoret Bypass Roads (Kenya) Project by Kenya National Highways Authority;
- (xxv) Eastern Africa Regional Transport, Trade and Development Facilitation Project by Kenya National Highways Authority;
- (xxvi) Safe Roads/Usalama Barabarani Programme by National Transport and Safety Authority; and,
- (xxvii) Kenya Towns Sustainable Water Supply and Sanitation Programme by Rift Valley Water Works Development Agency.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Let us allow the Leader of the Majority Party to lay the Papers.

Next Order!

**BILL***Second Reading*

## THE REFERENDUM (NO.2) BILL

*(Hon. (Dr.) Otiende Amollo on 11.2.2021)**(Resumption of Debate interrupted on 16.2.2021)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, Order No.8 is a resumption of debate which was interrupted on Tuesday, 16<sup>th</sup> February 2021, in the Evening Sitting. As far as my records are concerned, we had Hon. Wilson Sossion, who was on the Floor and had a balance of six minutes. So, Hon. Sossion, you have the Floor.

**Hon. Wilson Sossion** (Nominated, ODM): Thank you, Hon. Temporary Deputy Speaker. Before I was interrupted, I had underscored the importance of the people of Kenya exercising their sovereign power directly through referendum. Of course, the Constitution of Kenya, 2010 gave the people of Kenya the power to exercise their sovereignty directly and also through this House. Looking at the principles of governance, our national values, our Constitution foresaw a situation where governance would be a key issue in this country. Even looking at the context of the various countries within the region, the biggest problem they have had after Independence has been good governance, democratic governance and participation of the people. Indeed, I wish to laud the Republic of Kenya. When we compare ourselves with many countries in Africa, our level of democracy is one of the best in the world and, indeed, when we passed the Constitution of Kenya 2010, implementing various aspects that are envisaged in the Constitution should have been done through various statutes. One of them is referendum.

So, to me, this Referendum Bill is one aspect of implementing the various provisions of the Constitution, particularly inviting the people to exercise their democratic rights and also engage in public participation. While Article 255 of the Constitution envisages referendum only in amending the Constitution in Articles 256 and 257, I believe that Kenya, as a democracy, has matured to a level that it can engage in referenda in other areas.

Hon. Temporary Deputy Speaker, looking at this Bill in Clause 8, it talks very clearly that a referendum may be conducted on the basis of an Act of Parliament which specifies the nature and purpose of the referendum, meaning that we may not limit the people of Kenya to only conducting referenda on constitutional amendments. It can be done in other aspects. Indeed, we have had two referenda, but with respect to the Report of the Joint Committee of CIOC and JLAC, framing of referendum question will be key and, in fact, at the moment, people are questioning and debating whether we should have multiple choices or one question. The most important thing is to have simple questions that the public can participate and exercise their sovereignty and their decisions well. So, indeed, the framing of referenda questions will be very key. It is important to have simple and clear questions so that voting and taking decisions can be very easy.

I also agree with decision Number 8 that we do not need regulations. The Independent Electoral and Boundaries Commission (IEBC) should not make regulations. A lot of legislations were enacted by this House to implement the Constitution, but we undid it by asking State agencies to make regulations and those regulations have been used to undermine the spirit and letter of the Constitution and also the law. I believe if we have a very good piece of legislation to guide

referenda, we will not need regulations. A good law will enable Kenyans to exercise their sovereignty through referenda.

The other important aspect is civic education. For people to exercise their independence and individual democratic decisions, a strong civic education on any item that is brought up by the proponents, whether it is an individual or a group, Parliament or Government or the people themselves is important. It will be important to mount a working civic education system. I believe this Act also will serve that purpose because when you look at it at the moment, the dimensions that the debates are taking in terms of referendum, sometimes we lose the very essential objective, and we can end up defeating issues that are very essential.

The other issue is the cost of referendum. This is the elephant in the room. We have seen arguments that a referendum is going to be expensive; that it is billions of shillings. When we talk of referendum and elections in this country, it becomes a huge cost. We must think as a country about how to make referenda cost effective, convenient and easy for the people. We have seen other democracies where they have gone into electronic voting system. That electronic voting system makes it extremely cheap. We should not deny the people the opportunity to exercise their sovereign power by making referendum very expensive. It should be as applicable to as many issues as possible.

I believe this Bill is coming at the right time so that we can save on areas where we are losing. We can midwife democracy. Men and women have suffered in this country to ensure that we have a working democracy. At the moment, we may end up losing the independence of the Judiciary. State agencies and constitutional commissions are also under capture and I think the voice of the people would be very important.

I support this Referendum Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): You have already consumed your six minutes. Let me have the Member for Suba North, Hon. Millie Odhiambo.

**Hon. (Ms.) Odhiambo - Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker. I rise to support the Referendum Bill with amendments. Having gone through the Bill, I do not understand why it was very controversial because it just strengthens what is in the Constitution. As a House, we always have options to amend the Constitution, if there is something we do not like. So, I really do not think there is anybody who in principle disagrees with the need for a Referendum Bill. Having said that, I want to agree with Hon. Sossion, that we have not taken into account some of the proposed amendments that I would be seeking. We have not proposed or taken into account Article 1(2) of the Constitution that recognises that the people may exercise their sovereign power either directly or through their democratically elected representatives. Should people say, for instance, they want to determine whether they want to leave the East African Community, when we get into that, the Executive will go through the treaty, and then it will come to Parliament. But should people decide that they do not want to go through Parliament and they want to do that on their own, to get out of the treaty, they can propose a referendum. On social issues like whether men should send fare, if Kenyans decided to do that, on a light note, they should do that because those are some of the things that you can do directly.

The other issue that I would like to propose an amendment to is that it takes away the power of the promoter which goes against the Bill of Rights because from the spirit of this Bill, it tries in various ways by taking back the referendum question to Parliament to frame the question or to approve the framed question. We already have a parliamentary initiative. So, if Parliament wants to bring a Bill, like I know after this Bill we have Bill by Hon. Shollei, we will still have that and then it can also go for referendum if it is an issue that affects certain issues such as the Bill of

Rights. But once an ordinary citizen of Kenya or any other person in Kenya decides to bring an issue that is of concern to them, it is not up to us as a Parliament to then reframe it for them because our understanding is very different. I remember when we were passing the Constitution, when we talked about the freedom of expression, one of us was very explicit and she said, dress is part of freedom of expression and we stopped for two days discussing whether a dress is freedom of expression or not. So if a Kenyan decides to say that we want to include dress as a right, then Parliament comes and says no, frame the question whether it is freedom of expression, you would have taken away that person's right because inherent in what they were saying was the fact that women are mistreated because of the way they dress. Women are raped because of the way they dress. So they are talking a lot of issues through that expression of freedom to dress.

The other issue that Hon. Sossion has alluded to is in terms of the obligations to the public and the promoters. We must balance in terms of principle, so that we do not have people bringing frivolous amendments yet at the same time when somebody has brought something that is weighty, it should not fall by the roadside merely because they cannot support it. So there must be a balance between what the promoter can do and what the Government can do just to ensure that as I have said, we are not bringing frivolous amendments.

My other concern is that this Bill is loading *honorius* provisions that are not in the Constitution. Whenever you are bringing a Bill to give effect to the Constitution, it should be within the framework or the principles of the Constitution, not outside the principles of the Constitution. If you look at Clause 5 of that Bill, especially Clause 5(1)(a), it says for purposes of a referendum to amend a Constitution by popular initiative, pursuant to Article 257 of the Constitution, the promoters of a popular initiative shall collect not less than one million signatures of registered voters. This is okay because it is constitutional, but it then adds that not more than one - third shall be from one county and voters in at least 24 counties shall be represented. I think we are confusing this with the final votes from the counties when you go to a referendum. But when it comes to initial stages, we are actually giving *honorius* provisions that are not in the Constitution.

The other issue that I think other Members have spoken to is the issue of verification of signatures that we need to speak to because we saw when the signatures were taken to the IEBC, we had to spend a lot of money running into millions that we did not need to. I remember when we brought the Okoa Kenya last time, one of the reasons we were told our signatures were refused is because people even had elephants as signatures. Constitutionally, there is nothing stopping you from having an elephant as your signature or even drawing Millie Odhiambo as your signature. What the IEBC ought to do is to verify whether you are a voter not your signature because they do not have the mandate or the knowhow to determine what people's signatures look like. However, they can verify if you are a voter and that is what we should be providing.

Another *honorius* issue is that I can see we are providing public participation twice. People will have done public participation at the counties like they are doing right now and when it comes to Parliament, again public participation. Unless we want to take public participation to Uganda, it is the same people we are involving in public participation and we are making it too expensive.

There is also provision that gives the President timelines. When the Bill has been taken to the President, it is given seven days, but we do not say what happens if the President refuses. We are not doing this for purposes of this referendum. This Bill is for posterity. I doubt it will even apply in this referendum. It will not. But should we in future have a situation where the President decides he does not want to forward, what then happens? Let us make a provision that says within seven days if he does not, he will be deemed to have sent it. That will enable it to move forward.

The other thing I do not like is where we are saying, where counties do not forward their decisions, they will be deemed to have rejected. We are not too sure. If they fail to forward, they shall be deemed to have passed, so that we are sure that they make a decision, one way or the other.

Hon. Temporary Deputy Speaker, the issue that people have talked about is single or multiple questions. When we talk about single or multiple questions and we are talking about a Bill even in the Constitution, what multiplicity are we talking about? Unless we are talking under Article 1 of the Constitution. The Constitution talks about a Bill. If you give a Bill, like this Bill we are talking about right now, what will Kenyans vote about? Are we turning the whole country into a Parliament? When is their Committee of the whole House? Where will they be saying this one is agreed and that is not agreed? It would mean that we may take about 20 years to just bring one constitutional amendment.

The issue of declaration of results is also a concern to me. We need to have the same standards as provided in the existing law. We should not provide new standards. Finally, because people are very concerned, one of the amendments we can bring is on the commencement period.

I support with amendments.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Let me have Hon. (Prof.) Jacqueline Oduol.

Hon. Members, as a matter of procedure, the Members who have requested to speak to this and had already contributed, just know that it is not provided for in our own Standing Orders to contribute twice to either a Bill or a Motion.

Carry on.

**Hon. (Prof.) Jacqueline Oduol** (Nominated, ODM): Thank you, Hon. Temporary Deputy Speaker, for the opportunity to contribute to this Bill.

On the outset, I would like to indicate that I support the Bill, but with some amendments. Clause 7 of the Bill is speaking to the need to hold a national referendum about any issue other than a referendum, to amend the Constitution. When I look at the understanding and the definition of a referendum, it clearly indicates that we need to distinguish between seeking constitutional amendments which, in this case, is what we can see as we look at the reconciled notes from the two Committees, and a plebiscite, where you can have an advisory referendum and where you can come up with the decisions that the Government does not have to act upon, but which would give room for the citizenry to express some of their desires.

So, Hon. Temporary Deputy Speaker, it is extremely important that we get back to the point where we give people their sovereignty in terms of giving them voice and direct democracy, so to speak. It is clear that through the popular initiative, the citizenry can provide very specific indications of change that they would like to see by following the procedures therein in terms of gathering signatures. If they are sufficient, these would be verified and the verification would be carried out in accordance with procedures. This would be something that would be acceptable. It is important that we recognise that.

Secondly, I agree with the point that as we look at the Bill, it is a Bill by popular initiative. In terms of sovereignty of the people, it is allowing the citizens to come up with thoughts that they would want to be brought into law to ensure that they are given an opportunity to be considered. We have not come up with the idea on how the Bill that has been presented by popular initiative can be redrafted. In this regard, it is clear that the joint committee's resolutions are something that I agree with. It is useful to keep it as the citizen's popular initiative.

This links to the question of framing of the question. If we are linking, which we must, because our Constitution recognises the sovereignty of the people, what we are talking about is

how the people, themselves, in guidance with the law that exists, can express or make clear what they are looking for. The promoters of the popular initiative would be the ones with the responsibility of framing the question. It should not be something that would be discussed, given to some other body or somebody else.

Hon. Temporary Deputy Speaker, the fourth point that I would want to make concerns power that would be seen to be given to the IEBC. When we look at resolution No.8, I am in agreement that the power to make regulations should not be given to the IEBC. As we have said and many Members have pointed out, we would like to be sure that we do not have an atmosphere where with one hand, we are allowing and giving the citizens enough room through popular initiative to come up with what they would want to see reflected in an amendment and with the other hand, taking it back through getting the IEBC to come up with regulations.

I do not have to say and repeat that there is a sense in which, as we look at the verification of signatures, as was said yesterday by one Hon. Member, it is a wonder to the citizenry in Kenya the manner in which the IEBC would verify signatures because they do not have a repository of signatures. As indicated, what they would do is to go by what the referendum requires, that they are able to confirm that the request or petition brought to them is, indeed, supported by a minimum number of registered voters. So, the key issue is that of voters and the verification of whether those who are seeking to make the change by popular initiative are registered voters. This is the mandate of the IEBC. I agree with the joint committee that as we look at the Bill, we would not want to have the IEBC given power to make regulations.

I want to speak to the application of the Elections Act. As we are going to be talking about the referendum, we would want to be sure that we are allowing, as much as is possible, a clear way by which the very idea, response, answer or choice of the citizenry is captured accurately. In this regard, therefore, it is important that we have a clear application that is provided for that would enable us to engage the Elections Act and at the very least, ensure that when we are tallying, we are doing this in a way that we can link to what already exists and not have a situation where we would have an amorphous unit or standard, such as the county, as opposed to what already exists.

As I support this Bill, I support it with amendments. We want to be clear that as we come up with law, we are speaking specifically to how we would amend the Constitution and look at it. Not us talking about a particular short time interest such as the Building Bridges Initiative. Our responsibility as Members of Parliament is to ensure that we come up with legislation that captures the views, desires and needs of the people.

I support with amendments.

I thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Let me have the Member for Tongaren, Hon. (Dr.) Eseli Simiyu, who is also serving as the Deputy Minority Whip.

**Hon. (Dr.) Eseli Simiyu** (Tongaren, FORD-K): Thank you, Hon. Temporary Deputy Speaker, for this chance to contribute to this debate on the Referendum Bill.

This law is timely given the circumstances that the country is undergoing. As we speak, the BBI Bill is before the assemblies, rapidly moving through the assemblies and making a possibility of a referendum soon loom large. So, it should not catch Parliament flat footed. We should put in place this Referendum Bill, so that we are able to manage that referendum properly. There are those who have different views as to how the referendum should be conducted. I keenly followed the contributions by the Chairperson of the Constitutional Implementation Oversight Committee, Hon. Jeremiah Kioni. He gave a chronology of the processes that the Bills by the

Constitutional Implementation Oversight Committee and the Departmental Committee on Justice and Legal Affairs had gone through. He expressed his reservations on certain matters. I was heartened when I remembered that Hon. Jeremiah Kioni was part of the 10<sup>th</sup> Parliament, which, in essence, was a post-conflict Parliament. We had to make very many bi-partisan compromises so that we could move the country forward.

I believe the two committees; namely, the Departmental Committee on Justice and Legal Affairs and the Constitutional Implementation Oversight Committee are up to the task. I have also seen the Report of their joint meeting to try and harmonize the two Bills. If they have gone to that extent, I am confident that, by the time we get to the Committee of the Whole House, they will bring those amendments that they feel are fit to be included in this Bill that might have been initially left out. I have full confidence that given the circumstances, we will be able to reach proper compromises that will not completely water down the intent of the Bill when it becomes law. The country badly needs this law.

The cost of the referendum, as has been bandied by the commissioners at the Independent Electoral and Boundaries Commission (IEBC), was rather worrying. It appeared like the IEBC is not living in the present-day Kenya where there are a lot of financial constraints and everybody needs to cut back on unnecessary expenditures. The IEBC needs to be more realistic in their estimates of the cost of a referendum. Those costs should be much lower than what they are implying they should be.

The other matter I would like to point out is the issue of public participation. It is the constitutional right for the public to participate but, in the case of a popular initiative, going out there to get the one million signatures is no mean feat. Is that not public participation? If you are able to collect over one million signatures, perhaps, the public has participated in this matter. Perhaps, when we are looking at a popular initiative, we need to relook at these things. It is all very well to have a blanket law that says that there should be public participation in everything. However, find out how this started. If it started by public participation already, are you still justified by insisting that there should be public participation? When you are collecting those signatures, there is quite a bit of public participation.

I have looked at the Bill generally. Clause 7(2) states that county governments may conduct local referendum on, among other local issues... We live in this country and have seen what happens in the counties. The Departmental Committee on Justice and Legal Affairs can rise to the occasion and tighten this up a bit so that we can specify exactly what county governments can go to referenda on in their counties. Remember, this is also a cost. We cannot just leave it open. We might end up having referenda on almost everything in the counties. We need to tidy this up a bit so that we are very clear on what we mean when we say that the county governments can have referenda. Which referenda are those that the county governments can have? Even if we say they will use the Election Laws, what can they go to or not go to a referendum on? Otherwise, you will have 47 referenda every year from all the 47 counties. We need to tighten that up a bit.

There is also the issue of timelines. We need proper timelines in this matter because if you leave it too open, you can have some people who are mischievous and delay everything. I noticed that with the Departmental Committee on Justice and Legal Affairs and the Constitutional Implementation Oversight Committee Meeting Compromise Report. They seem to have tightened up the issues at the court. This Bill allows the Court of Appeal to take six months to give their verdict. You might end up with - for lack of a better word "judicial filibustering", which is very common in this country. You get tied up in the courts for good and you will never move. I agree with the compromise that they will put it for 30 or so days. It is not just for the Building Bridges

Initiative (BBI). Any referendum that has come through the popular initiative must be treated as urgent. We should not allow any delays in our courts of law which they are very good at. We need to do something to ensure that the timelines are very tight so that we do not end up with a lot of delays in the courts.

Overall, I support the Bill. I pray that we will rise to the occasion. Making compromises does not mean that you are weak, if those compromises are for the greater good. I know people still have very strong beliefs but I never saw any beliefs stronger than what I saw in the 10<sup>th</sup> Parliament and yet, we were able to make compromises and move forward. This is one occasion where this Parliament can do the same and rise to the occasion.

I support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Before I call upon the next Member, there are Members who are not sitting in the designated seats. Some Members are too close to each other. There is no social distancing. They are not wearing masks. It does not matter whether you come from the same region, especially the eastern side. Please, let us maintain the regulations that you made as a House. Let us put on our masks. Let us protect the other Members and sit in the designated seats. I am sure you can see they are written “Sit Here”.

Very well! Let us have the Member for Seme.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity to contribute to this extremely important Bill.

I rise to support this Bill. As I do so, let me first of all thank the two committees; namely, the Departmental Committee on Justice and Legal Affairs and the Constitutional Implementation Oversight Committee, for their efforts in the harmonization of the Bills that has brought a lot of sense to the whole debate.

The main object of this Bill is to establish a fair and transparent process for procedures of referendum, in particular, the referendum to amend the Constitution. Therefore, it operationalises and enhances Article 255, which talks about the circumstances under which you need a referendum; Article 256, which is on the parliamentary initiative; and very importantly, Article 257, which is on the popular initiative of amending the Constitution.

I support this Bill because it provides very clear procedures. It gives timelines. It provides for committees, proponents and opponents because that gives a much cleaner way of debating any referendum that you will have. If people are organized in tangible and recognizable groups that are actually registered and are legal by law, it is much easier.

It also provides for the funding. Importantly, it also provides for clear procedures of petitioning the outcome of a referendum. This is extremely important because referenda are likely to be contested. Luckily so far, we have not had this. We have been lucky that we have had that referendum without petitions coming forward that would have overturned everything.

However, there are a few areas that many Members have talked about that we will need to look into. For example, there is the issue of verification of the signatures of the one million people that are required for the popular initiative. The only thing that IEBC can do is to verify that the names they have are registered voters using ID numbers and the Voters Register. I do not see how they can actually verify the signatures.

It may be possible technically in the future, if we have a single registry which has signatures that can be available in soft copy to the Independent Electoral and Boundaries Commission (IEBC). As things stand now, that is something that we will look into. The joint effort of the two committees has cleared that. I support that. I agree with them on that.

Clause 7 of the Bill implies that you can have a referendum on other issues other than the amendment of the Constitution. That is a fairly dangerous thing. It is better to have a clear law on a referendum for amendment of the Constitution which is what we have here. If there are other referenda that we want to go into, we should have a clear law for that. I have looked at the Report of the Joint Committee. I do not think that has been clearly brought out. We need to do that. Clause 8 of the Bill implies that counties can have local referenda. This is something that we have to look at very carefully, so that we do not end up with a lot of public expenditure on efforts that may not be useful to the country.

There is the provision of the committees in the Bill which I support. If you have those committees, then you can have the leadership of the proponents and opponents. This will identify their agents, chief agents, local agents, national committees and constituencies committees. This will make an organized procedure where people can take sides. If there are some referenda that can be funded by the State, both sides should be funded.

I also support this Bill because of the issue of petition. It gives clear grounds for petitions. It clearly states the procedure of petitioning, who petitions and the composition of the bench that will look at the petition. That is extremely important. Clause 15 of the Bill gives the general powers to the Independent Electoral and Boundaries Commission (IEBC), so that the referendum can be managed on handling and storing of the documents, appointment of officers, administration procedures and sanctions that we need. These are important.

There is the other issue of framing the questions. I agree with the Joint Committee's Report that the promoters of the referendum questions are the ones who should formulate them. People cannot sit down, discuss what they want or the promoters or a promoter goes through the process of collecting all those signatures and then when he or she brings the question, Parliament or IEBC tells him or her that they will look at it. The Joint Report has recommended that the promoters of the referendum should do that. When we have a referendum, it is important to have one clear question. We need to look into that. Even if there are many issues, when they are formulated in terms of a Bill as indicated in the Constitution, then it is easier to have a yes and no referendum. Even if it is not an amendment to the Constitution or any other referendum where this law does not apply, I do not see how you will have a whole list where this one is saying "no" and the other "yes". This means that you will have very many committees each one dealing with each question. That is something that we will look into.

Finally, I find it very appropriate that the Bill has looked carefully at the consequential amendments, particularly in relation to the Elections Act. When we are through with this Bill, it will be a very well-done law. However, it is important to note that, at the Committee of the whole House, we will have a lot of work to look at the details that are required to make it what we would like it to be.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Let me have the Member for Chepalungu.

**Hon. Gideon Koske** (Chepalungu, CCM): Thank you, Hon. Temporary Deputy Speaker. The principal object of this Referendum Bill is to consolidate the law relating to the referendum to obtain a clear expression of the will of Kenyans. This Bill helps to tighten up the process....

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order, Hon. Koske! There is a lady Member who is seated on a seat that is not designated. Maintain social distance, please. I know that you are consulting, but you have to maintain social distance.

*(The Lady Hon. Member sat on a designated seat)*

Thank you. All Members should keep social distance. Following the COVID-19 pandemic, Parliament took an initiative to create the space for social distance. The seat that you sit on or occupy is already written. Carry on, Hon. Koske.

**Hon. Gideon Koske** (Chepalungu, CCM): Thank you, Hon. Temporary Deputy Speaker. I know that it is very important for all Members to follow the regulations which are provided by the Ministry of Health.

This Referendum Bill will tighten up the process. It is the work of Parliament to enact laws that are followed in any referendum. I want to comment on what Constitutional Implementation Oversight Committee (CIOC) did. I was a Member of CIOC during the public participation on this Referendum Bill. I was among the team that steered up the process through the able Chairman, Hon. Kioni. The verification of signatures is a very crucial procedure. We remember that we had a nullification of an election in this country simply because of a procedure. This Parliament is very important for all of us to ensure that we follow the procedure, so that the enactment of this Bill is not challenged in any court of law. The threshold should be uniform across the counties. The simple majority or super majority which is normally two-thirds should be uniform. The relaying of the results to the IEBC from the county assemblies is very important. We should have a uniform formula that is being used. It should be known across the board on how those results will be sent to IEBC, for example, by *matatus* or G4S Courier Company.

The CIOC Bill was the hybrid one before the Departmental Committee on Justice and Legal Affairs came up with theirs. I want to thank the CIOC for coming up with the Referendum Bill which is inclusive. It includes all the requirements that are being used as we amend this Bill. I want to urge the House to move with speed and support this Bill because it will help us as we move along.

Thank you, Hon. Temporary Deputy Speaker. I want to correct what is happening out there. The Building Bridges Initiative (BBI) does not refer to a particular leader in this country. There is a notion that when you say BBI, you refer to somebody or a certain leader in this country. The giant thing that we are discussing in this country is the Constitution (Amendment) Bill, 2020, which is for all Kenyans. It does not belong to any party or any leader. It is about how we want the country to be ruled going forward. It is very important for all of us to know that this Constitution Amendment Bill belongs to each and every Kenyan.

Hon. Temporary Deputy Speaker, I support this Referendum Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. The Member for Emuhaya, Hon. Milemba Omboko is next on my request list.

**Hon. Omboko Milemba** (Emuhaya, ANC): Thank you, Hon. Temporary Deputy Speaker, for giving me this chance. Let me also thank the Justice and Legal Affairs Committee (JLAC) and the Constitutional Implementation Oversight Committee (CIOC).

Both speakers spoke very calmly about this Bill. “General” Kioni especially, was able to take us down the line on how he went around issues of this Referendum Bill. Therefore, from his speech, I noticed that this is a process that needed to happen and had to happen at a particular time, which is now. Therefore, it is well placed before the House for discussion.

The forthcoming referendum is a very good chance for us to make a good law; a good law for posterity and for everybody. A good law that will deal with every aspect of the referendum in a way of actualizing what the Constitution requires for both the parliamentary and the public

process that is driven by the people themselves. In this case, the one that shall be coming has been driven by the people themselves.

I would, therefore, wish that as we speak on this, and especially when we move to the Third Reading where we shall have amendments, we, the legislators, will look at the law without attaching it to any event that is coming. After all, we have had three or two referendums in this country before and they were there without this law. But we have been given a chance to make a law that will now be very clear and straight on how referendums will be conducted in this country. I want to remove the fear in a few Kenyans who feel that this law is specifically being made for the Building Bridges Initiative (BBI), for instance. I would want to dissuade any legislator who may go in that direction, for us to lose the real gist of what we want.

I have a background of history and government and that is what I taught. Between 1965 and 1966, for those who care to look at the constitutional amendments in Kenya then, the amendments were hurriedly done and they were very many. So, when we taught history and government to the students, we told them that all these packages of amendments were the 'Odinga' constitutional amendments. That is because at that particular time, Jaramogi Odinga was having problems with Jomo Kenyatta. So many laws were made, some of which we have carried to date - for instance, this one of defecting from one party to another and losing your seat. This was part of what we taught as 'Odinga amendments' and they are quite a number.

I am dissuading ourselves from imagining that this law we want to make will specifically be for the BBI or for an individual and, in the process, we miss what needs to be done correctly at the expense of that feeling. If we do that, later on, we shall be required to make amendments and, maybe, it will be too late for ourselves.

We may ask the two committees – and I know there are lawyers there and I am not one myself - to clearly specify what we may require for a referendum that seeks constitutional amendments like the one we are dealing with now and the one that may just require an advisory of the public to the Government really not requiring a particular action.

From my background as student of history, we have these two terminologies: Referendum which directly deals with constitutional amendments and requires the Government to take action and that is why the Government must invest in it. Then we have a plebiscite. I even consulted my senior Hon. T.J. Kajwang, but I do not agree with the advice he gave me.

Plebiscites are usually sometimes called advisory referendums. The Government does not need to completely take action. It may just take the opinion of the people. I think many examples were given here on such like matters, including what the Speaker talked about that particular day when we began this debate. So, we have to differentiate between the plebiscites and the referendum. Therefore, in this law, we may bring together all the matters that will concern the two or have separate laws for plebiscites and referendum.

Having said that, I want to mention just a few things that I think would possibly require amendments in the Third Reading; the first one being the committees that the Mover talked about. He seemed to say that the committees should be spilt into small groups and not coalesced around an individual. That would not work for us. But in as much as the committees will be split, they must have somebody around whom they operate for the system to work clearly. I would want us to later on look at the committees with an intention of amending that there is a committee or a group that is overall for this referendum.

The other thing is verification of signatures by the Independent Electoral and Boundaries Commission (IEBC). This has been spoken to by many speakers, but I think I have a different approach on it. Whereas a few speakers before me have said that we only need to look at whether

a person is registered, that will be very weak. Remember when we had the *Punguza Mzigo Initiative*; they lost, partly, because they had presented names of people who were not in the register and some whose signatures had been forged.

It is our business as Parliament - and that is why the law is here - to come up with a specific method that we can give IEBC. Let us not surrender our guard simply because we want to move fast. If anything, it is not a matter of moving fast because BBI has already gone through the IEBC. We are specifically tasked to look at what is the best way in which we can make sure that signatures are verified and we actualize the verification. On this, I propose even further that it should be through IEBC devolving itself to the grassroots. Can we not verify those signatures within the devolved units of IEBC, that is, within where we come from? It is so that we ascertain that they are correct signatures. It does not necessarily mean that we have to carry the books to Nairobi. Members, we need to think widely on the issue of verification with the intention of making a good law. We need to make sure that at no given time will one person have it go through the IEBC without a certain form of verification. Remember even governments can be interested in referendums.

The other thing I wanted to speak on is the county referendums. I have no quarrel with those ones. They may arise. The only thing that this Parliament needs to do is to make specific laws that will make it not very easy for referendums to become the order of the day at the county governments. However, at one point in time, a county government may require a referendum because we now have what we call trading blocs within the counties. At one point, one county within a trading bloc may have to decide whether they want to be part of that bloc or not. Let us not quickly pass it that we do not want many referendums from counties. They may arise and might require the participation of counties at that level. We should only make it difficult and procedural on how to reach the issue.

Hon. Temporary Deputy Speaker, I also want to speak on the issue of public participation. Public participation is crucial...

**Hon. (Prof.) Zadoc Ogutu** (Bomachoge Borabu, Independent): On a point of order.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order!

**Hon. Omboko Milemba** (Emuhaya, ANC): You know I could not stop until I hear from you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order! There is this Member who is consulting loudly. You cannot shout "point of order", from where you sit Hon. Member. You know the procedures of the House. In fact, you are out of order. Carry on Hon. Omboko.

Hon. Members, you need to press the intervention buttons. You cannot just shout from where you are.

**Hon. Omboko Milemba** (Emuhaya, ANC): Thank you. Let him go to the Standing Orders and learn. I wanted to speak to the issue of public participation.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): You know it is an evening Sitting. Let me hear from the Member for Bomachoge Borabu.

**Hon. (Prof.) Zadoc Ogutu** (Bomachoge Borabu, Independent): Thank you, Hon. Temporary Deputy Speaker. It is unfortunate that I am making this point of order very late. The Member speaking on the Floor is without a mask.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): That is your observation.

*(Loud consultations)*

Please, Hon. Member, that is an observation.

**Hon. Omboko Milemba** (Emuhaya, ANC): But, Hon. Temporary Deputy Speaker, the person who talked about me is not having a mask. Did you note that he did not have one?

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): I noted that he had removed it.

**Hon. Omboko Milemba** (Emuhaya, ANC): Terrible! But anyway, I have mine on now.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. I could see you sipping some water. I could tell that he could not see the water from there.

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order, Hon. Shamalla. There is nothing out of order.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Member for Bomachoge Borabu raised a concern. Hon. Member, please, from where we sit, we must protect each other.

*(Hon. (Ms.) Shamalla Jennifer spoke off record)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Is that a point of order or information?

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): It is point of information.

**Hon. Omboko Milemba** (Emuhaya, ANC): To inform who?

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Member, you are not the Temporary Deputy Speaker. Let me hear her. Hon. Shamalla, you are on intervention. Please, can you state your point of information is to whom?

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): I have a point of information, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): That is a matter of procedure. Okay. The Hon. Member, *mwalimu*, do you want to be informed by the Hon. Member?

**Hon. Omboko Milemba** (Emuhaya, ANC): No! No! No!

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): I am responding to the point of order that was raised by....

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): I have dealt with that. You cannot respond to that. Is it a different point of order or a point of information?

*(Hon. (Ms.) Shamalla Jennifer spoke off-record)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Who do you want to inform?

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): The Member of Parliament who stood up on a point of order. It is with regards to the COVID-19 Regulation and the wearing of masks.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Unless, you want to just make a contribution. Who do you want to inform so that we can understand?

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): I want to inform the House.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): I have made a ruling on social distance. Hon. Shamalla, you are not wearing a mask. For that matter, I want to invite the Leader of the Majority Party to make us understand what this House passed. Leader of the Majority Party.

*(Hon. Omboko Milemba stood at his place)*

Resume your seat. Hon. Member for Emuhaya, I know....

**Hon. Omboko Milemba** (Emuhaya, ANC): What happened?

**Hon. Amos Kimunya** (Kipipiri, JP): I already contributed to this.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Any comment on that?

**Hon. Amos Kimunya** (Kipipiri, JP): Two wrongs and a third one do not make a right.

The whole point of wearing a mask is not for your protection.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Exactly.

**Hon. Amos Kimunya** (Kipipiri, JP): It is for our protection.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well.

**Hon. Amos Kimunya** (Kipipiri, JP): So, if one cannot, then they are at liberty to be in the open air. But so long as you are here and air is circulating, it is important that we all protect one another.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Shamalla, what did you want to say? I could see you were agitated. Please, put on your mask?

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Hon. Temporary Deputy Speaker, one of the most diligent people when it comes to ensuring that COVID-19 Regulations have been met is myself. The reason we have the social distancing is to ensure that we do not have people or persons in front of us, because if one is not wearing a mask, one can spread saliva a number of metres. That is why we are placed the way we are. It is difficult sometimes to have a mask on. In fact, once one is seated at one's place, and that is why we are having the spraying before and after, as long as one sits where one is, he or she can remove your mask and talk. But not that I am certain! Otherwise, we sit here, there is no air conditioning and it gets hot and stuffy for all of us and extremely uncomfortable. So, at the point where I am standing and addressing the National Assembly, it would be fine. It would be another thing if I am walking around and exposing other people who are within three or four feet in front of me. I should be wearing a mask but at this point where I am sitting, and we have designated seats .... I beg your pardon!

*(Loud consultations)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Shamalla, it is my discretion. Having listened to you, we have not changed the rules. That is why I invited the Leader of the Majority Party to make a comment. You are aware that if we make rules in the House, we can overturn them differently. So, we have not changed the rules. Of course, as the Leader of the Majority Party has said, we do this just to protect one another. We are Members and we do not want to make rules and break them. If you want to change the rules, you can do that in the best way and you know there is a procedure. A Communication, as it was done by the substantive Speaker on the same matter, can be made. But for now, the rules have not been changed. Hon. Members, we are not protected from the pandemic. In fact, I would feel very bad if I have Hon.

Shamalla being the one giving it to the Leader of the Majority Party. Let us protect one another. That was a good observation by the Member.

Yes, Hon. Member for Emuhaya. Please, carry on.

**Hon. Omboko Milemba** (Emuhaya, ANC): Thank you. I wanted to speak on the issue of public participation.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): You had two minutes. I have added you one more minute.

**Hon. Omboko Milemba** (Emuhaya, ANC): Public participation should be duly done and done well as per the laws or the Constitution. I heard earlier speakers say that we may even have some shortcuts because of one thing or another. But I notice, as I have been following that even in places like Baringo, where we thought that this could not a problem, there are people who have gone to court because of the same public participation. So, you notice that if we do not follow it correctly, because it is in our Constitution, it may end up gagging us or making our process stall because we did not follow the law.

Hon. Temporary Deputy Speaker, without much ado, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Let me have the Member for North Horr, the Hon. Ganya Chachu, who is next on my request list.

**Hon. Chachu Ganya** (North Horr, FAP): Thank you, Hon. Temporary Deputy Speaker. I rise to support the Referendum Bill (No.2) Bill (National Assembly Bill No.14 of 2020)

As a country, for sure, we need a referendum law to guide us when we are dealing with matters referendum. As of now, we do not have a law to guide us on this. We have been using the Election Act and other relevant laws, but we do not have one. We have come of age and it is time we had one. We have had a few in the past.

I appreciate the work of the Departmental Committee on Justice and Legal Affairs. They did an amazing job. Their Report is very informative. I was here when Senior Counsel, Hon. Otiende Amollo moved the Motion. It was well done, well researched and we are well informed.

I wish the Constitutional Implementation Oversight Committee (CIOC) and the Departmental Committee on Justice and Legal Affairs are able to harmonize their Report and guide this House, especially at the Committee Stage.

As we make this referendum law, and it is the first time we are doing...

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Chachu, so that we do not... I wish you can put on your mask.

**Hon. Chachu Ganya** (North Horr, FAP): Thank you, Hon. Temporary Deputy Speaker, for your guidance.

We are making a precedent by making the first law to guide referendum in this nation and we are doing it for posterity. We are doing it for generations to come. We are doing it for the current situation as well as future situations that this country might face. In this regard, it is very important that we are holistic and look at all the perspectives that are required to inform this law.

I have heard Members contribute on the Floor of this House in the three sittings we have had and we seem to agree on almost everything. We seem to have unanimity on almost everything except when it comes to the framing of the question. It is critical that we look at both reports - the CIOC Report and that of the Departmental Committee on Justice and Legal Affairs and harmonize them. The leadership of this House - and Hon. Kimunya is here - should help or guide us on this because we can have a good law that we will leave for posterity and not prevailing political circumstances of the day. We are law makers and we are making laws for posterity.

We have to be holistic on this. In framing the questions or when we are passing this legislation, let us look at this country. Let us look at the interests of the country today and for decades to come. Let us not look at what is likely to happen next year or the following year. If it is the will of this House or of this nation that we have multiple choice questions, so be it. If we feel we are better off with a single question, so be it. Let us debate and look at what is good for this country, for posterity. Let us be informed by what happens in other jurisdictions; what happens in other countries and what happens in other modern democracies. Let us learn from them and be informed by them. Referendums are very common in the United States of America. They are very common in Western Europe. We should borrow a leaf from them and inform our laws, of course, with a view to tailoring them to our circumstances in light of our Constitution.

Let us take a hard look as we look into this issue. Let us look at this country from every corner of it. We are going to be informed on what will be done at the county level by county assemblies, and what we will be doing here in Parliament, in both Houses. It is very important that we carry everybody on board. My major point here is harmonization of the two Reports and ensuring that we do not have a contested Bill, or we have contested provisions when it comes to the Committee of the whole House and we are forced to take sides or we are forced to vote on an issue that can easily be resolved, if we have able leadership in this House.

I beg to support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Let me have the Member of Bomachoge Borabu.

**Hon. (Prof.) Zadoc Ogutu** (Bomachoge Borabu, Independent): Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to also make some remarks on this amendment Bill.

I want to agree with what has been said and what is in the Constitution – that, the purpose of this amendment is to ensure that the democracy of this country is improved. I hope we are making a step by step amendment so that looking forward to years to come, for the generations that are yet to come we should make sure they enjoy the foundation of democracy that this Parliament has contributed. We know that according to Article 1 of the Constitution it is very clear that all sovereign power belongs to the citizens of this country.

Mine will be two concerns. Concern number one is about how well in making this amendment we have taken into account people with disability. This is the group of people in Kenya who sometimes have missed participating in constitutional changes and even in voting. Looking through this document, I do not see any amendment that has been proposed to ensure that people with disability are catered for equally, so that their voices and their votes can contribute to the democratization of this country. Even in previous elections the majority of these people were left out because the voting stations were too far or because there were no people to assist them to get to the voting stations. Even when they get to the voting stations they also have challenges.

I want to also assume that the majority of people in this country, especially the adults who are illiterate, will also be considered in this category of disadvantaged people. In a system where people's capacity to make decision is not well considered like we have in Kenya, I think we have a lot of manipulation. This is what we see during elections. This is what we may see during the referendum – people being coerced to participate in a referendum where they hardly understand the issues or where they are hardly capable of contributing to the issues at hand. That is why I join some of the Members of this House who have said that we really need to think on how to promote civic education using the various social media, including the FM radios and other media outlets. Even if we have to use the vernacular FM stations, we must ensure that our people are brought on

board so that they all understand what they are doing and what is happening in this country. You might be surprised to learn that a number of people in this country right now do not know anything about the amendments we are talking about, the various political transformations, and the BBI. They may not know just because they have no access to the right information.

Hon. Temporary Deputy Speaker, technology is at our fingertips, but we do not seem to embrace it to ensure that we can promote some of these weaker areas when it comes to referendum and voting. We have come up with costs that are very worrying just because we have ignored to embrace technology that is available with us. Electronic voting has been a good indication on how much we can cut down the costs. I believe it is necessary for the Government to invest more on technology to ensure that it cuts across all the sectors, all the communities and all the groups. Even when we talk about electronic voting, come 2022, we will have enough communities that have no access to this type of voting because either there is no power or the power transmission is not sustainable.

We want to move forward as a country to ensure that these exercises are inclusive. So, we must think about how to bring on board those disadvantaged groups which go beyond the physical disadvantages and mental disadvantages to what we call literacy disadvantages.

With those few remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Now we have the Member for Taita Taveta, Hon. Mizighi Mnene.

**Hon. (Ms.) Haika Mizighi** (Taita Taveta CWR, JP): Thank you, Hon. Temporary Deputy Speaker. I am going to be very brief because I was holding on to the next business. Nevertheless, I also want to say that I will support this Bill with amendments because I believe it is not only about the BBI. In future, it can also guide the country on different matters that may need referendum.

Therefore, I thank you for this opportunity.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Member for Mukurweini, Hon. Kiai Githiaka.

**Hon. Anthony Kiai** (Mukurweini, JP): Thank you, Hon. Temporary Deputy Speaker. I stand to support the Bill.

I am a Member of the Departmental Committee on Justice and Legal Affairs. I commend the joint Report by the CIOC and the Departmental Committee on Justice and Legal Affairs. We spent many hours on the issue, put a lot of time in going through all this. I am very proud of what we came up with.

Article 1 (1) of the Constitution clearly states that all the sovereign power belongs to the people of Kenya. The same Article 1 (2) says that power can be exercised directly or indirectly. Power can be exercised directly by the people or indirectly through their representatives who are duly elected. This is the best way to show democratic space to our people. This is one of the best methods of exercising that direct sovereign power as bestowed upon the people of Kenya by the Constitution.

We came up with a very comprehensive Bill that intends to fill in the vacuum in so far as matters of referendum are concerned. You realise that there is no law that covers this new phenomenon that is known as referendum. It is good to indicate here and now that this law is not about the forthcoming referendum. This law is for posterity. It is meant to guide and also structure the way referendums are conducted in this country. If you look at this Bill, it has provided different types of referendums. Indeed, the Bill provides for the procedure on the conduct of a referendum

– the different types of referendums, whether at the county level or the national level. It also provides for how we go about giving out the notice when we want to hold a referendum.

It also provides for committees that are meant to carry out referendum work, both at the national level and at the constituency level. What is also not forgotten is the power of the courts. If you will have any issue about how the referendum was carried out, you will go to court. The court has been given a procedure and timelines upon which to ensure that the issues that will be before it do not drag forever. If you look at them, they are very reasonable timelines. When it comes to petitioning the courts about matters that can be contested in courts, the amount of money that one is supposed to deposit, say for security, is also reasonable.

What we have done as a joint committee is to provide this Parliament with a general framework upon which we can come up with a comprehensive law that will guide this country today and in future on how to conduct referendums. If there are any issue that the Committee did not touch on or they were never comprehensively covered, we will have a chance during the Committee of the whole House stage of the Bill where we can fine tune the Bill and make sure that we have the best Referendum Bill in the world. The general mood of the House is that we, indeed, need a referendum law. This is the chance to have one and ensure that the country is guided by it. Once we pass this law, we will have a good chance to test it during the forthcoming BBI referendum, if at all it will happen.

I support. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Let us have the Member for Kandara, Hon. Wahome Muthoni.

**Hon. (Ms.) Alice Wahome** (Kandara, JP): Thank you, Hon. Temporary Deputy Speaker for the opportunity to speak on this Bill. I agree with my colleagues who have spoken before me that this Bill is timely taking into account that there is a referendum in the offing. Therefore, we are in order to come up with this proposed Bill. When this Bill was being discussed at the committee level, I was serving as a Member of the Departmental Committee on Justice and Legal Affairs. I was one of those Members who were undemocratically axed from that Committee. I am familiar with the contents of this Bill. I have listened to my colleagues contributing to this Bill. I am in agreement with some things, but I want to reiterate that this Bill is before the country.

I have listened to, for example, Hon. Junet on the Floor of this House and he needs to disabuse himself from the BBI Bill because, according to him, he is the promoter. If you ask me, that Bill is erroneously and fraudulently being promoted by Waweru and Junet. I say this without any fear of contradiction. Public funds have been used for the Bill that was initially promoted by his Excellency the President and the Rt. Honourable Raila Odinga. It would have been in order if the BBI Bill was a Government Bill, if there is something like a Government Bill. Being a popular initiative, if there was a law that was guiding that process, then it would have been safely called a popular initiative.

The other thing I want to react to is the statement by Junet while contributing to the Referendum Bill because he feels he is the promoter of the BBI Bill. The Bill is now in the public domain. The Constitutional (Amendment) Bill is in the public domain. It belongs to the public...

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order! As I listen to you, this being a House of debate, Hon. Wahome, you cannot mention a Member without bringing a substantive Motion.

**Hon. (Ms.) Alice Wahome** (Kandara, JP): Which Member?

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): You are talking about Hon. Waweru and... Order! The Referendum Bill that is ---

**Hon. (Ms.) Alice Wahome** (Kandara, JP): The *Hansard* will bear me witness. Those names were mentioned by Hon. Junet when he was debating.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): I want to make a point to other Members who want to contribute that the Bill being discussed is the Referendum (No.2) Bill (National Assembly Bill No. 14 of 2020) that is the Motion, Order Number 8. This Bill was moved by the Chairperson... It is important for me to inform Members so that they do not confuse. Members check, we are on Order Number 8. Carry on Hon. Wahome.

**Hon. (Ms.) Alice Wahome** (Kandara, JP): Hon. Temporary Deputy Speaker, I am aware of the Bill that we are discussing. It is important that when Members start to debate, the Speaker, who is a neutral arbiter, allows free and fair debate. I am reacting to debate that occurred on the Floor of this House. Thank you for allowing me to proceed.

This Bill proposes for multiple-choice questions option and one question option. There were concerns that allowing a multiple-choice question option may not be a good route. The people who have those concerns are limited by the fact that there is a referendum that is coming, instead of looking into the future and coming up with a legislative proposal that will take care of a proper process; those fears are misplaced. When I look at the question of public participation... Breathing is a challenge.

*(Hon. (Ms.) Alice Wahome lowered her face mask)*

I know there are rules. I do not like taking it off because we should secure ourselves and each other.

On the question of public participation and verification of signatures, public participation is a constitutional requirement. Therefore, once a Bill has been released, it is not possible to stand on the Floor of the House and talk about curtailing public participation. Let us be reasonable as we debate this law. It is important to allow free, fair, open and candid public participation for Bills. I have seen there is a lot of disturbance and effort to curtail good order in terms of debate out there. We have seen people being disrupted. With this kind of law in place, we are likely to put some sanity in this process as we move on.

I am happy that we have this Bill and I hope that we will clear it quickly, so that we can tidy the business of the referendum that is likely to happen. There is already a BBI Referendum Bill. The reason why we are having some of those challenges is because there is no law. One of my greatest concerns has been that we are moving with such an important process without a legislative framework. Therefore, the problems and challenges the proponents of the Bill outside there have been having is because there was no legal framework. We need, as a House, to move quickly so that we can have the framework in place.

Verification of signatures cannot be overstated or understated, because it is known that you can actually forge people's signatures to get the one million signatures required. So, while we are making this law, we have to think about how to protect the sanity and integrity of the process, so that whoever finds their signature it is not by accident, but they are the ones who have signed on to the proposal. I would want this Bill to take care of that.

On the question of timelines of between seven days and 30 days, depending on the activity, that is a very good proposal in this Bill. We cannot have activities that are not guided by timelines. I think the CIOC did a great job. It is good to commend Members when they have worked hard. The Bill anticipates that there can be more than one question. Therefore, let us encourage that. Looking at how we are moving, tomorrow it may be necessary that there be more than one valid

question. This Bill also talks about the fact that there can even be more than one Bill. Therefore, let us not be limited. Choices are important in a democratic process. This is a very key process.

**The Temporary Deputy Speaker** (Hon. Jessica Mbalu): You have already consumed your time the Member for Kandara and former Vice-Chair of the Departmental Committee on Justice and Legal Affairs. Let us have the Member for Kitutu Masaba, Hon. Shadrack Mose.

**Hon. Shadrack Mose** (Kitutu Masaba, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me a chance to also add my voice to this very important Bill. From the outset, I want to indicate that I support it. I would also like to indicate that a few amendments will be necessary so that we can ensure that the Referendum Bill is one that will serve this country well.

One of the good aspects of this Bill is that it is transparent and it will provide a fair process to ensure that the expression of the will of the people of Kenya is heard and appreciated. This will be a milestone. We will have a standalone law that guides a referendum process. You realise that what has been helping this country is the Elections Act of 2011, which has had serious loopholes. This Bill is extremely important because it will be a standalone law that guides the process of referendums, and particularly now that we are about to have one. This will actually assist this country.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order, Member for Kitutu Masaba! The Member for Lari, you are on intervention? Is your card working? He has already removed it. Carry on Hon. Member.

**Hon. Shadrack Mose** (Kitutu Masaba, JP): Thank you, Hon. Temporary Deputy Speaker. As we have this standalone legislation, which the Constitution empowers us as legislators to enact, so that it would provide for the conduct of a referendum, the kind of legislation that should be brought here is one that is simple, clear and straightforward. It should provide a chance to the Kenyans who would want to express themselves without delving into a lot of the legal intricacies. This is so that issues that are raised take into account special interest groups like people living with disabilities.

The Committee that dealt with this and IEBC were in agreement that there are serious loopholes with regard to legislation that should guide the process of referendum in this country.

Today, we have a perfect opportunity for us legislators to ensure that this particular process is one that will help this country. The Election Act, 2011, has always remained ambiguous. It is not clear on how we should handle this process.

This Bill also provides a number of options so that, even when we are talking about the various choices, it provides for multiple choices so that our people who are looking at the various issues, would control what they are not comfortable with and leave out those that are unclear to them. What we legislate on this should actually give a clear guideline that will assist the Kenya citizenry. It will ensure that we have order, proper freedoms, including the right to express oneself.

With those remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Let me now have the Member for Lari, General Mwangi Mburu. You have the Floor.

**Hon. Jonah Mwangi** (Lari, JP): Thank you, Hon. Temporary Deputy Speaker for giving me the chance to support the Bill.

I also commend CIOC and JLAC for coming up with this Bill. We are at the tie-end and we need to test this Bill. I am happy that they have come up with it because, as we are going into this process, we will have something to guide us.

I am also happy that within the Bill, the sovereignty of the people is captured. We are talking about a Bill to amend the Constitution through a popular initiative as per Article 257. I am

happy because the people of Kenya will also have democratic space to participate in a referendum which is well guided by the law.

I am a bit concerned about Section 7 as Hon. Millie has said. I do not know whether the Speakers of the two Houses do not receive a response from the county assemblies within the three months stipulated under Article 257 of the Constitution. The Bill will be ‘deemed as not approved.’ I wish we had said that it will be ‘deemed as approved.’ This is so that we give people who are ignorant a chance that they have to participate in a process rather than just ignore and leave it at that. Therefore, I thought it should read as:

“It should be deemed as approved in respect of that county assembly...”

That is just a part. I am happy about this Bill because it also provides for procedures before the conduct of a referendum, the way a referendum question will be presented, and the way it should be acted upon by the Houses. I am also happy about this Bill because it outlines other referendums, which we did not have before. We say that we can have other acts of Parliament to guide on those referendums. Therefore, when the JLAC and the CIOC were on this one, I believe they were on the correct path.

On the other part where we are talking about multiple questions and all that, I think this Bill is very clear. It is saying to the extent possible, all opinions and recommendations that are not divergent shall be contained in a single Bill.

Even when we are coming to a question, rather than confusing most Kenyans, the question should be straight forward to most people. Where there is a divergent opinion, a separate Bill should come in. I support its timeliness and I support that it is coming at a time when we need to pass the BBI, like yesterday. I am also happy about how most of the county assemblies are passing the BBI Bill. This is because as many may say that they are being muzzled, I do not think when you have many counties passing the BBI day and night, they are being muzzled. I think it is popular. I think they could be muzzled not to pass it, but when they are passing it day and night, I think it is the will of the people prevailing. In addition, I also believe that the same message is going to everybody on the ground so that when we come to the referendum, it will be a non-contested one; one that will pass early in the morning and then we can move on to the 2022 elections.

With those few and many remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Let me have the Member for Emurua Dikirr, Hon. Kipyegon Ng’eno.

**Hon. Kipyegon Ng’eno** (Emurua Dikirr, KANU): Thank you, Hon. Temporary Deputy Speaker. I also wish to rise to support this Bill. I remember that this referendum Bill has been on the lips of Members of Parliament for a long time. It is only that it has never had an opportunity to be dealt with.

We have had a clamour for referendums. Initially there was an initiation for a referendum called *Okoa Kenya*, and then there was another one. We never had any law to guide us on those particular proceedings. There was *Punguza Mizigo* which never went through. I think the clamour for this one now is based majorly on referendums that may be lying ahead of us. I believe that we are doing this one in good faith and not for the BBI, but for posterity and for the many referendums that we might be having in this country.

I wish to state that under Chapter 1, Article (1) of the Constitution, the sovereign power belongs to the people of this country. In addition, it is vested on the elected leadership. The supremacy belongs to the people of Kenya. It is them who will decide many things. It is them who would decide to send us here and recall us. It is them who make decisions on this particular part

of the constitution. Article 2 tells us that nobody should claim authority or exercise state authority except as authorised by the Constitution.

I am saying this because there are too many people who have appropriated themselves as if they are the Constitution by themselves... If you want to change the Constitution of this country, it has to be through either one of them. I want them to read Article 2 and know that no one has authority above the law.

Hon. Temporary Deputy Speaker, no one is above the law. No one has authority over the Constitution. It is the Constitution that gives us the authority that is vested in us. So, even as we approach the change of the Constitution, people must know that it is not their obligations to change or to force people to change parts of this Constitution.

On this particular amendment, I wish to comment on the part of the one million signatures. We have had several issues on the collection of one million signatures. Many people have complained that some of the signatures which are being perused on daily basis were collected through dubious means and through unscrupulous methods. We should also include in this amendment a provision in order to ensure that collection of signatures is done by a credible body and not by individuals so that we can have signatures that will be verified as the true signatures of the people of Kenya.

Secondly, the referendum itself is like an election and must follow the election rules. Therefore, the electoral rules that are in the Constitution must be observed by everybody. This is because a referendum is conducted by the IEBC. Rules on electoral offenses must be adhered to.

On the matter of bribery, Article 8 talks about free and fair elections free of corruption and intimidation. What we are seeing in our county discussions on this particular referendum Bill is corruption and bribery. Everybody knows that giving Members of County Assemblies (MCAs) Kshs2 million each to pass the BBI Bill is bribery and is against the law. Intimidation of MCAs who vote "No" is also against the Constitution. That is intimidation and it is expressly outlawed in Article 8 of the Constitution. I am shocked that today some Baringo County MCAs were summoned to go to Integrity Centre to answer several allegations, but we all know it is because they refused to pass that Bill.

That is intimidation and it is against the electoral laws. That must be noted. There are many other incidents we have witnessed during the time of the BBI. There is also the question of whether we should include in our discussion several questions on the referendum or one question where you answer with "Yes" or "No". If there is a part of the Constitution that needs to be amended so that we can have multiple choices, we have opened the Constitution for amendment and so we can still open that part of the Constitution so that it allows the country to vote on a multiple choice question. There is nothing that can prevent anyone from amending this Constitution. Nothing can prevent us from amending the part of the Constitution that says we must have multiple choices. If that is not in the Constitution, we can do that amendment in this proposed referendum law. We have the power and the authority to do that amendment so that we can change and have a law that can allow for multiple choice questions.

The last part that I wish to talk about is Clause 11, which talks about campaigning for or against the referendum. There is a contradiction in some parts of this clause where it is stating that the committees which will be formed for or against the referendum should fund themselves. This is an election process. Every election in this country is funded by the State. Parties are funded by the State. I wonder why a referendum, which is a very fundamental part of the change of the Constitution of this country, cannot be funded; especially the campaigning part of it. In this regard, therefore, I will also bring an amendment to ensure that those who will be leading the "No"

campaign against the referendum, because it is the State which should be leading the “Yes”, are also funded by the State.

**The Temporary Deputy Speaker** (Hon. Jessica Mbalu): The Member for Emurua Dikirr, Hon. Kipyegon Ng’eno, you are the one on the Floor, and you have a balance of three minutes. We will give you priority in speaking.

**Hon. Kipyegon Ng’eno** (Emurua Dikirr, KANU): Most obliged.

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Jessica Mbalu): Hon. Members, the time being 9.00 p.m., this House stands adjourned until Tuesday, 23<sup>rd</sup> February 2021, at 2.30 p.m.

I thank you.

The House rose at 9.00 p.m.