

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

Tuesday, 16th February 2021

The House met at 7:00 p.m.

[The Temporary Deputy Speaker (Hon. Christopher Omulele) in the Chair]

PRAYERS

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, we have the requisite numbers to do business. We will, therefore, proceed.

BILL*Second Reading***THE REFERENDUM (NO.2) BILL**

(Hon. (Dr.) Otiende Amollo 11.2.2021 - Evening Sitting)

(Resumption of Debate interrupted on 11.02. 2021- Evening Sitting)

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, this business commenced last week. It is a continuation of where we reached last week.

First on my requests list is Hon. Oundo Ojiambo, Member for Funyula.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Speaker for giving me an opportunity to contribute on the Referendum Bill.

Everyone in Kenya is anxiously waiting for the outcome of this debate for the simple reason of the task ahead of us as a republic.

A referendum, as I understand, is basically an election. It is an election to answer a question or to determine a contentious issue. It has happened before even when it was not expressly set out in the Constitution. We held referendums in 2005 and 2010. We have had two successful referendums previously. People are wondering why we now need a stand-alone Act of Parliament to guide the conduct of referendums in this country. That talks very well on the mentality of the people of Kenya. People have come to distrust the current IEBC. They are not so sure that they can conduct a referendum and a contentious one for that matter. What is at hand is a fairly political issue that we are trying to solve using a referendum. Nevertheless, I must commend the team that prepared and presided over the previous referendum. Probably, there are two issues that we need to look at here.

First, I want to look at the process of the Bill as currently drafted. I want to trust the presentation made by the Chair of JLAC on behalf of the Committee. It was very clear. There are gaps that need to be looked at. We need to address the process. Once a promoter makes a decision to promote a contentious issue, what is the process that one has to go through to the point when we conclude?

I am afraid that the Committee does not seem to have fully addressed the most contentious issue of the process: How do you verify 1,000 or a million signatures? It is provided for in the Constitution, but it is an act of Parliament that generally solves these problems. It is unfortunate that the JLAC, in its Report, does not come out very clearly on this matter. Does the IEBC have a repository, store or a specimen signature for everybody? The answer is obviously “no”. It will, therefore, remain a very difficult question to answer. Yes, as a promoter, I have collected a million signatures, but how sure am I they are true signatures of the people who purport to sign for them? It is important we develop a mechanism because this is a popular initiative and we have no choice at all, but to make sure that we get it right. Otherwise, we are going to get it wrong.

The second important issue that has been canvassed in this House and elsewhere is on the issue of multiple choices. The Bill talks about options. However, in a popular initiative, how do you then identify what question to ask and what question not to ask? The Bill speaks to itself. It runs from the citations to the schedules. Trying to isolate particular aspects and leaving out others would be onerous, cumbersome and defeatist to the sole purpose of the promoter promoting the Bill.

On the issue of the appeal process or petition, the Constitution might not be expressly clear on whether the Supreme Court can have a say in the matter. The issue of a referendum, which touches on issues stated in Article 255 of the Constitution, are weightier than a presidential petition. Is it fair to the people of Kenya that the matter only has to end at the court of appeal yet there are quite a number of petitions regarding governorship or even parliamentarians that go all the way to the Supreme Court because of public interest? Those are some of the issues that we must deal with.

We are faced with a referendum arising from the debate we are having. A referendum should surely not be used to divide the people of Kenya. Let us talk to the merits at hand, let us be factual and not lie.

In addition, that is why it is important. We cannot afford to remove the Referendum Committee from the proposed Bill. This is because at any given time there must be people who will coalesce or organise either for or against. Therefore, it is important that those referendum committees be retained.

With those very many remarks, I stand to support the Referendum (Bill No. 2 of 2020). Thank you Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well. Hon. Rasso Ali, the Member for Saku.

Hon. Rasso Ali (Saku, JP): Thank you very much, Hon. Temporary Deputy Speaker. I rise to contribute to this very important Bill. The matter before us is very weighty. It is about the law of this country. It is not just for sitting here, but also for posterity. This law must not be rushed. We must look at it with a sharpened pencil so that nothing is going to skip this House. We must learn from other jurisdictions. The immediate referendum is the Brexit. Today, the British want to walk out of the European Union, but they were in a serious quagmire. Many wanted to remain. Many wanted to leave. However, some of the critical and important issues that they are attempting to discuss today is to have their cake and eat it. They want some issues that they want to leave the

European Union, but on other issues, they want to remain there. Therefore, for that reason, as we look at our referendum Bill, we must have a win-win situation. There should be no people going for the yes and those going to say no.

Hon. Temporary Deputy Speaker, several speakers before me have alluded to the fact that let us not posit this Referendum Bill for the Building Bridges Initiative. Let us posit it for posterity, for the future in law making in Kenya. A referendum as it is, is in our Constitution making. Many have been saying it is not about amending the Constitution. It is about implementing the Constitution. In coming up with this Bill, I think Hon. (Dr.) Otiende Amollo who moved this Bill must agree with me that it is for the consequence of making the law of this land complete. Through a referendum, the citizenry of this country will have a say and will have a voice in making the laws. I just want to talk about three issues. First, is Article 3 that talks about the application of the Election Act, that:

“When we are running a referendum, it is as if we are running a general election”.

If you see what has been spelt out there, the eligibility of vote, registration of voters and all that up to (p), it is clear. In addition, I must inform this House that the devil is in the detail. A lot of time many resources are required to put things in place. Therefore, in terms of timelines, what the Committee recommended in the consolidated report, it is time to microscope some of the timings here where from six months, they try to reduce it to like 30 days. From 30 days to 14 days. From 14 days to seven days. This cuts across the Bill and I think as we move forward, we must look at it because these are weighty matters that are before us. Is it feasible to reduce the timeline from six months to just a few weeks?

Hon. Temporary Deputy Speaker, the other issue is on 17, about the petition challenging the outcome of the referendum. The Member who spoke before me said that this is a constitutional matter. Necessarily it cannot just enter the Court of Appeal. There are many lawyers in this House - distinguished for that matter. If a matter is constitutional, then I believe it is for the Supreme Court. I believe it is not for the High Court or the Court of Appeal. As we also look at that, we must consider the petition where it is said that the petitioners must file within, I do not know 14 days; within seven days. I think that is too short a time for the petitioners to have prepared themselves to go before even the Supreme Court.

Finally, it is under Article 54. That is when you do a referendum in this country and then you say that this matter is not as important as that one of the Constitution and then we say that we are just going to have a simple majority. I believe anything that will affect the law of this land must be determined by 50 plus one or else it will be difficult to enforce.

With those few remarks, Hon. Temporary Deputy Speaker, I thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well. Next in my list is the Hon. Atandi, the Member for Alego-Usonga.

Hon. Samuel Atandi (Alego-Usonga, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to speak on this Bill, the Referendum Bill, 2020. I want to start by thanking the Committee for coming up with a very simple Bill, which will end up as the Referendum Law. Referendums happen in many countries. Countries in the West such as France and Australia have done many referendums. Therefore, as a country, we have not done as many referendums as compared to those other countries. Therefore, I think it was important that for us we make a simple law that would allow anybody in this country who is interested in asking Kenyans their opinions on a matter to be able to come up and have it. Therefore, the Bill before us has captured many issues, which are touching on the concerns of Kenyans.

One of the issues that this Bill is capturing - which I think we need to look at - is the fact that even after the referendum, anybody who is disgruntled with the outcome or the processes of the referendum is given an opportunity to petition the same in our courts. In addition, the petition process has been made very simple. This is because one, the Chief Justice is being asked to appoint a three judge bench. This is very important because it will give the petitioners an assurance that their petition is being listened to by not just one judge like what we have seen in the past where one judge makes a decision on certain critical matters that touch on the Constitution. Therefore, a three judge bench, in my view, is important because it is going to give the petitioner an assurance and be able to listen to this matter conclusively.

The provision on the petition, is that the petition must be concluded within 30 days. Hon. Temporary Deputy Speaker, this is very important even though the immediate contributor is saying that this is not quite in order. This is in order because when a referendum has been conducted, it needs fast decision making so that we do not drag simple referendum processes in courts for more than 2 months as suggested.

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

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

Therefore, the referendum period which has been provided here as 30 days, in my view, is accommodative. Thirdly, the cost of filing a referendum has been made modest such that if you want to file a petition, you only need to pay Kshs1 million. This is fair and will enable many Kenyans, who are disgruntled with the outcome of the referendum or the process, to seek redress in our courts.

This Bill is protecting the citizens of this country from what I call presidential fiat. In many countries especially in Africa, we have seen situations where presidents do not want to retire. When their term for retirement has come, they institute constitutional processes that aim at extending their tenure in office. Therefore, the fact that this Bill is protecting Kenyans by saying that a President cannot initiate a referendum, is very important for all of us and is going to ensure that Kenyans are protected from the presidential fiat.

Lastly, I know we are discussing this Bill at a time when we are facing a referendum. We are trying to amend the Constitution through a popular initiative. Therefore, this will mostly crowd our views in a manner that we are likely to look at this referendum Bill and tie it with the referendum that is coming up. I plead with my colleagues that because we want to do referenda in future, you may want to do it again tomorrow and ask Kenyans to vote in a particular matter, let us agree with this law as drafted by the Committee because it is very simple. It will allow the referendum process to be conducted as fast as possible and Kenyans move on with their activities. I support.

Hon. Deputy Speaker: Let us have Hon. Jeremiah Kioni.

Hon. Jeremiah Kioni (Ndaragwa, JP): Thank you, Hon. Deputy Speaker for according me an opportunity to speak to this issue. As Members of the Constitution Implementation Oversight Committee (CIOC), we had also done a Referendum Bill and it is important to mention that the mandate of the CIOC is as provided for under Section IV of the Sixth Schedule of the Constitution. The major task that the Committee has is to look out on any impediments that stand in the way of the implementation of the Constitution.

In executing our mandate, we as a Committee has done a little bit of audit of the Constitution and the laws that have been passed since 2010. We have not less than 150 of the statutes that require to be looked at, perhaps, amended or improved, so that we can implement the Constitution as we passed it back in 2010.

In the process of amending or auditing the implementation of the Constitution, we went through Article 255 of the Constitution. We noted that if you need to amend anything under Article 255, you need a referendum and yet we did not have a referendum law. That was noted by the Committee immediately we came into office. I want to also put it on record that as early as 2019, the Committee engaged the Third Way Alliance headed by Dr. Aukot. They had what was called Punguza Mzigo. It is out of that that it became clearer that there are issues that required to be addressed quickly including how the Independent Elections and Boundaries Commission would verify signatures. How would the county assemblies report back to the two Hon. Speakers? What does it entail for the county assemblies to pass any constitutional amendment Bill that is put their way? What kind of threshold and legal timelines would be required?

Hon. Deputy Speaker, in line with that, the Committee quickly drafted the Referendum Bill (National Assembly Bill) No.11 of 2020 as a Committee sponsored Bill. The process, for the record, was initiated on 16th September, 2019 vide a letter that we had done to the Speaker. The Bill that we had drafted was published in the Kenya Gazette. In getting to process the Bill, it is important to mention and acknowledge that we had an engagement with the Kenya Law Reform Commission (KLRC), the IEBC and the office of the Registrar of Political Parties (RPP). We received representation and presentations from the National Gender and Equality Commission (NGEC). The Commission on Administrative Justice had a time with us and we thank them for their input. The Kenya Human Rights Commission (KHRC) also had time with our Committee. We also got written submissions from the political parties Liaison Committee, the Law Society of Kenya (LSK) the National Treasury, Centre for Multi-Party Democracy and KATIBA Institute. The Report, after public participation, was tabled in this House on 17th September, 2020 for the record and the Members of the House to know. This Committee does not belong to me. It was there yesterday and shall be there tomorrow.

This Committee's mandate is derived from the Constitution and not even the Standing Orders. So, when you subject it and say it must report to a departmental committee, I take it that it is a complete misreading of the Constitution.

Hon. Temporary Deputy Speaker, I think it is also important to say for the record again, that Members of this Committee spent a lot of time developing the Bill that is before this House. I am there as the Chair and I thank those who gave me that responsibility.

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

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

We have the Vice-Chair, Hon. Peter Kaluma. The other Hon. Members are Hon. Naomi Shaaban, Hon. Yusuf Abdi - Member for Kamukunji, Hon. Christine Ombaka, Hon. T.J Kajwang', Hon. Charles Gimose, Hon. Raphael Wanjala, Hon. Abdi Shurie, Hon. Peris Tobiko, Hon. Simeon King'ara, Hon. Antony Aluoch, Hon. Japheth Mutahi, Hon. Halima Muccheke, Hon. Daniel Rono, Hon. Phabian Muli, Hon. Cornel King'ang'i, Hon. Benard Okoth, Hon. Joash Nyamoko, Hon. Moses Kirima, Hon. Catherine Wambilyanga, Hon. Didmus Barasa and Hon. Purity Ngirichi.

Therefore, even as we support, I support the Bill before this House because with it now, we have a draft report that has been developed by the two Committees. It is crucial that when a committee goes out to engage the public and develops a Bill and the Bill is ahead of the pack, it is only fair and reasonable to other colleagues in Parliament that the Bill be given its rightful place. But for another Committee to start the whole process, develop another Bill and then it is fast-tracked by the leadership in Parliament to overtake the other, I do not think that is a fair game.

(Applause)

I support this Bill and ask Members to support the Bill before this House. It is useful because we need to move the country forward. It is not fair and proper leadership, if those with responsibility treat committees as if there are some that are senior to others. Also, for those of us in committees, we need to take this responsibility with a little bit of respect. If others have done it, let them continue and feed into the Bill that was ahead of the pack.

It does not make sense to engage the public twice. We look like people without any order. When we call the Law Society of Kenya twice to discuss the same Bill with two committees, then there must be something wrong somewhere. This is the second time this is happening. My Committee is being treated the same way again. We had the Independent Electoral and Boundaries Commission Bill that is still pending somewhere. We did it before the Justice and Legal Affairs Committee, but theirs was brought ahead and fast-tracked. This is not right. I do not think we can learn parliamentary procedures that way.

I support this Bill. It is good to recognise we have a joint report that was tabled this afternoon. Hon. Otiende who represented the Justice and Legal Affairs Committee and I had a good meeting in Mombasa. We discussed many issues and what we agreed upon is contained in the draft report. I support it and own up to the recommendations we made. Again, this is because the country is bigger than the Committee and I. I ask Members to engage objectively so that we can help the country move forward.

My last comment is that the positions we are holding including chairing of committees is courtesy of people who may not have managed themselves well in the previous Parliament. Manage yourself well if you want to be with us. Do not hop, there is so much work. As President Kibaki would tell us, *fanya kidogo wewe uende, kuna wengine watakuja baadaye*. Do not think you can do everything and there is not enough work for all committees. So, you just pick what others have done. I am saying this because I am not a happy person as a Chair. These Members wasted their time in Mombasa and all over the country. I support this for the good of the country.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Today Hon. Kioni seems to be coming from... It is in order he supports and that is okay. We will have contribution from Hon. Ochanda, Member for Bondo.

Hon. Gideon Ochanda (Bondo, ODM): Thank you, Hon. Temporary Deputy Speaker. I want to believe that if any of us were in Kioni's shoes, we may want to say exactly what he has said.

In the last Parliament, some of us wondered why the Constitutional Implementation Oversight Committee was there. In terms of auditing the Constitution, the function was given to the Budget and Appropriations Committee and some of us wondered loudly. This happened where the Budget and Appropriations Committee were the ones who went through auditing the Constitution 2010.

I want to believe that Jeremiah is fairly in order. I wanted to mention two things. One, is that there is a clear way in terms of what the Constitution says about amending it. You can only amend it by bringing a Bill. I think this is a fact that remains and must remain. I think this is where there is confusion because some think you can do this through a Question first, then bring a Bill.

The whole thing logically and legally is that you must bring a Bill. Look at it and vote on it. Once you have voted on the Bill as an item, then the next step is ayes or no as we do here in Parliament. I think this is where the problem is. We have done three referendums before. We did one in the 1960s which some of us may not know. We did a referendum in 2005 and a third one in 2010.

We are facing a fourth referendum which is in our sight. I want to believe we will do it. We have done all this, apart from the next one, minus a law. This law is important, mandatory and we have been late with it. Therefore, I support this Bill. While I do so, there are five items we may want to look at a fresh in terms of amending the Bill or making them a bit straight. There are some that are neither in line or contradicting.

Just like in my first statement, for example, if you look at Section 6, it states every question. This means there are many more questions. Yet, we are saying the question should be one. This is not following very well. This is because we are talking about every question and not the question. If you look at Section 12, it states the constituency being a single polling area.

I think this is something that needs to be looked into again. That there is space to make a constituency one polling area. Does this mean that the entire voters of the constituency will come to one centre because our polling area has been a polling station? When you talk about a constituency being a polling area, does it mean there is a possibility that the entire constituency can be a polling area?

The other thing that needs to be checked into is the role of the IEBC. One of their roles is conducting civic education and then parallel to this there is a campaign committee. How can the two run parallel together? What kind of content will they be bringing out for purposes of civic education? What kind of content will the campaign committee bring?

I think this is where we will have conflict. For example, the IEBC may be talking about the process in terms of how you move with your vote and stuff like that, but then, there is a campaign committee that is campaigning for particular positions. So, how do we check the two or at what stage does one end and the other begins. Maybe we can have it in a manner that the IEBC must have a very objective content for purposes of civic education. This must be beyond the normal process of movement of a voter from one place to another to items or issues listed out for purposes of the vote.

The other area is in Section 25 on tallying. There is a mention that tallying is to be done at the tallying centre. In terms of the kind of practice we have adopted as at now, counting is done at the polling centre and not tallying centre. If you look at the Maina Kiai issue, this means that in Clause 25, if you go by tallying, then the polling station will not be a tallying area. You will have to carry the results from a polling station to a tallying area like the constituency level. I think this is an area that needs to be looked into.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Ochanda, I do not mean to interrupt you, but which Referendum Bill are you referring to?

Hon. Gideon Ochanda (Bondo, ODM): I am talking about Clause 25 of the Bill.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Which one? The one I have is the Referendum No.2 Bill of 2020.

Hon. Gideon Ochanda (Bondo, ODM): This must be Clause 25(6) because I listed this down. What I am talking about here in principle is that there is a whole issue of tallying area and a polling station. It is talking about tallying being done at a unit that could be different from the polling area. The last one is about where we have a petition in court. Here, it is referring to particularly more petitioners in one petition. But I want to believe there could be more petitions which the proposed Bill is not talking about. Petitioners here are like all the people who are petitioning are listed as one. However, there is a situation where we may have many other people or interested parties petitioning the results. So, I want to believe this is something the proposed Bill may want to look into. Those are my concerns, Hon. Temporary Deputy Speaker.

Hon. (Dr.) James Nyikal (Seme, ODM): On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Nyikal, what is out of order?

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Temporary Deputy Speaker, maybe some clarification. Going by what Hon. Ochanda has just said regarding Clause 25, it seems like there may be two Bills that people are discussing separately. This is because what we have here under Clause 25 is actually talking strictly about petitions, and I do not see any tallying. So, if there is that confusion, I think it is important to clarify it so that people are discussing the same document. That is my concern.

The Temporary Deputy Speaker (Hon. Christopher Omulele): He is on a point of order. He cannot be out of order. Hon. Nyamai, what is burning?

Hon. (Ms.) Rachael Nyamai (Kitui South, JP): Thank you very much, Hon. Temporary Deputy Speaker. It is very much close to what Hon. Nyikal is raising because I have looked at the current report that seems to bring together the thoughts of the Justice and Legal Affairs Committee (JLAC) and the Constitutional Implementation Oversight Committee (CIOC), and I am not able to get the matter that is being raised by Hon. Ochanda. So, the question is: Are we really reading from the same script?

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Nyamai and Hon. (Dr.) Nyikal, both of you are right. Hon. Members, what is before the House for consideration as per the Order Paper is the Referendum (No. 2) Bill of 2020. There are two. There is another one which had raised the ire of Hon. Jeremiah Kioni. There is that one also but, you will recall that the Speaker had directed that those two Bills be harmonised and be considered in the manner that we are now proceeding in considering this Referendum (No. 2) Bill of 2020. For the information of Members, there is a harmonised report by the two committees; the CIOC and the JLAC. So, Hon. Members, kindly remember what is under consideration is Referendum (No. 2) Bill of 2020 and as you debate, you want to consider the recommendations made by the two committees jointly in their report that was tabled and laid today and it is available for your consumption.

Hon. Members, I believe that clears the issue that was raised by Hon. (Dr.) Nyikal and by my sister, Hon. Nyamai. So, we proceed in that manner. The next contribution will be by Hon. Gikaria David, Member for Nakuru Town East.

Hon. David Gikaria (Nakuru Town East, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to contribute and support the Bill before us. Of course, with the clarity that you have given, I think we will now be able to debate.

I thank both committees - of course, Hon. Jeremiah Kioni of CIOC and JLAC. We have a Bill before us and that is the most important thing. Today, I was watching the television and I

heard Nandi County has gone to court trying to seek a directive on the manner in which they are going to approve the Bill that has been sent to them. Even if the judge was to make a judgement, what would they be referring to without a referendum law? I think this is a very good law that is going to address so many other issues.

Hon. Temporary Deputy Speaker, you remember yesterday or the other day some people in one of the counties that rejected the BBI had gone back to court to question some of the issues that are now being clarified in this Bill. I think once this Bill is approved, it is going to help sort out many issues that are being asked.

When we will be given an opportunity, we will propose some amendments to the committees so that they can look at them. Some of the issues relate to even the definition of some of the terms used in this Bill. I will start by saying that if you look at the conduct of the referendum, it is very clear in our Constitution on how we can go about the parliamentary initiative and, of course, the popular initiative or what we have now. The collection of one million signatures...

I do not want to belabour the issues that have been raised on the process of verification of the signatures, but it is important for the Committee to start also thinking of, as we look at the ways of verifying the signatures, the IEBC as a commission and what it must do through this Bill. It should indicate what time they should verify signatures. We cannot just give the Commission the task of verifying signatures and then they decide to take, for example, a year. So, again, in this Bill, the Committee needs to look into the timeframes that will be set for verification of signatures so that, again, it is not at the discretion of the IEBC to do that.

Let me move to the other bit of the proposal here in the Bill that counties have been given 90 days to process the Bill. Even here in Parliament, when we are given a certain Motion or any Bill, it does not take more than three hours for us to debate it. It has not been specified how long the National Assembly should take to pass this kind of a Bill. With only three hours for debate of a certain Bill, then 90 days is just too much. We passed some procedural Motions today, but we can only speak for 10 minutes. I think the 90 days that have been given to counties or even to Parliament as indicated in the Bill are too many. Ninety days is such a long period. I think the Committee needs to look at this. They should give 30 or 45 days.

Hon. Temporary Deputy Speaker, on matters to do with public participation, I think there was a proposed Bill on public participation before Parliament. It is important that public participation should not just be public participation. I will get my supporters to come and say something and that is it. As Parliament, I think we need to fast-track that Bill on public participation so that we have a procedure for actual public participation. For example, in Nakuru, they put an advert in the newspapers to notify people of public participation. I think the Speaker of Nakuru County Assembly erred by allowing all the 11 sub-counties to do public participation. If we subject a Bill like this to 290 constituencies, then we will take forever. So, I think we also need that specification on public participation.

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

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Gikaria, just hold on. Hon. ole Sankok, what is out of order?

Hon. David ole Sankok (Nominated, JP): Hon. Temporary Deputy Speaker, I think Hon. Gikaria is out of order to discuss the conduct of the Speaker of Nakuru County Assembly who we all praised for following the due process of the law by letting the Amendment Bill go through public participation as demanded by the Constitution.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Sankok, you are out of order. Resume your seat.

Hon. David Gikaria (Nakuru Town East, JP): Thank you, Hon. Temporary Deputy Speaker. Let me not belabour much on my colleague, Hon. Sankok.

The other bit is about the passage of the Bill. When it comes to Parliament, whether we approve it or not, it will still go. Assuming it is approved, it will go through the requirement of the 24 counties. Sometimes, we need to ask ourselves what the purpose is. If it comes, are we supposed to make amendments to the questions that were given by the promoters? We appreciate the timelines that have been given either to the commission or the President and how many days they are supposed to take.

Generally, if we look at the mandate that has been given, the question that we continue asking is about the mandate and whether it will be a multiple-choice question or is it a single answer question. It is very important for that to be verified.

There is quite a lot that we wanted to talk about but I want to say the Bill is good. If it is now amended in a few areas, then we can have a very good law.

I thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Osotsi.

Hon. Godfrey Osotsi (Nominated, ANC): Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity to also support this Bill. I will point out a few things that I think must be looked into. The first thing is on the proposal on the redrafting of the Referendum Bill which, according to this Bill, is supposed to be done by Parliament. That is wrong because the promoters should have much say in the process of redrafting the Bill because those are the people who have gone around the country...

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Osotsi, I think I understand where you are coming from, but you may not have had the benefit of reading the Report of the joint committees that was tabled today. It has something about what you are speaking to.

Hon. Godfrey Osotsi (Nominated, ANC): Thank you for that guidance. I was just trying to emphasise the point that, at the Committee of the whole House, this is a very important issue to look into. In the original Bill, that was not the case. The second point is on the authority to frame and publish the question. I think this should be the responsibility of the promoters and not any other person like the Independent Electoral and Boundaries Commission (IEBC) or Parliament. This should strictly be the promoters' issue. Even the determination of whether to have a single question or multiple questions should be the responsibility of the promoters of that Bill. It is very unfair to collect signatures and then someone else comes with questions which are not known to you.

The other thing is on the procedure of considering the popular initiative Bill at the county assemblies. We have seen what happened in Baringo County Assembly and the matter is now in court. I think this matter is silent on the Justice and Legal Affairs Committee's sponsored Bill but the one by the Constitutional Implementation and Oversight Committee provides a procedure. I am happy the joint committee has adopted the proposal by CIOC which now helps us to solve the problem that we are now having in the Baringo County Assembly.

The other issue is on the petitions. The issue of referendum is a very weighty issue, just like the issue of presidential election. We need to tie up the presidential election petition to referendum petition. If you say that the High Court or the Court of Appeal will be involved, then you are giving a long timeframe of six months to determine the matter. Consequently, you are giving an opportunity to people who are out to cause mischief to take advantage of this and delay

the whole process. This issue must be looked into very keenly so that we clean up at the Committee of the whole House stage.

The other issue is application of the Election Act. If you look at the Bill, you will see that we have, at least, 30 consequential amendments to the Election Act. This is not very clean. Maybe, we should have considered merging both the Election Act and the Referendum Act. If you look at this Bill in Clause 3, it proposes situations and events where the Election Act can be applied. This is not very neat. We just need to state that the Election Act will be applicable where necessary. The best thing is to try and merge the two Acts of Parliament.

The other issue is the power of IEBC to make regulations. There are 31 situations where the IEBC can make regulations. This is contrary to the recommendations of the Kriegler Report which recommended that we should not give too much discretion to IEBC on some issues. I think this is a matter that we need to look into because it can also create unnecessary delays in processing those regulations.

Lastly, it is on the issue of verification of signatures. This process must be very clear. What is involved in verifying signatures? Does IEBC have a repository of signatures? The answer is no. So, what have they been verifying? We want to be told as Kenyans because we provided our information under the *Huduma Namba* project. Can this be integrated in the IEBC system so that in future we do not struggle looking for signatures to verify? The system will be able to give us the signatures and we will be certain that the signatures we are using are the correct ones.

Otherwise, with those submissions, I support this Referendum Bill.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Kimani Kuria, Member for Molo.

Hon. Kimani Kuria (Molo, JP): Thank you very much, Hon. Temporary Deputy Speaker, for giving me this chance to contribute to the Referendum (No. 2) Bill of the National Assembly Bill, No. 14. At the outset, I was trying to find out what wisdom is. It is one that entails cognitive knowledge, understanding, insightful reflective thought and integration of one's views with those of others. Studies have shown that there is a direct relationship between wisdom and age.

That is why, at the outset, because I did not have a chance to do this in the morning, I would like to condole with the family of the late Hon. Haji, the late Hon. Oyioka and the late Hon. Nyachae. Those are banks of information that we, as young people of this country will miss and hopefully, we will get to understand, respect, learn and tap from those knowledge cups so that, when we become of that age in future, it will be information that we can share with the generations that will be behind us.

The Bill of Rights provides that there is freedom to choose. This coming referendum assures us of that freedom. There is going to be a chance to either oppose or propose the constitutional amendments that are being brought up by this popular initiative of BBI. Therefore, the Bill is rightfully before us because, as Parliament, we will provide for that platform where people can come out and say clearly whether they are for or against the popular initiative in terms of the constitutional amendment through this BBI. I must commend the JLAC for taking the initiative to reform and develop the referendum legal framework. If this House passes this, I am sure it will go a long way to affirm the will of the people of Kenya.

One Thomas Jefferson, a diplomat and one of the founding fathers of the United States of America (USA), said: "The will of the people is the only legitimate foundation of any government". Therefore, that government must safeguard the expression of that will of the people. This Referendum Bill is clear expression that the Republic of Kenya is willing to respect and to have people express their will through a referendum.

Hon. Temporary Deputy Speaker, the Bill seeks to establish procedures for the conduct of referenda, including providing for referendum committees and establishing a level playing field for referenda. This Bill will achieve the balance for providing equal funding and reasonable limiting of funding for the public good. This will consequently afford the Kenyan people an equal opportunity to make their decisions based on the information that has been provided.

Our elections have been said to be a reserve of those that have resources. It is said that if you want to run for any political office, you need to have a particular sum of money and a particular budget. Providing funding for those different fields shows that this Bill is going to provide an equal opportunity to either those propagating for the passing of the referendum or against it to have an equal chance to show their case to the Kenyan people and have the Kenyan people express their will.

Hon. Temporary Deputy Speaker, any law must be simple, transparent and must take into account the special needs of persons with disabilities and other persons with special needs. The requirements of this canon law, of it being simple, transparent and taking care of the needs of people with disabilities, have been taken care of by this Referendum Bill. That is why I am standing to propose and to agree with the Referendum Bill.

The Elections Act, 2011 has been the legal framework to govern the conduct of elections as well as referenda. Under the Elections Act, the provisions that address the question of referenda are primarily enshrined in Part IV of the Elections Act from Section 49 to Section 55 (b). The provisions of this Act have been considered to be grossly inadequate to address all matters regarding the conduct of referenda. From my reading of the Report, I understand that the Committee has been in consultation with the Independent Electoral and Boundaries Commission (IEBC) on what the Commission thinks about our current law and how that referendum should be conducted.

Hon. Temporary Deputy Speaker, the laws of the land of any country should be consistent. The Bill, therefore, removes this conflict and potential inconsistencies with other laws. For example, a referendum can only be initiated through an Act of Parliament. This entails the creation of a law to initiate an amendment. The Committee made this observation and recommends that if the Bill passes, it should be the forum under which any referendum to amend the Constitution should be conducted.

The Constitution provides, through the Elections Act, Section 52 (a) as read together with Section 51; that you could have a referendum that has multiple questions. This Referendum Bill, however, puts it in black and white that any Kenyan who goes to vote in the referendum either agrees or disagrees with the proposed amendments in the referendum. It removes all the grey areas and makes it a black and white initiative. It is either 'yes' or 'no' That makes it clear. Considering the clamour for amending the Constitution through the BBI and in future, I hold the considered view that this initiative by the Justice and Legal Affairs Committee is laudable.

Lastly, on the remarks made by Hon. Jeremiah Kioni earlier today about what he had worked on and what has been brought here now, when I was doing my research on this Bill, I went to the Table Office and I was asked: "Which Referendum Bill are you referring to? Are you referring to the one by the Constitutional Implementation Oversight Committee or the one by JLAC?" Although that has been sort of remedied by the joint report that you have shared with us now, it paints Parliament in a different way. I wish that, in future, any Member of this House that comes up with any amendment to any Bill, through a Private Member's Bill, is accorded an equal chance to have that Bill become law without having to beg other people or authorities for the Bill to be given priority.

With that, I fully support this Bill. I urge this honourable House to do the same.

I thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Well spoken, Member for Molo, Hon. Kuria Kimani. We shall now have Hon. (Dr.) Lilian Gogo, Member for Rangwe.

Hon. (Dr.) Lilian Gogo (Rangwe, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me this chance to also speak on this matter.

I rise to support the Bill. This is an interesting time to discuss this particular matter because as things stand now, we are trying to lay down structures for posterity. Once we enact the Referendum Bill, it means that any referendum initiative that will be undertaken now and, in the future, will be anchored in law. Essentially, there are provisions for procedural matters. On the matters of procedure, there have always been elements of litigation that come out of ...

(Hon. Onyango Oyoo and several other Members consulted loudly)

The Temporary Deputy Speaker (Hon. Christopher Omulele): The Hon. Members behind the Member contributing, kindly consult in low tones. Remember that COVID-19 is still here with us, Member for Muhoroni and others.

Hon. (Dr.) Lilian Gogo (Rangwe, ODM): Thank you, Hon. Temporary Deputy Speaker, for protecting me. There were loud consultations behind me and they were distracting me.

I was mentioning the matter of procedure, which has been well covered on the procedural issues that are to be followed before a referendum is carried out. This Bill speaks very well on this matter. As I said, many times, people run to court because of not following procedures when conducting referendum or when doing other matters that affect the people.

I also rise to support this Bill because it gives clear guidelines on the funding of referendum if it is to be carried out, so that it is not dependent on only one person. The method of funding is well laid out. This is very important so that we do not have somebody or a particular institution holding the country to ransom, especially when it comes to the provision for funding.

Hon. Temporary Deputy Speaker, I also support this Bill on the provisions that give equality for proponents and opponents of pertinent matters that would call for a referendum. This particular Bill has put it out very well. There is not going to be any contention on who is proposing and who is opposing as it were. Everybody is given an equal chance to give their propositions. Those who are opposing are also given an equal chance to oppose the matter that they do not like and then a referendum is done.

I also want to give my contribution on the work that has been brought on the Floor of this House. As much as Hon. Jeremiah Kioni put forth his reservations, I thank him for supporting this Bill. As it were, this Bill has been worked on by two very serious committees of this House and public participation has been undertaken by both committees. That shows the in-depth position of the matter that we are discussing on the Floor of this House this evening. A lot of work has been done on it. People who did not do public participation on the one that was brought by the CIOC probably had another chance of doing public participation when it was presented by JLAC.

This Bill is specifically very well-researched and it is one the public participated very well on. If we were to really take our time to look at matters, especially before they are brought to the Floor of this House and they touch on two committees, it is a good thing when committees also work together. They have also held joint sittings and have agreed on what part to table and what to improve on. The Bill that we are discussing on the Floor of this House has been well-looked into by the two committees. It does not matter which committee presents it on the Floor of the

House. What is important is the content of the Bill. I have looked at it. It is rich and it will help this country to move forward, especially for posterity.

Another matter is that a referendum, being a direct and universal vote, needs Parliament to look at matters that can bring down the efforts made by the people that we represent on the Floor of the House. If we come up with this Bill and it is supported and it goes through, this will stamp the authority, especially on what the electorate wants, through a referendum which will be anchored in law. Anything that is anchored in law is protected. Even if it goes to court, the judicial system will have a point of reference. As it were, we have not had a referendum law and now that we are bringing it in, it will be good for posterity.

With those many remarks, I support the Bill.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Let us have Hon. Kibiwott Melly, Member for Tinderet.

Hon. Julius Melly (Tinderet, JP): Thank you, Hon. Temporary Deputy Speaker for allowing me to speak to this Bill.

First of all, I thank the Mover, Hon. Otiende Amollo, for the good work he did. This Bill will set a precedent as it will put together a number of laws that relate to carrying out of referenda in this country. It will set a level playing ground. I ask Hon. Members not to make this Bill for BBI alone, but for the future referenda in this country. It will not be set to only look at the current BBI process in this country, but will also look at issues that cut across not only on politics, but even opinions that the citizens want to discuss.

I thank the proponents of the Bill because it is looking into issues that concern us. However, there are certain things that we need to give a lot of input on. First, as it has been talked about, when it comes to referendum questions, whereas the proponent would wish to have a Bill in a certain way, we also need to have a feel of the other parties that will speak on that referendum. It should not be a Bill that only looks at one side of the law.

This Bill talks about funding which is very pertinent. This referendum will affect the people if it is well-funded and structured. I want that structure to be taken even lower to the polling station where both proponents and opponents of a particular referendum are given equal opportunities in terms of access to public resources and time to air their views.

Clause 13 is on the cost of the referendum committees. The matter that I want to raise is on the limitations of election campaign financing. This is an area which we need to look into. If it is not well-taken care of, this section can easily be abused. I propose that we delete it during the Committee of the whole House Stage.

The Chair of the Constitutional Implementation Oversight Committee mentioned that the Departmental Committee on Justice and Legal Affairs and the Constitutional Implementation Oversight Committee needed to have sat down and come up with a Bill that cuts across what the two entities wanted. We need to respect committees when they take up a proposal, bring it to the House and it is defeated. If it does not go through, it is good for Bills to be given equal priority on the Floor.

Lastly, I have seen a section in this Bill which allows for a number of questions to be asked. We need to develop that and agree as Members that we cannot have a Bill that is one-sided. We have a number of issues that we are speaking to. We are not only saying “yes” or “no”. We will speak on issues that have been discussed in that referendum. In the next stage, we will make new proposals on the number of questions that will be there so that we will not only look at this particular section. We will be looking into many other issues that we will come across.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well. Let us have Hon. Kigano, Chair of the Departmental Committee on Justice and Legal Affairs.

Hon. Clement Kigano (Kangema, JP): Thank you, Hon. Temporary Deputy Speaker. People may wonder why, as the Chair, I have to contribute. I did not move the Bill. The Bill was very well-moved by my Vice-Chair. I tabled the Joint Report earlier this afternoon. Perhaps, as many Members as possible should acquaint themselves with the harmonised Report. This harmonised Report is a unanimous effort by both Committees, namely, the Kioni Committee and the Departmental Committee on Justice and Legal Affairs. Both of them met through a sub-committee and both committees then approved the harmonised draft.

For the sake of clarity, very eminent Members of both committees considered the Report. I have the list somewhere. Give me a minute. I will read out the names because this may allay some of the fears that my colleagues may have on the propriety of the Report that was tabled. The eminent persons consisted of my fellow Chairman of the Constitutional Implementation Oversight Committee, Hon. Kioni; my Vice-Chair, *Mheshimiwa* (Dr.) Otiende Amollo; Hon. Kaluma, Hon. Jennifer Shamalla, Hon. Olago Aluoch, Hon. Anthony Oluoch, Hon. Zuleikha Hassan, Hon. Japheth Mutai, Hon. Tom Kajwang', Hon. Christine Ombaka and Hon. Yusuf Hassan. These are eminent Members of this House and Committees. One may say that one Committee might have been preferred over the other. If you look at the Sixth Schedule of the Constitution which constitutes Hon. Kioni's Committee and the Sixth Schedule of the Standing Orders, you will find that the jurisdictions of both Committees overlap just like many other Committees. However, the most important thing is that we are not arguing or fighting, only that the Speaker made a ruling that my Committee should pilot, and in the course of piloting then we harmonise both reports.

The whole foundation of this Bill is that it is donated by Article 82 of the Constitution which says that there shall be such a Bill. We are obligated under that Article that the voting to be provided under that Bill shall be simple. That rules out multiple questions. This is because, the Constitution obligates simplicity. If you are going to have 10 questions, then the voting will not be simple which is mandatory under the Constitution.

This Bill goes wider outside many other omnibus matters and brings into issue Article 257 of the Constitution. Equally, the Constitution itself has a suggestion under that Article that it must be converted into a Bill. I do not know whether that Bill will say it is a multi or simple question. A Bill lies in between.

The other question I would like to address is what my colleagues have raised, particularly – I heard from Dr. Oundo that it concerns public participation. Public participation is subjective. You can only look at public participation at the moment if you mistakenly overlap this Bill with any other election. Even if you did and landed in Article 257...

For example, if you look at the BBI, it has gone through the mill. It went through the national committee which was collecting views. They met Members of the public and the views were expressed and compressed into a book. Then it came to countrywide verification and views were collected. Therefore, depending on how you look at public participation, you cannot say that it is only the counties that can conduct public participation. As far as I am concerned, public participation has been fully addressed and effected.

I hope and expect all our Members will advise their constituents to vote for this referendum when it comes.

Thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): The Hon. Muturi Kigano is a constitutional lawyer, so when he contributes there is not much that we can say or take away from his contribution.

Let us have the Hon. T.J. Kajwang’.

Hon. T.J. Kajwang’ (Ruaraka, ODM): Thank you, Hon. Temporary Deputy Speaker. I did not know that I was to be next.

Allow me to first start with what I think is procedural. I have listened to my Chair and a ranking Member, Hon. Jeremiah Kioni and I sympathise with his circumstance. I am in his Committee, I join him in every word, but I cannot explain it more eloquently manner than he has done already.

However, we need to deal with a bigger issue. We now need a referendum law. Even though we are now discussing the law emanating from the JLAC and there is another Bill sponsored by the CIOC, at the end of the day, we want a referendum law. Therefore, the content is more important than the persons who are spearheading it.

We must find a way to sanitise this apparent incongruence and it can be done. I have looked at the Speaker’s ruling and you have just explained in detail this evening. It does not in any way negate the principles that I have heard here. In fact, it helps us to put together the thoughts that have been expressed by both JLAC and the Constitutional Implementation Oversight Committee. In my view, I have a practical solution. This Bill should be processed the way we are processing other Bills and it should pass. I can see it passing.

Therefore, the Leader of Majority should take the first opportunity – even tomorrow- to list the Constitutional Implementation Oversight Committee Bill. Members will see that the Constitutional Implementation Oversight Committee carries very good positions, perhaps better than what JLAC has and pass it too.

We will have two Bills which have passed Second Reading. At the time we come to Committee of the whole House Stage, the two Committees should come up with a united report guiding Members on the Committee amendments that are necessary. Therefore, if there is any other Member with different amendments, that is also allowed. That way, we will have two Bills which have been considered separately, but there is a united front which the amendments have brought.

If that does not happen, speaking for myself, I will carry as many amendments from the Constitutional Implementation Oversight Committee as possible, as I am able to come by, to enrich what I think the JLAC has done. I think the best is to harmonise this ... We have used taxpayers’ money; we have been officially commissioned to look at this thing and I do not see competition. There is no competition in these issues. There is no one Bill that is superior to the other. It is just that we are in one House and we want to come up with one document which speaks to everyone. The spirit we need to look at is then how to harmonise the Committee stage amendments that capture the spirit of all these things.

Hon. Temporary Deputy Speaker, allow me to move to the second matter which is related to what I have just said. If you consider the Constitutional Implementation Oversight Committee, many of the splendid debates that I have heard would not have arisen because many of them have been looked at. I heard the first one from the Leader of Minority Party, Hon. Mbadi, who talked about the fact that it is unconstitutional that the IEBC should be given powers which it does not have in the Constitution. If you look at Constitutional Implementation Oversight Committee’s deliberations, that has been taken care of. Members are debating from a raw Bill. Had Members

looked at the report, you would have seen that there are lots of advancements that have been made which take care of some of these issues.

For example, Hon. Ochanda is uncomfortable that there are single constituencies. That also troubled us in the committee that we cannot have single constituencies. In a plain way, it means that you are creating a polling station in the constituency which will only handle a referendum, but which does not ordinarily handle elections. What we have said and we can see it in the joint report, is that the applicable law in the Elections Act will apply in the referendum with necessary modifications. What are those laws? There is a polling station which has been established for purposes of elections. That polling station should be the same that is used in a referendum. We cannot have a constituency and call it a county and expect members to go and vote in one single constituency called a county. It cannot work because there is already a legal precedent borne by *stare decisis* and borne by the law that a polling station will only have 700 people. This is what we want to do.

Therefore, if we were to pass the Bill by the Departmental Committee on Justice and Legal Affairs, without seeing the richness of the Bill by the Constitutional Implementation Oversight Committee, we will create a conflict. We will have a single constituency, but have one which says that import all the laws of the Elections Act into it and there will be a conflict of laws. So, it is important, gentlemen and distinguished ladies, (the ladies are more distinguished than this gender) this is not competition. We must find a way we can put these things together so that we are together.

The last thing that I want to talk about is this thing called single question or multiple questions and all that is dividing us. Sometimes if we do not know something, please let us ask. There are people who went to school and spent years just studying legal terms and how to use them in law. Do not be a doctor of everything. You will make people abort, if you want to be a doctor, yet you are just a witch doctor. The law is very clear. The word “referendum” is used in the context of Articles 255 and 257 of the Constitution. Article 255 of the Constitution says that a referendum will be done in some manner. Then it proposes a Bill to amend the referendum; a Bill and not Bills. Where is this language of Bills and all the multiple questions? It is that Bill that is presented that is doing its journeys in the constituencies.

There is something confusing and I heard veterans talk about issues which concern society like whether we should have gay marriages or should we have dogs walk on the streets at some particular hour of the day or of the night and such like issues? Nobody says that those are not questions. They are very important issues of the day but those are not issues of a referendum within Article 255 of the Constitution. This Act is implementing Article 255 of the Constitution only.

We will have an opportunity of creating a Bill or creating an Act of Parliament which deals with many of these issues that we are talking about. Therefore, when I hear Members saying that let us do a law which governs everything with other questions, such as whether we should secede and so on, I get concerned. There will be an opportunity and when it will arise, the first thing we will do is the interpretation of Act. In the interpretation section we will define questions bordering on good governance and are also issues of referendum but right now, we are dealing with only one thing which is amendment to the Constitution. So, the multiple thing we are talking about... Do not put *siasa* where it is not necessary! You can just ask the lawyers who are here and they will give advice for free. You are talking about things which are not legal.

Let us pass this Bill because it is good. Let us bring the CIOC Bill and let us also pass it and we will have... Please, I beg the Hon. Leader of the Majority Party who is responsible, we

will pass this Bill but also bring the CIOC Bill. It is also good. Let us also pass it then we will have a joint committee which will lead us into the...

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Kajwang', your time is up.

Hon. T.J. Kajwang' (Ruaraka, ODM): Hon. Temporary Deputy Speaker, you can complete it for him.

The Temporary Deputy Speaker (Hon. Christopher Omulele): I was intrigued by that part about the doctors that you and I have studied. We studied interpretations as a whole unit at the university. You are now talking about *stare decisis* and witch doctors.

Hon. Kajwang' always tickles my.... Hon. Wangwe, are you ready?

Hon. Emmanuel Wangwe (Navakholo, JP): Thank you, Hon. Temporary Deputy Speaker. At the outset, I rise to support this Bill. I congratulate and thank the Chair of the Departmental Committee on Justice and Legal Affairs, as well as the Chair of the CIOC who, if it was not for other issues, would be my Deputy President.

This Bill recognises everything and all persons are inclusive. That is what enables me to feel that this is a good Bill to support. Many people outside there shall be asking what is there for them in the Bill.

At the outset, I am interested in Clause 100 of the Bill. Under Clause 100, the Bill stops us or any other person from being forced to disclose what he voted for. Most of the time, the political class shape how people will vote. Therefore, in the event the voting process results in a court process, one could be asked to state what he voted for. The advantage of this is that the Bill, if passed, will stop anyone from being asked to disclose. That in itself is a good thing from where I sit.

I am also attracted to Clause 104 of the Bill which states that or elaborates on how various persons with special needs are included in the process. I am really happy with the way persons with disability have been brought on board. It is stated that should there be persons with disability, the voting places shall be in a certain manner that shall support people who live with disability. In this House, we know that Hon. "001" represents 6.5 million people living with disability. If we take care of those people, it means that the society will have everyone voting.

I am also concerned and happy that the Report which was given to us this afternoon addresses issues of concern. For example, this Bill aligns with the Constitution of Kenya. Article 256 of the Constitution in particular talks about the parliamentary process in terms of parliamentary initiative. When one reads the entire Article, it does not give the President the number of days within which to instruct the IEBC to cause a referendum election. Through this amendment, we see that the joint committee has now agreed on giving the President 14 days within which the IEBC will conduct referendum election.

I am also touched by the issue on the hearing of a petition by a bench of three judges. Under Clause 21 of the Bill, the Bill shall provide for hearing of a petition by a three-judge bench and determine the matter within six months. By the Bill giving us timeline, it is a good thing so that we do not have a petition which will last forever. We are aware that there are some petitions which have taken years to end and have never been determined.

In this House, we have the petition by Hon. Waluke which has never been determined for years now. Therefore, it is important that we give a timeframe to the judicial system so that they tell us, for instance, that they are able to settle this matter within six months. Let the Judiciary itself set a bench of three judges. I am attracted to that, and I feel that it is a good thing, if we push this Referendum Bill to be in that manner.

Hon. Temporary Deputy Speaker, on the same note of the judicial corridors, there is also the right of appeal or having a High Court decision on a referendum. It is important that there should be a process of appeal. Maybe for one reason or another, the High Court might not have determined a case in the best interest, in terms of what one thinks, and he moves to the Court of Appeal. This Report appears to favour the Court of Appeal option, which I agree with, rather than proceed with consideration of six months that we have in mind. Therefore, I feel comfortable that the Court of Appeal is to be at the tail-end of serving justice that arises from this Bill. That is a good thing, and I support it.

It is also good that as we go to the courts, we are certain of various aspects such as the cost that could be incurred. I am happy that in Clause 103 of the Bill, the costs have been mentioned and itemised. It is good to provide this in law rather than leave it open to the judicial officer to determine. I am also happy that the powers of the courts under Clause 102 have been settled. Therefore, when you go to court, you know the jurisdiction of the court and the level of outcome that you expect from that court.

With those many remarks, I beg to support and ask my colleagues to support this Bill.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Fabian Muli, Member for Kangundo.

Hon. Fabian Muli (Kangundo, Muungano): Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to deliberate on this Bill. As we pass this Bill, there are aspects that we need to understand, especially on admissibility of these Bills when they are brought to this House, that is, how that process is followed. I belong to the school of thought of my able Chairman, Hon. Jeremiah Kioni, on our understanding of the admissibility of the Bills in this House.

I have seen our able Chairman of the Departmental Committee on Justice and Legal Affairs bringing a report. The question is whether we need a report in a legislative process when a Bill is in Second Reading? Those are the questions we need to ask ourselves because the process of making laws by this House is very important and must be observed.

This Referendum Bill has elicited a lot of excitement in the public because the whole country is speaking about the BBI. I want to bring it to the attention of the public so that they can also understand that this is a Bill for the referendum process. It is a Bill which provides for the process to be undertaken as envisaged in Articles 256 and 257 of the Constitution on matters of referendum. It is not the BBI Bill that we are debating in the House.

I have checked this Bill from the Departmental Committee on Justice and Legal Affairs and seen that there are things which we need to check when we go to the Third Reading. It does not give the ownership of the promoters of the Bill. They are not mentioned anywhere. The promoter of the Bill might wake up and oppose the same Bill. The promoter of the Bill and the people who drafted the BBI Bill might wake up and say that they do not need their respective documents, and that the documents are not there. So, this referendum process Bill should show the principle of promotion of a Referendum Bill.

The other thing that this Bill is trying to establish is a situation where there will be multiple questions. On that one, I laud the issue raised by Hon. T.J. Kajwang' because this is just one Bill for Article 257 of the Constitution. This Referendum Bill shows that there are multiple Bills. If we have multiple Bills, we can have multiple questions, but the Bill which is here seeks to amend Article 257 of the Constitution. So, we should not talk about many Bills. Therefore, this aspect needs to be considered during the Third Reading.

The other thing is that this Bill, in Section 25, has tried to bring the issues of registering committees in constituencies. Referendums are matters of politics and you cannot raise the issue

of registering committees at the level of constituencies. People will tend to say that there are several committees that need to be registered in the constituency. So, we need to describe very well what these committees are, who is supposed to register them and their duties.

The other issue I have seen in this Bill and which may bring inconsistencies is the petitions. In matters of a referendum, a petition is very important. It has to be described very well, point to point, how it is supposed to be followed. This Bill has not given the security cost of a petitioner. If I am the one presenting the petition today, somebody can decide to bring a very big petition cost so that I withdraw that petition.

The other thing is that much as it has given room to petition, this Bill has not shown us what happens if a petitioner withdraws a case. What normally happens? Is that case going to lapse or does it give room to another petitioner to proceed with the case? The Bill has stated when a petition lapses. What if I petition this referendum to block another person not to petition? So, when we go to the Third Reading, we need to check the factors of these petitions.

Also, the petitioner has been given six months. If you see the referendum, the country will be in tension. The country will be wanting to know the results. The country wants to finish the process and go on. By giving a petition time of six months, that is very long. It is good matters of law have exact timelines. Time in matters of law need to be described so that we get conclusions to avoid a lot of conflicts in the country.

As the CIOC, we agreed to support this Bill, but there are many facts and documents which we carried as a Committee, which deal with matters of the Constitution. So, we need to come up with a way forward. We put a prayer to the House on this CIOC Bill which talks about the same matters as the other one. That document carries a lot of materials which are very important for referendum in this country.

I support this Bill, but I leave the question that we need a proper document. We need proper laws to carry our referendum for the sake of our country.

Thank you very much, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Mutunga, Member for Tigania West.

Hon. John Mutunga (Tigania West, JP): Thank you, Hon. Temporary Deputy Speaker, for this opportunity to add my voice to the Referendum (No.2) Bill of 2020. This is a very important Bill for this country and our people. We have had several referendums, as Members have said. We did those referenda without a law that would guide us to do them, but we somehow survived. However, at this point in time, I think the Bill has come at the right time so that we may set modalities and processes that have to be followed for purposes of coming up with a good referendum that will satisfy every person in this country.

It will be good for us as Members of Parliament, and as a country, to delink this process from the BBI. It will be very good for us to look for a law that will be there for a very long time and that will take care of the issues that will come in the future. It will give flexibility for purposes of dealing with these issues in the best way possible. This law is important in the sense that we need to really be very sober as MPs. We need to agree with each other. We need to talk to each other. We need to understand each other so that we can come up with a harmonised law that will take care of the interests of all Kenyans.

Hon. Temporary Deputy Speaker, the Departmental Committee on Justice and Legal Affairs and the Constitutional Implementation Oversight Committee had a meeting and came up with a joint report that is in a draft form. However, we have not been able to look at it. Looking at the Report presented by JLAC, there are so many issues that refer to regulations. When there are

so many issues referring to regulations and some of them looking fairly complicated in the Bill, there is need for us to guide the process of making these regulations. This will ensure that the requisite interpretation will give us the message that we want to have at the end of the day.

We should harmonise the two Bills and come up with a joint version and take time at the Third Reading stage. I want to ask Members to take time and listen to each other at the Committee of the whole House and the Third Reading stage so that we can come up with a law that will not only help in the upcoming referendum but for the future of this nation and the laws of this country.

Hon. Temporary Deputy Speaker, there are considerations that have been put in terms of changes in the electoral law. The electoral law has been considerably amended. For instance, 27 sections have been repealed and four sections have been amended. Are we going to have an Electoral Act or do we hold a referendum and an election without an Electoral Act? What are we left with? How does this law serve us and how is it going to help us going forward? This Referendum Bill speaks to the changes in the electoral law and there is need to look at the other one.

This Bill seems to give a lot of discretion to the IEBC. We should not look at the IEBC as it is now because there is a lot that we have bestowed on it. For instance, we have allowed it to do verification of signatures. I am not sure whether we have been able to build its capacity to verify signatures. I am also not sure about the method they are using to substantiate authentic signatures. I wish we could go the biometric way. We have also given them a lot of responsibility in terms of making regulations, and when we do that, do we have timelines? How are we guiding them in giving us important regulations?

I would like to refer to Clause 2 of the Bill that talks about the referendum question. I would like us to look at a possibility of having more than one question. Let us not lock our minds into the BBI but let us do a law for posterity and for circumstances that will demand more than one question. There are so many countries that have conducted referenda that have been able to address many questions. In our case, we held an election where we elected MPs, MCAs and many others. It was possible for Kenyans to choose from the list that was provided. It is still possible for Kenyans to interpret whatever is presented to them and make a choice. We should not limit ourselves because of perceptions. It is possible to have a multiple-choice system and we should have an inbuilt flexibility.

Clause 3(2) of the Bill provides for necessary modifications. However, it does so in an open manner. I am of the opinion that it should take into account the specificity of this modification and develop the requisite clarity so that we do not open it so much but enable us to incorporate regulations into the Act as proposed by the Committee.

Clause 5(a) of the Bill talks about...

(Hon. Lessonet crossed the Floor without bowing)

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Lessonet, you are a senior Member of the House and you know the rules. You are out of order! Just do what is expected of you.

Hon. John Mutunga (Tigania West, JP): Thank you, Hon. Temporary Deputy Speaker, for the intervention. I would like to refer Members to Clause 5(a), which says that not more than one-third of supporters of a referendum call shall be from one county. It goes further to say that voters in at least 24 counties shall be represented. Not more than one-third of a million signatures will be around 333,000 signatures. If we allow one county to produce that number of signatures,

and we are talking about collecting signatures from 24 counties, there is a possibility that some counties may only manage 10, 15 or 20 signatures. Shall we have requisite representation? Shall we be talking about equity in terms of representation? I think this particular clause needs to be looked at. My proposal is that we need to say that not more than 10 per cent of the supporters shall be from one particular county, not one-third. One-third is 33 per cent, which is a lot if we are talking about 24 counties.

With those few remarks, Hon. Temporary Deputy Speaker, I do support this proposed legislation. I pray that we are able to agree and come up with a good law for the sake of this country. Thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Sossion.

Hon. Wilson Sossion (Nominated, ODM): Thank you, Hon. Temporary Deputy Speaker. I rise to support the Bill. This is going to be one of the most important Bills in implementing the Constitution of Kenya. I am saying so because Article 10(2)(a) of the Constitution, on national values and principles of governance, talks about patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people of Kenya. I am particular about democracy and participation of the people of Kenya.

We have talked about many issues, ranging from constitutional amendments to key issues that are very dear to the people of Kenya. This Bill should have come during the term of the 10th or the 11th Parliament, so that the people of Kenya could exercise their sovereign power on the many issues that confound them. As we appreciate our democracy as a country, we know we have conducted two successful referenda in this country since Independence—in 2005 and 2010. Circumstances are now pushing us to another referendum. This tells us that before the enactment of other pieces of legislation to implement the Constitution of Kenya, this probably would have been the most essential Bill that should have come in the 10th and 11th Parliaments. Nevertheless, it is good we are debating it at the moment.

I want to thank both the Departmental Committee on Justice and Legal Affairs and the Constitutional Implementation Oversight Committee. And I would like to plead with our legal friends in those Committees—with a lot of respect you have done a fantastic job—to give us an easy time and allow us to enact an Act that will enable the people of Kenya to exercise their sovereignty which has been denied over time. Of course, referenda are conducted in other civilizations. We are talking about Britain in terms of Brexit, but it has not conducted a referendum only on Brexit. Referendum is an everyday activity that comes as and when necessary. I remember three years ago there was a referendum in Scotland seeking to secede from the United Kingdom. The referendum was lost. So, really, a referendum is not only for political purposes or the specific purpose of a constitutional amendment; it is also about issues that the people must decide on. I have in mind quite a number of issues in this country. For example, we are deciding on the type of education system. In the spirit of Article 10(2) (a) of the Constitution, where is public participation?

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Sossion, thank you for your contribution. Time has caught up with us, so I will allow you to go and put your thoughts together again so that when this matter comes up, you will have six minutes to go. You will have priority at that time.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Members, thank you for keeping me company tonight and for your contributions.

(Laughter)

Hon. Members, the time being 9.00 p.m., this House stands adjourned until Thursday, 18th February 2021, at 10.00 a.m.

The House rose at 9.00 p.m.