

PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

THE HANSARD

Tuesday, 3rd November 2020

The House met at 2.30 p.m.

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

PRAYERS

Hon Speaker: We can start. I will be making a Communication later.

MESSAGES

Hon. Members, I have two Messages. One should be a formality because you had passed a Motion consequent upon which this Message was acted upon. Nevertheless, the rules require that I must make this Communication.

NOMINATION OF PERSONS FOR APPOINTMENT AS HIGH COMMISSIONERS AND AMBASSADORS

As you are aware, Standing Order No.42 (2) states:

“If a Message is received from the President, at a time when the House is not in session, the Speaker shall forthwith cause the Message to be transmitted to every Member and shall report the Message to the House on the day the House next sits.”

In this regard, Hon. Members, on 16th October 2020, I did notify all Members of the National Assembly that my office had received a Message from His Excellency the President regarding nomination of persons for appointment as high commissioners and ambassadors.

The President, in exercise of powers conferred upon him in the provisions of Article 132(2) (e) of the Constitution, and Sections 3 and 5 of the Public Appointments (Parliamentary Approval) Act, 2011, nominated and now seeks the approval of the National Assembly, the following persons for appointment to respective offices in high commissions, missions and embassies of the Republic of Kenya:

A. HIGH COMMISSIONERS

	Name	Station
1.	Amb. John Tipis	Canberra
2.	Ms. Immaculate Wambua	Ottawa
3.	Amb. Catherine Mwangi	Pretoria

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B. AMBASSADORS

4.	Amb. Martin Kimani	United Nations - New York
5.	Amb. Jean Kimani	UN Habitat – Nairobi
6.	Amb. Jean Kamau	Addis Ababa
7.	Mr. Lindsay Kiptiness	Bangkok
8.	Amb. Tom Amolo	Berlin
9.	Amb. Lemarron Kaanto	Brasilia
10.	Amb. Daniel Wambura	Bujumbura
11.	Ms. Stella Munyi	Harare
12.	Maj. Gen. (Rtd.) Samuel Nandwa	Juba
13.	Maj. Gen. (Rtd.) Ngewa Mukala	Khartoum
14.	Amb. Benson Ogutu	Moscow
15.	Mr. Joshua Gatimu	Tehran
16.	Amb. Tabu Irina	Tokyo

Hon. Members, you may recall that on 15th October 2020, the House passed a resolution to the effect that during the period of the short recess upon receipt of names of persons nominated for appointment to State or public offices requiring approval of the House from His Excellency the President, the Speaker shall forthwith refer the Messages containing the names to the relevant Committee for consideration, without having to recall the House for a Special Sitting.

In furtherance of the said resolution of the House, I directed the Office of the Clerk to promptly convey this Message to all Members of the National Assembly and consequently refer the Message and the curriculum vitae of the nominees to the Departmental Committee on Defence and Foreign Relations, to commence the necessary vetting processes as contemplated under the Public Appointments (Parliamentary Approval) Act and Standing Order No.45 relating to committal of public appointments to Committees.

Hon. Members, Section 8 of the Public Appointments (Parliamentary Approval) Act requires that the Committee shall consider a nomination and table a report for debate and decision of the House within 14 days from the date of notification, which is today. In this regard, the Committee should table its report on the above nominees soonest to enable the House to conclude the matter within the statutory timelines.

Thank you, Hon. Members.

STATE OF THE NATION ADDRESS

The next Message is grounded on our Standing Order No.42(2) of the National Assembly Standing Orders requiring the Speaker to cause the transmission of any Message received from the President when the House is not sitting to every Member and later report as supposed. In this regard, therefore, I wish to inform the House that I received a Message from His Excellency the President dated 23rd October 2020 conveying that he intends to deliver the 2020 State of the Nation Address to the Parliament on Thursday, 12th November 2020, pursuant to Article 132(1) (b) (c) of the Constitution.

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Hon. Members, the said Article provides:

“The President shall-

(b) address a special Sitting of Parliament once every year and may address Parliament at any other time; and

(c) once every year-

(i) report in an address to the nation, on all the measures taken and progress achieved in the realization of the national values referred to in Article 10;

(ii) publish in the Gazette the details of the measures and progress under sub-paragraph (i); and

(iii) submit a report for debate in the National Assembly on the progress made in fulfilling the international obligations of the Republic”.

Pursuant to Standing Order No.22 (2) of the National Assembly Standing Orders, therefore, I wish to notify all Members that a Special Sitting of Parliament will take place on Thursday, 12th November 2020 at 2.30 p.m. in the National Assembly main Chamber, Parliament Buildings and that the Speakers of the Houses of Parliament are making necessary arrangements to facilitate the Special Sitting of the Houses of Parliament. Besides, I am also aware that the offices of the Clerks of the Houses of Parliament have since commenced preparations for the day including seating arrangements in line with the public health guidelines, and that official invitations will be sent out in the usual manner.

The House is accordingly notified.

Thank you.

Next Order!

PETITION

DISPOSSESSION OF LAND BELONGING TO RESIDENTS OF KILIFI SOUTH CONSTITUENCY

Hon. Speaker: Member for Kilifi South, Hon. Chonga. It looks like the Table Office does not differentiate between Kilifi North and Kilifi South constituencies. They think that Hon. Chonga is the Member for Kilifi North.

(Hon. Ken Chonga spoke off record)

I know it is the Table Office. They have indicated that Hon. Ken Chonga is the Member for Kilifi North. I am correcting that you are indeed the Member for Kilifi South.

Proceed, Hon. Chonga.

(Hon. Jared Okelo assisted Hon. Ken Chonga to switch on the microphone)

Where are the people who are supposed to facilitate you?

Hon. Ken Chonga (Kilifi South, ODM): Thank you. I think he was a disc jockey (DJ) before.

Hon. Speaker, I stand to present Public Petition No.38 of 2020 regarding dispossession of land belonging to Dindiri, Makata and Kaole Villages in Chasimba Ward, Kilifi South Constituency.

I, the undersigned, on behalf of the residents of Dindiri, Makata and Kaole Villages of Kilifi South Constituency, draw the attention of the House to the following:

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THAT, Makata Community-Based Organization (CBO) was registered as a community-based organization on 26th August 2020 under certificate No.49145 and has membership comprising of residents of Dindiri, Makata and Kaole Villages of Chasimba Ward in Kilifi South Constituency;

THAT, the residents of these villages comprising of a population of over 65,000 live on their ancestral land registered under Plot No.152/4/Mainland-North measuring 1776 acres;

THAT, the residents recently discovered, with dismay, the existence of copies of a title deed dated 1908 that allegedly assigns ownership of the land to an absentee individual by the name of Mbarak Islam Abed;

THAT, this alleged subdivision and title deed issuance is irregular and highly questionable in view of the fact that, among other reasons, it was issued over 110 year ago during the British colonial era yet at independence in 1963 all land was freed from colonial oversight and transferred to the Government to safeguard the welfare of indigenous people occupying their respective lands;

THAT, Wachonyi and Giriama ancestors had settled in the Dindiri, Makata and Kaole Forest area for over 100 years without any dispute and built houses, grown crops such as coconut palms, cashew nuts, maize, cassava and mangoes, and reared livestock;

THAT, over the decades, the community expanded exponentially and established new social infrastructure such as the Dindiri Nursery School, Makata Primary School, Kaole Primary School, Dindiri Secondary School, churches, restaurants, salons, shops and other commercial establishments;

THAT, graveyards that are almost 100 years old as well as old mango trees are a testament to the fact that the residents have lived on this ancestral land for decades;

THAT, the area residents are the legitimate owners of the land Plot No.152/4/Mainland-North as a community by virtue of being the occupants of the land for centuries;

THAT, efforts to address this matter with relevant authorities have not borne much fruit; and,

THAT, the matter in respect of which this Petition is made is not pending before any court of law or any constitutional body.

Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Lands, enquires into the matter with a view to securing the revocation of the title deed irregularly issued to Mr. Mbarak Islam Abed to facilitate subdivision of the land and title deed issuance to the legitimate and bona fide residents of Dindiri, Makata and Kaole Villages.

Your petitioners will forever pray.

Hon. Speaker: I think there is a problem. We need the Member for Nyando all the time to assist. It is now okay. The Petition is referred to the Departmental Committee on Lands.

Next Order!

PAPERS LAID

Hon. Speaker: Let us have the Leader of the Majority Party or the Majority Whip.

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

Legal Notice No.191 of 2020 relating to the Retirement Benefits (Forms and Fees) (Amendment) Regulations, 2020 and the Explanatory Memorandum from the National Treasury;

Legal Notice No.192 of 2020 relating to the Retirement Benefits (Mortgage Loans) (Amendment) Regulations, 2020 and the Explanatory Memorandum from the National Treasury;

Legal Notice No.193 of 2020 relating to the Retirement Benefits (Umbrella Retirement Benefits Schemes) (Amendment) Regulations, 2020 and the Explanatory Memorandum from the National Treasury;

Legal Notice No.197 of 2020 relating to the Public Finance Management (Credit Guarantee Scheme) Regulations, 2020 from the National Treasury and the Explanatory Memorandum;

The 2020 Budget Review and Outlook Paper from the Ministry of National Treasury and Planning;

Sessional Paper No.2 of 2020 on the Veterinary Policy from the State Department for Livestock;

Sessional Paper No.3 of 2020 on the Livestock Policy from the State Department for Livestock;

The Report of the Auditor-General on the Financial Statements in respect of the Kenya Post Office Savings Bank for the year ended 30th June 2018 and the certificates therein, and;

The Report of the Steering Committee on the Implementation of the Building Bridges to a United Kenya Taskforce Report.

Thank you, Hon. Speaker.

Hon. Speaker: Very well. Let us get the Chairman of the Departmental Committee on Defence and Foreign Relations, Hon. Katoo.

Hon. Katoo ole Metito (Kajiado South, JP): Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House:

The Report of the Departmental Committee on Defence and Foreign Relations on the Vetting of Nominees for Appointment to the Positions of Ambassadors and High Commissioners/Permanent Representatives.

Hon. Speaker: The Chairman of the Departmental Committee on Communication, Information and Innovation. Hon. Kisang.

Hon. William Kisang (Marakwet West, JP): Thank you, Hon. Speaker. I beg to lay the following Papers on the Table of the House:

Reports of the Departmental Committee on Communication, Information and Innovation on:

The Vetting of Ms. Immaculate Kassait, the Nominee for Appointment as the Data Commissioner, and;

The Kenya Information and Communications (Amendment) Bill (National Assembly Bill No. 20 of 2019).

Hon. Speaker: The Vice Chair of the Committee on Delegated Legislation.

Hon. Charles Njagagua (Mbeere North, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Reports of the Committee on Delegated Legislation on its consideration of:

The Special Economic Zones (Amendment) Regulations, 2020, Legal Notice No. 33 of 2020 and;

The Crops (Sugar) (General) Regulations) 2020, Legal Notice No. 99 of 2020.

Thank you, Hon. Speaker.

Hon. Speaker: Very well.

Next Order.

NOTICES OF MOTIONS

APPROVAL OF PERSONS FOR APPOINTMENT AS HIGH COMMISSIONERS AND AMBASSADORS

Hon. Katoo ole Metito (Kajiado South, JP): Hon. Speaker, I beg to give notice of the following Motion:

THAT, taking into consideration the findings of the Departmental Committee on Defence and Foreign Relations in its Report on the Vetting of Nominees for Appointment as Ambassadors, High Commissioners and Permanent Representatives, laid on the Table of the House on Tuesday, 3rd November 2020 and, pursuant to the provisions of Article 132(2)(e) of the Constitution and Section 8 of the Public Appointments (Parliamentary Approval) Act of 2011, this House approves the appointment of the following persons as high commissioners, ambassadors and permanent representatives:

1. Amb. John Tipis, High Commissioner to Canberra-Australia.
2. Ms. Immaculate Wambua, High Commissioner to Ottawa-Canada.
3. Amb. Catherine Mwangi, High Commissioner to Pretoria-Republic of South Africa.
4. Amb. Martin Kimani, Permanent Representative to United Nations-New York.
5. Amb. Jean Kimani, Permanent Representative to the UN Habitat-Nairobi.
6. Amb. Tom Amolo, Ambassador to Berlin-Germany.
7. Mr. Lindsay Kiptiness, Ambassador to Bangkok-Thailand.
8. Amb. Daniel Wambura, Ambassador to Bujumbura-Burundi.
9. Ms. Stella Munyi, Ambassador to Harare-Zimbabwe.
10. Maj. Gen. (Rtd.) Samuel Nandwa, Ambassador to Juba-South Sudan.
11. Maj. Gen. (Rtd.) Ngewa Mukala, Ambassador to Khartoum-Sudan.
12. Amb. Benson Ogutu, Ambassador to Moscow-Russia.
13. Mr. Joshua Gatimu, Ambassador to Tehran-Iran.
14. Amb. Tabu Irina, Ambassador to Tokyo-Japan.

Hon. Speaker: Hon. Kisang.

APPOINTMENT OF MS. IMMACULATE KASSAIT
AS THE DATA COMMISSIONER

Hon. William Kisang (Marakwet West, JP): Thank you, Hon. Speaker. I beg to give notice of the following Motion:

THAT, taking into consideration the findings of the Departmental Committee on Communication, Information and Innovation in its Report on the Vetting of the Nominee for Appointment as the Data Commissioner, laid on the Table of the House on Tuesday, 3rd November 2020 and, pursuant to Section 64 of the Data Protection Act of 2019 and Section 8 of the Public Appointments (Parliamentary Approval) Act of 2011, this House approves the appointment of Ms. Immaculate Kassait as the Data Commissioner.

Hon. Speaker: Hon. Njagagua.

ANNULMENT OF THE SPECIAL ECONOMIC ZONES (AMENDMENT) REGULATIONS

Hon. Charles Njagagua (Mbeere North, JP): Hon. Speaker, I beg to give notices of the following Motions:

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Special Economic Zones (Amendment) Regulations of 2020, laid on the Table of the House on Tuesday, 3rd November 2020 and, pursuant to Section 18 of the Statutory Instruments Act of 2013 and Standing Order No. 210(4) (b), annuls in its entirety the Special Economic Zones (Amendment) Regulations of 2020, Legal Notice No. 33 of 2020.

ANNULMENT OF THE CROPS (SUGAR) (GENERAL) REGULATIONS

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Crops (Sugar) (General) Regulations of 2020, laid on the Table of the House on Tuesday, 3rd November 2020 and, pursuant to Section 18 of the Statutory Instruments Act of 2013 and Standing Order No. 210(4) (b), annuls in its entirety the Crops (Sugar) (General) Regulations of 2020, Legal Notice No. 99 of 2020.

Hon. Speaker: The Vice Chairman of the Select Committee on the National Government Constituencies Development Fund, Hon. Omar Maalim.

APPROVAL OF NOMINEES FOR APPOINTMENT INTO CONSTITUENCY COMMITTEES

Hon. Omar Mohamed (Mandera East, EFP): Hon. Speaker, I beg to give notice of the following Motion:

THAT, pursuant to the provisions of Section 43(4) of the National Government Constituencies Development Fund Act of 2015 and Paragraph 5(2) and (10) of the National Government Constituencies Development Fund Regulations of 2016, this House approves a list of nominees for appointment to the following eight constituency committees of the National Government Constituencies Development Fund, laid on the Table of the House on Wednesday, 5th August 2020:

1. Ainabkoi.
2. Bomet East.
3. Buuri.
4. Dagoretti South.
5. Eldama Ravine.
6. Kitutu Chache South.
7. Nyeri Town.
8. Dagoretti North.

COMMUNICATION FROM THE CHAIR

JUDGMENT OF THE HIGH COURT IN CONSTITUTIONAL PETITIONS

Hon. Speaker: Hon. Members, I indicated that I had a short Communication to make.

As you may be aware, last week, specifically on 29th October 2020, the High Court, in the Constitutional Petition No. 284 of 2019 as consolidated with the Constitutional Petition No. 353 of 2019, issued amongst other orders, an order for cessation of consideration of all pending Bills in both Houses of Parliament until the requirements of Article 110(3) of the Constitution is first fulfilled. The Judgment also contains other related declaratory orders that shall have a direct implication on the legislative work of this House.

Honourable Members, consequently, on Friday, 30th October 2020, the House Business Committee met and deliberated on the matter of the judgment and took a firm view that the judgment is unconstitutional, erroneous and flawed in law.

(Applause)

The House Business Committee, in particular, noted with grave concern that the court erred, misdirected and misapplied the Constitution on the following issues, amongst others -

(i) The High Court failed to consider the architectural design of the bicameral Parliamentary system under our Constitution of 2010. The Constitution has clearly set out the mandate of the two Houses of Parliament. Article 109 of the Constitution mandates the National Assembly to enact Bills not concerning county governments without the participation of the Senate. The Senate is only mandated to participate in the enactment of laws concerning county governments.

(ii) The High Court's Judgment has effectively curtailed the National Assembly's mandate under Article 109(3) of the Constitution by requiring that any Bill not concerning county government must be considered by the Senate too.

(iii) The Judgment has also muted the provisions of Article 114 of the Constitution as read together with Article 109(5) of the Constitution regarding money Bills.

(iv) The effect of the High Court's judgment is that Members of Parliament and Committees in either House of Parliament cannot introduce Bills in their respective Houses, without the concurrence of the two Speakers. This curtails Members' right to initiate legislations and their right to represent the people of the constituencies and special interests, particularly in the National Assembly.

(v) The Judgment also attempts to set aside previous judgments of the High Court and the Court of Appeal which had validated some of the 23 laws like The Finance Act, 2018, The National Government Constituency Development Fund Act, The Computer Misuse and Cybercrimes Act, No. 5 of 2018, The Statute Law (Miscellaneous Amendments) Act, 2018 and The Statute Law (Miscellaneous Amendments) Act, 2018 and 2019, amongst others.

(vi) The Judgment has grave implications on the general presumption of constitutionality of a statute and the legislative sovereignty and will affect Government taxation measures, Government international commitments, reforms and policy decisions already taken in relation to various Acts of Parliament as enacted by this House.

Hon. Members, in view of the foregoing, I therefore wish to inform you that the House Business Committee resolved as follows in regard to the High Court judgment:

- a) That, the National Assembly does appeal the decision of the High Court in Constitutional Petition No, 284 of 2019 as consolidated with Constitutional Petition No. 353 of 2019; and,
- b) That, in the meantime, no legislative business will be undertaken by the House in the coming days, whether from the National Assembly or the Senate pending a way

forward on the decision contained in the High Court's Judgment, while seeking stay or setting aside of the Judgment by the Court of Appeal.

Thank you, Hon. Members. Yes, Hon. Junet. Sorry, let us have Hon. Kimunya.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Speaker. I am sure that Hon. Junet wants to ventilate on the same. It is really a sad situation that the court, in its infinite wisdom, has ruled that all the work done in this House since 2013 up to now is of dubious constitutional validity. They have listed the 23 Bills that were sent to them. They have extended to say that whatever is in process should be stopped because it risks suffering the same invalidity on the basis that the two Speakers have not been seen together declaring a concurrence or signing a paper.

I have attended a few of these functions and during assent of the Bill by the President, I have seen the two Speakers. If they are happy at the point of signing, does it not validate that they might have agreed at the beginning? This is happening because people are working on pedantic reasoning that since we cannot see evidence that you concurred, then the Bill is illegal or unconstitutional *ab initio*. The risk is that the 23 Bills have been declared null and void and we have a nine-month window to ratify, but I know that once something is unconstitutional, it is dead. There is no reawakening. That is the confusion we are having as mere mortals.

The Appropriation Bill of 2019 has been declared null and void but money was appropriated to the Judiciary and the entire country and it lapsed. You will recall that in the advisory by the Chief Justice to the President to disband this House, he reemphasized that there is no gain without pain, and that some pain is necessary for people to insist on the rule of law. It seems to be same argument that the judges have put on this because they were made aware of the grave consequences in nullifying laws that are already in place. People are already refusing to pay taxes. It is not just the 23 Bills because between 2019 and last week, since all the laws passed followed the same process, they must be wrong. At the onset of the bicameral Parliament in 2013 to 2018, the process was the same and this means that we have allowed the likes of Omtatah to nullify all those laws in court.

Hon. Speaker, I would like to ask that we should advise the Controller of Budget and the National Treasury to freeze the IFMIS system because if the Appropriation Act of 2019 is illegal, the Appropriation Bill of 2020 that has been done in the same way risks being invalid. We should ask them to freeze all payments so that people can wake up to the reality of the kind of judgments they are giving in this country. I thought the law is supposed to serve the greater public good but it is now serving some myopic pedantic interests from an activism perspective.

The judges should demonstrate that they can absorb the pain by us freezing the illegal payment to the Judiciary. It would be unfortunate for a Judiciary that says that we should adhere to the rule of law to benefit from an illegal Act. They should be the first to state that they do not want to receive any money because it is illegal. We can then move to the Senate that took us to court but I do not think it is right to punish *wananchi* for things that have come from unconstitutional implementation. They can come at the second or third tier. We want to ask the National Treasury that as from today, they should freeze the IFMIS system for the Judiciary and within the PSC, for the Senate. They will start reasoning once they feel the pain. It is unfortunate that we cannot carry out our business and our constitutional mandate is being interfered with, and because we want to obey, we will stop. But we want to ask the National Treasury to obey and freeze the IFMIS system for those two institutions.

We are actually being stopped from doing what we should be doing. We will stop because we want to obey the court's decision. Because we are obeying the decision, we also want to ask the National Treasury to obey it and stop paying the two institutions. I believe, with that, we will

be able to get into negotiations on what to do next. With those remarks, I will leave it there. The lawyers in the House may help us. Since you are a lawyer and you have already interpreted for us, let us see what we can do to save this country from this kind of unwarranted interference within the jurisdiction of the National Assembly.

Hon. Speaker: Hon. Junet, you also want to say something? Actually, it is not just the Appropriation Act, 2019, it is the Appropriation Act, 2018, the Supplementary Appropriation Act, 2018, and the Appropriation Act, 2020. Hon. Junet.

Hon. Junet Nuh (Suna East, ODM): Thank you, Hon. Speaker. First I want to appreciate your Communication and the decision of the House Business Committee. Your Communication today proves that this is a House that upholds the rule of law. We have seen the judgment that was made by the High Court and we have decided to appeal in the Court of Appeal. That shows that we respect the courts contrary to what they think, that we do not respect them.

The day I learnt about this ruling last week, I was shocked. I thought the judges were using a constitution of another country like Nigeria or Uganda. The Constitution is clear; as lawyers say, the law is clear. It is in black and white. We have been using our Constitution since 2013. The 11th Parliament was the first Parliament to implement the Constitution of Kenya, 2010 bicameral system of Parliament. This is an issue that has been canvassed on the Floor of this House under your leadership. Fortunately, you have been the Speaker of this House since that time. It is not the first time the Senators have gone to court. They went to court on the issue of Division of Revenue, they were given an advisory that did not work. Now, they have a ruling. If the ruling is saying the Appropriation Act, 2018; the Supplementary Appropriation Act, 2018, and the Appropriation Act, 2019 and the other subsequent supplementary Appropriation Acts were unlawful, I expect the Judiciary to return the money that they have used which was appropriated illegally. They have declared those Acts illegal. Therefore, they should refund the Exchequer the money they have used, including allowances and everything they have been using like food that they consumed. They must be surcharged from today.

If I can remember, when we passed the Cyber-Crime Bill, the court suspended certain clauses of the Bill before it declared it illegal. Three days after, the Chief Justice was on record complaining how people are fighting him on social media yet, if you can remember, the Bill was supposed to address the same thing. The problem with the Judiciary is that they do not look at the national interest of the country. The Constitution is clear in Article 144 that money Bills are the business of this House. How do you discuss funds that you do not know how they are raised and you do not oversee Kenya Revenue Authority (KRA) and Treasury? If it were me, as a politician, I would have discarded that ruling and said ignore it.

However, because we are a country that is governed by the rule of law, we will appeal that ruling. When the BBI Report proposes an avenue for people to complain to the Judiciary, it is referring to complaints on issues such as this. The Report proposes a Judiciary ombudsman. If that was the case today, I would have written to the Judiciary Ombudsman telling him that the three judges have made fools of themselves. But now, who do we complain to? Other than going to the Court of Appeal, we will burn in our houses with anger. If the ombudsman was in place in the Judiciary today, I would have written to him officially as a Member of Parliament to tell him that what the three Judges have done is wrong and he should look into it and take my complaints to the Judicial Service Commission (JSC). This is why people should open up their eyes and see the problem the Judiciary is posing. As much as they are doing good work, they are rejecting anything that they think is not going their way. Let us appeal the decision of the court. I will not come to *Bunge*. There will be no legislation. My work is to legislate and the court has stopped that. I will

be away at home. Do not declare my seat vacant for missing eight sittings. The courts have stopped me from coming to Parliament to legislate.

Thank you.

Hon. Speaker: Let me hear from the Leader of the Minority Party, Hon. John Mbadi.

Hon. John Mbadi (Suba South, ODM): Thank you, Hon. Speaker. I am a bit hesitant, but this ruling forces us to be close to discussing the conduct of judges. What we are expressing here – if you allow us – is general concern about constitutionalism in this country. The mistake we made – I stand indicted because I was in the 10th Parliament – is that we allowed from the 9th Parliament, people from the civil society to take over the assignment of constitution making that was critical. As people’s representatives, we should have taken keen interest on it and played a big role in coming up with a new Constitution. If you look at our Constitution, there are issues that clearly should not have been in it. We ought to have come out clearly that a Bill that does not concern counties should be legislated by the National Assembly. There was no need for the two Speakers to talk and agree. That was unnecessary.

However, we are where we are today because of allowing the duty of Members to be executed by other players outside the bracket of people’s representatives. The civil society is doing a good job, but they are just supposed to hold us accountable and not to come up with a document as important as the Constitution that governs the people of a country yet they are not elected. They will be speaking for who? They are supposed to hold us to account.

It shocks me that the court can pronounce itself on 23 laws that have been passed and order that they be annulled. In my view, what the courts could have done is to talk about the future. For example that, going forward, we advise that the two Houses should relate this way. That would have made sense to me. But going to the extent of annulling the Appropriation Act that is clear -- - Sometimes, before lawyers make judgments, they should seek professional input on certain areas which are not directly legal from professionals. If there is one thing that is clearly provided for in the Constitution as a function of the National Assembly, it is appropriation. It is clear that the financial estimates are tabled in the National Assembly and discussed, then the Budget and Appropriations Committee seeks public views and presents a report to the House. That report is turned into an Appropriation Bill that is passed by the National Assembly. How on earth would someone imagine to annul such a process that is clear in the Constitution and insist that you need to seek the opinion of the Speaker of the Senate on it as if you are an idiot? It is clear. You can read it and understand it.

The interpretation of the Constitution should be done in a way that promotes the values of the Constitution. When you do the opposite because you are a judge... That is why those who are opposing the Judiciary ombudsman should change their minds and stop playing politics. The Judiciary needs someone to oversee them. On the Legislature, as you can see, the Judiciary is pronouncing itself on its work. On the Executive, the Judiciary does the same. Parliament oversees the Executive. Who oversees the Judiciary? Nobody. They think they are law unto themselves. We need a body to which we can also express our frustrations. We just engage with them as a House, but there is no one to check what the Judiciary does.

Hon. Speaker, as I agree with your ruling and with due respect to the Leader of the Majority Party, I want to caution that we should not take any drastic measures that may hurt other players or people who are not even party to this case. Let us see how best we can deal with this matter. I think the direction the House Business Committee has taken is the best. Let us appeal the ruling but Kenyans should engage. We should discuss the powers of the Judiciary. They should know

that much as we respect their powers, they should also respect the powers of other arms of Government.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, I can see a number of you want to make comments, but let me just say this: As the HBC, we have taken the position that we appeal that judgment. Maybe we just live with that decision. I would like to remind the House that in the last Parliament, there was a Bill proposed by Hon. Peter Kaluma, which sought to amend some of the aspects of Article 165 of the Constitution with regard to powers of the High Court. The Bill was actually passed by this House, with the support of two-thirds of Members. But as it happens normally, it found its way on the other side and it never saw the light of day.

More importantly, there are lessons to learn from this decision. There are several other decisions of the High Court clearly saying that the provision of Article 110(3), requiring the Speakers of the two Houses to resolve any issue, is not about concurrence. I am surprised the judges were talking about concurrence. The words used in the Constitution are the same ones we have used in Standing Order 121. The Speakers shall resolve any question as to whether a Bill concerns counties. Other judges have interpreted that to say a question must therefore arise. An Appropriation Act, as correctly pointed out by both Hon. Kimunya and Hon. John Mbadi, is a Bill dealing with authority to withdraw money from the Consolidated Fund to pay for services in all other national State organs. The county assemblies always pass their own Appropriation Bills to authorise expenditure from county revenue funds. A Finance Bill is a Bill that does not concern counties. Article 109(3) of the Constitution is very clear: Bills which do not concern counties are to be passed only by the National Assembly, after which they are sent for assent.

(Applause)

That is the Constitution. We are not making it up. That is why several judges have in the past said there is no need for concurrence. An Appropriation Bill comes from the National Treasury. It seeks to authorise withdrawal of money from the Consolidated Fund to fund all arms of Government at the national level, including constitutional commissions and independent offices including that of the Auditor-General. Surely, there is nothing in that Bill that touches the functions of county governments. The Bills concerning county governments are clearly defined in Article 110(1). They are Bills which touch on election of speakers and members of the county assemblies, or a Bill referred to in Chapter 12, which is the public finance chapter, more specifically, indeed, Articles 217 and 218 of the Constitution. Those are the Bills which would concern counties. But a Bill to provide for a cybercrime law does not concern counties. In fact, when that law was challenged in court, the Court of Appeal said it does not concern counties and it is constitutional because the way it was passed by the National Assembly was proper. I do not understand whether the three Judges of the High Court were sitting on an appeal on the judgment of their superiors.

Anyhow, the HBC has considered this matter. I am sure sense will prevail. But more important in my view, the point at which interpretation of the Constitution is to be placed is a matter that we need to carefully consider going forward. It cannot be one judge here, another one there then you collect those ones from the outer stations and you bring them to Nairobi and yet they have been dealing with very small matters of pregnancy, compensation and things like those. You bring them to matters of constitutional interpretation and it becomes very complex. They have been dealing with other small issues out there. You congregate them in Nairobi and the city also becomes very complex. I think as a country, in order to provide uniformity, we need to be very

careful. That was the import of the amendment proposed by Hon. Kaluma in the last Parliament. We need to have uniformity, so that once interpretation has been rendered, it binds everybody; it is with finality. Now you get one judge saying one thing and another one saying another thing. There is total confusion on interpretation of the same provisions of the Constitution.

I am saying this because I am aware many of you were congregating somewhere over the weekend. The powers of the High Court as provided for in Article 165 of the Constitution is a matter that you need to address. Even the power to interfere with the processes of this House. If a Committee of a House of Parliament, for instance, is seized of a matter, how is it that somebody else would rush to court and ask the court to stop the process? Those are matters that we need to think about. The courts should allow the matter to end. If somebody is aggrieved by the decision of the House, then you can seek remedy at the Judiciary. The Constitution says any person can petition Parliament. But you find a situation where a person brings a petition then somebody else goes to court to stop its consideration. That is confusion. We need to clear it once and for all. It is important that we have clarity. If we could get some place where once a decision is made at that higher level it is final, it would be better. In any event, for a Bill to become an Act of Parliament, a lot of effort has gone into it; a lot of research work has gone into it, both from the Executive and by Members of Parliament. Surely, you expect that just one fellow comes and starts saying this and that should be law? That is not respecting the comity of the arms of Government. We should think about where to place that power.

Member for Murang'a, I hope not on this matter.

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): Hon. Speaker, I wanted to comment on the same matter if you allow me.

Hon. Speaker: You have two minutes.

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): Thank you, Hon. Speaker. When I was listening to this Communication, I was wondering whether we are going to conduct any business in this House. The judgment changes how the National Assembly performs its role. We know our role clearly is on legislation. We know that all Bills must now be subjected to concurrence as per the provisions of Article 110(3) of the Constitution, which may delay the legislative process. Already we wasted a lot of time in this nation because of COVID-19. So, these are some of the judgments that are necessary at these times.

However, the judgment does not allow us to address a situation where the two Speakers fail to reach an agreement. This may lead to a Bill dying before we have even got a chance to deliberate on it. Further, it will curtail the legislative power of Parliament bestowed on it by Article 109 of the Constitution. Again, this judgment ignores the express provision of the Constitution by allowing Senate to originate money Bills, which is contrary to Article 109(5) of the Constitution that provides that a money Bill may only originate in this House.

Further, I see this judgment ignoring provisions of Article 114 (2) of the Constitution which gives you, as the Speaker of this House, the role of forming an opinion on whether a Motion makes provisions on a matter listed as a money Bill. At the same time, there is the issue of amendment of the Constitution by judicial proclamation, which has not been provided for under Chapter 16 of the Constitution in terms of how to amend the Constitution. Article 259 (1) (a) provides the Constitution shall be interpreted in a manner that promotes its purposes, values and principles.

Therefore, in this regard, despite the provisions of Article 110 (3) of the Constitution, the judgment should have separated the disputed legislation, those concerning county governments and those that do not have any dispute.

Moreover, a repeat of the legislation process will not convert a Bill that does not concern county governments to one that concerns county governments. This will only lead to wastage of public resources. Therefore, the Senate has admitted before in a Report of their Select Committee on Constitution and Legal Review that they have a restrictive legislative role with regard to approval of persons for appointment to public office. Therefore, there was no basis for challenging legislation such as the National Cohesion and Integration (Amendment) Act 2019, whose main focus was on appointment of Commissioners to the National Cohesion and Integration Commission.

Therefore, regarding the clause "Petition filed by the National Assembly was dismissed on the ground that it was filed to abdicate the fundamental issues raised in the petition", the learned judges should have used the same criteria used in finding that the advocates of the first to the fourth petitioners were properly in court despite not having filed a notice of appointment and considered the substance of the cross petition, as opposed to the procedure used and other side issues. I want to say again what I have heard people say. I think we need the BBI for sure so that people have somewhere to go and complain about the Judiciary.

Moreover, for sure, this House is independent. We have many things that Kenyans are looking for and I pray that between yourself and your colleague, the Speaker of the Senate, you can find a way to handle the matter. Parliament is one institution. How do we run to the Judiciary when there are simple things that we can agree or disagree on? From where I stand, I see it as a waste of public resources. Even if we are going to appeal, we are still using public resources. Kenyans need this money more than before. Therefore, even as we look at the BBI and other issues that are coming up, we must look at the Constitution and see where we are going to get clarity in terms of the work of the Senate, and in terms of the work of the National Assembly. As Parliament, we can avoid these fights and wastage of resources.

Thank you, Hon. Speaker.

Hon. Speaker: Well, of course more importantly is that apart from those challenges, as Member of Parliament, you assist with the power to make and unmake laws. Therefore, if you are not happy about any law, you can always move to have it repealed or have particular clauses deleted rather than running around, looking for people to interpret it for you. You are a Member of Parliament, whether in this House or in the other House. Therefore, you can always move an amendment after six months.

Let us go to the next Order.

ORDINARY QUESTIONS

Hon. Speaker: Member for Tigania East, Hon. Kabeabea.

Question No.299/2020

ELECTRICITY CONNECTIVITY TO SCHOOLS IN TIGANIA EAST

Hon. Josphat Kabeabea (Tigania East, PNU): Thank you, Hon. Speaker for giving me this opportunity to ask a Question on behalf of my bosses, who are the great people of Tigania East. I rise to ask Question No.299 of 2020, which is directed to the Cabinet Secretary for Energy, as follows:

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- (i) Could the Cabinet Secretary explain the progress of electricity connectivity to all primary and secondary schools in Tigania East Constituency, stating how many schools are yet to be connected noting the Government's policy of ensuring that all public learning institutions are connected to electricity?
- (ii) Could the Cabinet Secretary also provide the list of all primary and secondary schools with electricity connection in the said constituency?
- (iii) Could the Cabinet Secretary also provide specific timelines within which the Ministry intends to ensure that all public schools in Tigania East Constituency are connected to electricity?

Thank you, Hon. Speaker.

Hon. Speaker: The Question will be replied to before the Departmental Committee on Energy. The next Question is by the Member for Nakuru Town East. He has written to request that the Member for Nakuru West, Hon. Arama, asks the Question on his behalf.

Hon. Arama, do you have your card? Please, touch the intervention button. That is the one for the Member for Narok East. Was it you? Hon. Aramat, I am not able to give you the line. What is the problem? Maybe, you could stop touching the button so that we can...

(Loud consultations)

Hon. Arama, you had actually been given the microphone, but I think your fingers are very mobile.

Question No.131/2020

NON-REMITTANCE OF NHIF FUNDS FOR THE ELDERLY PERSONS BY GOVERNMENT

Hon. Samuel Arama (Nakuru Town West, JP): Thank you, Hon. Speaker. I beg to ask the following Question:

- (i) Is the Cabinet Secretary for Health aware that most elderly persons who are aged 70 and above and who hold valid NHIF Cards are denied access to health services by hospitals due to the Government's continued failure to remit their premiums and settle bills?
- (ii) What is the current policy for those whose data was not captured during the registration exercise?
- (iii) What measures is the Ministry putting in place to address the issue of non-remittance of funds for the elderly persons to the NHIF accounts so as to facilitate their access to the much-needed healthcare services?

Thank you, Hon. Speaker.

Hon. Speaker: The Question will be responded to before the Departmental Committee on Health. The next Question is by the Member for Lamu, Hon. Ruweida Obo. The microphone is there or you prefer somewhere more visible?

Question No.279/2020

CONSTRUCTION OF MBWAJUMWALI SEAWALL IN LAMU COUNTY

Hon. (Ms.) Ruweida Obo (Lamu CWR, JP): Thank you, Hon. Speaker. I beg to ask the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public works the following Question:

- (i) When does the Ministry intend to have the construction of the Mbwajumwali Seawall in Lamu County, which has stalled despite having been funded, resume?
- (ii) Why has the contractor abandoned the site without meeting his contractual obligations, and could the Ministry consider engaging a new contractor?
- (iii) Could the Cabinet Secretary provide a list of all projects and the funds allocated for the construction of seawalls in Lamu County, including the Mbwajumwali Seawall project, indicating funds allocated on each project, the names of the contractors and the amounts of money paid to them from the year 2010 to date?

Thank you

Hon. Speaker: The Question will be replied to before the Committee on Transport, Public Works and Housing. The next Question is by the Member for Sigowet/Soin, Hon. Koros. Please, give him the microphone where he is.

Question No. 281/2020

DELAY IN SETTLEMENT OF HISTORICAL PENDING CLAIMS

Hon. Kipsengeret Koros (Sigowet/Soin, Independent): Thank you, Hon. Speaker. I rise to ask Question No.281/2020 to the Cabinet Secretary for Interior and Co-ordination of National Government:

- (i) Could the Cabinet Secretary explain the rationale under which payment of Historical Pending Claims was arrived at by the State Department of Correctional Services?
- (ii) (ii)Why did the Ministry decide to categorize the Historical Pending Claims into regions yet the claimants transacted business leading to the outstanding debts without any geographical considerations?
- (iii) (iii)Could the Cabinet Secretary provide a list of the financial institutions which loaned the claimants on the assurance of payment and what steps has the Ministry undertaken to cushion against accruing interests on the loans secured by the suppliers?
- (iv) What measures has the Ministry put in place to avert instances of delayed and non-payment of claims and when does the Ministry plan to settle all the pending bills?

Thank you, Hon. Speaker.

Hon. Speaker: Thank you, Hon. Koros. That Question will be responded to before the Departmental Committee on Administration and National Security.

Hon. Kipsengeret Koros (Sigowet/Soin, Independent): I request for your indulgence. In most instances, we have been experiencing a lot of problems with the Cabinet Secretaries who do not want to appear before Committees. Secondly, we also need your guidance on Cabinet

Secretaries who like giving a lot of excuses and sending their Principal Secretaries and Chief Administrative Secretaries. What is the way forward?

Hon. Speaker: Well, I think the Chairs of Committees understand the Standing Orders. No Cabinet Secretary is allowed to give excuses. If they are there, then you need to raise that matter with the Committee during the hearing so that it can be addressed and if need be, be escalated. If people do not appear, you can still have them summoned properly, not just through invitations. I hope the Question will be responded to.

Let us get to the next Question by the Member for Lamu West, Hon. Muthama. Kindly have the Floor, please.

Question No. 286/2020

HUMAN-WILDLIFE CONFLICT IN LAMU WEST CONSTITUENCY

Hon. Stanley Muthama (Lamu West, MCCP): I would like to ask Question No. 286/2020 to the Cabinet Secretary for Tourism and Wildlife:

- (i) Could the Cabinet Secretary provide a list of all persons who have lost lives or have been injured due to human-wildlife conflict in Lamu West Constituency, since the year 2017 and the status of compensation for the families affected or injured?
- (ii) What steps has the Ministry taken to strengthen the newly established Community Wildlife Conservation Committees (CWCCs) considering the challenges of funding, coordination and communication on compensation matters?
- (iii) What plans does the Ministry have to avert increasing incidences of human-wildlife conflict in Lamu West Constituency given that most wildlife in this region reside outside the gazetted and protected areas including a long-term solution to address the numerous cases of snake bites especially around areas of Manda, Hindi, Bagoni, Witu, Tewe and Lake Amu?

Hon. Speaker: That Question will be responded to before the Departmental Committee on Environment and Natural Resources. Next Question is by the Member for Malava, Hon. Malulu Injendi. Kindly have the Floor.

Question No.290/2020

NON-ADHERENCE TO COVID-19 PROTOCOLS BY LOCAL AIRLINES

Hon. Moses Injendi (Malava, JP): Thank you, Hon. Speaker. I rise to ask Question No. 290/2020 to the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works:

- (i) Could the Cabinet Secretary explain why most local flights in the country are operating on full carrying capacity without observing the COVID-19 protocols?
- (ii) Could the Cabinet Secretary provide the statistics of passengers on local flights of Kenya Airways from the time they resumed flights during the COVID-19 pandemic indicating the carrying capacity and the actual number of passengers on board during each flight?
- (iii) What measures have been put in place to ensure that all local airlines adhere and observe the COVID-19 protocols at all times?

Thank you, Hon. Speaker.

Hon. Speaker: That Question is to be responded to before the Departmental Committee on Transport, Public Works and Housing. Next Question is by the Member for Teso North, Hon. Oku Kaunya. Kindly have the Floor.

Question No.294/2020

CONSTRUCTION OF PARKING LANES AT MALABA AREA

Hon. Oku Kaunya (Teso North, ANC): Thank you, Hon. Speaker. I rise to ask Question No. 294/2020 to the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works: -

- (i) When will the construction of parking lanes on Road A104 (Northern Corridor at Malaba Area), which serves Uganda, Rwanda, Burundi, South Sudan and Eastern DRC, start?
- (ii) What plans does the Ministry have, if any, to fast-track the commencement of the project, considering the challenges being experienced by the motorists?

Thank you, Hon. Speaker.

Hon. Speaker: That Question is to be responded to before the Departmental Committee on Transport, Public Works and Housing.

Question No. 300/2020

DELAY IN CONSTRUCTION OF KAPKIAI ATHLETICS CAMP

Hon. Joshua Kandie (Baringo Central, MCCC): Thank you, Hon. Speaker. I stand to ask Question No. 300/2020 to the Cabinet Secretary for Sports, Culture and the Arts:

- (i) Is the Cabinet Secretary aware that the construction of Kapkiai Athletics Camp in Baringo Central Constituency that was funded by National Government for up to 60 per cent has stalled since 2010?
- (ii) What measures is the Cabinet Secretary undertaking to ensure that the project is fully-funded and completed considering that it will serve as training camp for both local and international athletes thus generating the much needed revenue and boost economy to the surrounding community?

Hon. Speaker: That Question is to be replied to before the Departmental Committee on Sports, Culture and Tourism.

Next Question is by the Member for Soy, Hon. Kositany.

Question No. 301/2020

NUMBER OF GAZETTED AND NON-GAZETTED ROADBLOCKS ACROSS THE COUNTRY.

Hon. Caleb Kositany (Soy, JP): Thank you, Hon. Speaker. I wish to ask the following Question to the Cabinet Secretary for Interior and Coordination of National Government:

- (i) Could the Cabinet Secretary provide the total number of gazetted and non-gazetted police roadblocks across the country?

(ii) Could he outline why non-gazetted police roadblocks are allowed to operate?

Hon. Speaker, please allow me to add on this. Driving from here to Eldoret, there are 14 roadblocks between Nairobi in Kangemi area up to Nakuru. I have just been consulting with my friend here from Limuru and he passes about six roadblocks in order to get to Limuru. Hon. Speaker, it is a matter of concern that citizens are suffering. In most of these roadblocks, they only stop *matatus*, check nothing and get a handshake then they are allowed to proceed.

I thank you, Hon. Speaker.

Hon. Speaker: They just do a handshake?

(Laughter)

The Question will be responded to including the handshake before the Departmental Committee on Administration and National Security.

Last Question by the Member for Mumias East, Hon. Washiali Jomo.

Question No. 302/2020

MECHANISMS TO ENSURE RECEIVER MANAGER OF MUMIAS SUGAR COMPANY
OPERATES WITHIN SET GUIDELINES AND REGULATIONS

Hon. Benjamin Washiali (Mumias East, JP): Thank you, Hon. Speaker. Pursuant to Standing Order 42A (5) I wish to ask the following Question to the Cabinet Secretary for Agriculture and Livestock:

- (i) What specific mechanisms has the Ministry put in place to ensure that the Receiver Manager of Mumias Sugar Company is operating within the set guidelines and regulations considering that the Government owns majority of shares in the company?
- (ii) How much revenue has the Receiver Manager generated from the sale of ethanol, scrap metal and any other revenue sources since the takeover by the receivership management and how have the funds been utilized?

I thank you, Hon. Speaker.

Hon. Speaker: Well, to be replied to before the Departmental Committee on Agriculture and Livestock.

Where is the second Statement?

Hon. (Ms.) Martha Wangari (Gilgil, JP): On a point of order.

Hon. Speaker: Member for Gilgil, what is your point of order?

Hon. (Ms.) Martha Wangari (Gilgil, JP): Thank you, Hon. Speaker, I am sorry I have been trying to catch your eye through a point of intervention. I wanted to point out something about what Hon. Koross said in terms of our Questions to Cabinet Secretaries. I will give you an example. About three months ago, I asked a Question to the Cabinet Secretary for Health. Today, they sent a written response indicating that the Question does not fall under them.

Hon. Speaker, we need to seek your guidance because that felt to me like an insult to the intelligence of your wisdom because you referred that Question knowingly where it should go. So, why did they take three months to give such correspondence? Hon. Speaker, we have a challenge because this Session is coming to a close. That Question was about COVID-19 funds utilization and three months later they say it is not their mandate. What does that mean? I feel like the Cabinet

Secretaries are also taking this House for granted not only the Committees but also the leadership that is led by you.

Thank you, Hon. Speaker.

Hon. Speaker: The only unfortunate bit is that I am not seized of both the Question and the answer. So I may not respond unless we now refer it to the Chair of the Committee to respond. I do not know what the Question is all about so I have no details about that. Let us have Hon. Chege

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): Thank you, Hon. Speaker. The issue that has been raised by Hon. Martha is on a question that was raised and addressed to the Cabinet Secretary, Health. It was on utilisation of COVID-19 funds that were raised by the Kenya Private Sector Alliance (KEPSA). That is why the Ministry said it is not their mandate. The private sector raised funds to help Kenyans during the COVID-19 pandemic period. They said they have no answer on how the money was utilised unless we directly contact KEPSA.

Hon. Speaker the issue that was raised by Hon. Koros on attendance of Cabinet Secretaries, it happened even today within my Committee where we had invited the Cabinet Secretary to respond to Questions. We expected him to attend but we were told that he was in Mombasa in another meeting. However, what was disappointing was that even the statements that were brought by the Chief Administrative Secretary and were meant to be signed by the Principal Secretary, were signed by a junior officer. Three times, officers from the Ministry have attended our meeting but Members have felt that the Ministry has not treated the Committee fairly and they have disregarded our invitation. So, today we had to ask the Chief Administrative Secretary to go back and inform the Cabinet Secretary, Health to appear before the Committee.

Hon. Speaker, we understand that cases of COVID-19 are rising, but we expected the Cabinet Secretary to send somebody to respond to the Questions with some decency. We cannot just have a Chief Administrative Secretary coming to read a statement that she does not own and one that has been signed by a junior officer.

Hon. Speaker, you need to give us a direction on how as Chairs we will be handling those matters. If a Cabinet Secretary is totally not available, is it the Chief Administrative Secretary or Principal Secretary who should appear or how should a Committee treat such a matter?

I thank you Hon. Speaker.

Hon. Speaker: It may well be that the answer may come from any of those people. However, the statement purporting to give an answer must be owned by the Cabinet Secretary, if those statements are meant to be tabled before Parliament through its Committees. We do not know those other functionaries. So, you need to get the Cabinet Secretary to own any statement or any answer even if it is going to be read by the Chief Administrative Secretary.

I am sure Hon. Mbadi will tell you that he answered several questions that he never signed. We cannot go below that. We must remain with that as a standard. If any Cabinet Secretary is not appearing and the Committee has reasonable grounds to believe that he is deliberately failing, neglecting and or refusing to appear, then proceed and use the Standing Orders. We will get them here.

Members are not asking Questions for parties. It is their representative role. Therefore, it is wrong for any Government functionary to assume that they just decide to ignore Parliament. We see them appearing in other places before people who have no oversight authority over them. So, they must appear because you are the people who exercise oversight authority over them.

Hon. Speaker: The Member for Nyando, you appear to be burning with something.

Hon. Jared Okelo (Nyando, ODM): Thank you, Hon. Speaker. It is true that the CSs we have in this country treat this House quite disdainfully. We think something needs to be done. I remember in one of your rulings a while back, you talked about censure, which is our mandate in this House. As you have correctly said, we do not just ask these questions for the sake of it. We ask them on behalf of the people we represent.

It is quite interesting how they mellow when they appear before us to be given those jobs. But immediately they assume those jobs, they discard everything about this Parliament. That is why we are saying we have a window to correct this as proposed in the Building Bridges Initiative (BBI). We will have them here with us and if questions arise, they will be asked right here and then.

My brother Hon. Mbadi has clearly said that, at some point, he was answering questions on behalf of the then Prime Minister in the 10th Parliament. This is what we need to have. I have asked questions before in this House that were referred to the relevant committees. But up to now, with some of them going up to four months, I have not received any answers. It will be very different if we have the CSs appearing in this House. That is why it is a travesty for anyone who is trying to fight BBI at this point in time, when an amicable solution has been presented to us. Let us seize that moment and run away with it.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Fatuma Gedi, you have the Floor.

Hon. (Ms.) Fatuma Gedi (Wajir CWR, PDR): Thank you, Hon. Speaker, for giving me this opportunity. This matter is very serious and, many times, it even exposes the Chairs and Vice-Chairs of Departmental Committees. This is the frustration they all have. I sympathise with my sister Hon. Sabina.

Hon. Speaker, I think it is high time you gave a ruling on this matter. This is because CSs are too full of themselves and disregard committees. Without giving clear reasons, they do not appear before committees when they are invited. We are frustrated and, at times, we do not know how to move and work. This matter is very serious and I think it needs your guidance. Thank you.

Hon. Speaker: Well, I think every case should be dealt with on its own peculiar circumstances so that we do not make a blanket condemnation. But we have suggested to them that if, indeed, they are serious, they should have liaison offices so that every morning, they liaise with Parliament to know what is coming and what is touching on their ministries. Unless they have that office, they will never be available to respond to questions. Perhaps, that may explain why there is so much disconnect.

Hon. Ochanda, you have something you want to say on an intervention?

Hon. Gideon Ochanda (Bondo, ODM): Thank you, Hon. Speaker. In a very short way, I want to say something on the subject that we are discussing about the casualness in terms of how the CSs respond to some of our questions. I think one of the biggest problems is the whole idea that all the blame ends up with committees. That is because the CSs are not seen in the full glamour and do not respond sometimes because of the media and that kind of stuff.

So many questions end at that level because of the causal manner in which they present them; meaning that a Member has to again follow up. If you are dissatisfied, you either have to follow up with the CS back in the Ministry and stuff like that. I think that is where there is a big problem. At the point at which we are looking at our Standing Orders, we need to revisit this area. The Committee on Implementation needs to pick up all these matters which the CSs present before committees and follow up for purposes of ensuring whatever they promise works. If we are not careful, there is a lot we are doing, which is in vain.

Hon. Speaker: Yes, because a CS gives an undertaking either in response to a question or to a statement. Thereafter, that is a matter that falls under the Committee on Implementation to pursue. Let us hear the Member for South Imenti.

Hon. Kathuri Murungi (South Imenti, Independent): Thank you, Hon. Speaker, for giving me this opportunity. I also want to join my colleagues in weeping. That is because we feel frustrated by the Executive and yet, we are supposed to oversight it as a House.

I raised a Question here three months ago about a bridge that was swept away by floods in May. The two wards are still disconnected since the bridge on that tarmac road was swept away. I have tried to follow up on this matter with the Departmental Committee on Transport, Public Works and Housing and the Clerk asked me to check for my Question in the Table Office. We thought by raising these questions, it is an opportunity for the CSs or PSs to come before the committees so that we can ventilate and make them understand the problems that our people are having.

We have the Leader of the Majority Party who is supposed to link the Executive and the Legislature. I think the CSs have relaxed in the last few months and I want to ask the Leader of the Majority Party to reign in on those officers. When Hon. Duale was around, he used to summon them. He even called them physically in our presence when we went to ask him why they were not appearing before us.

I want to ask Hon. Kimunya, who is the Leader of the Majority Party, to take this responsibility seriously and ensure that we oversight the Executive and execute our mandate to the best of our ability.

Thank you.

Hon. Speaker: You said you wanted to join in lamentation. I hope the Member for Kwanza does not lament.

Hon. Ferdinand Wanyonyi (Kwanza, FORD-K): Hon. Speaker, I will not lament. As an old Member of this House, if you ask a question to a particular ministry and for some reason the CS is engaged, we give an allowance. He or she should put the reply in writing to the committee that someone else will represent him and that is acceptable. But where the CS does not say anything and you see a PS coming, the Committee should send him or her away. When he or she is given a second chance and does not come, then we have to sanction that particular CS. I think that is the only way.

Thank you.

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

Hon. (Ms.) Gladwell Cheruiyot (Baringo CWR, KANU): Thank you, Hon. Speaker. As the Vice-Chair of the Departmental Committee on Energy, I want to reiterate what has been said. I have noticed that answers given to Members on Tuesday have a lot of excuses. That is because we are told CSs have a Cabinet Meeting and this puts us in a precarious situation.

I know that this is their day of meeting and they are usually making progress on other things. Could you consider giving a ruling that answers should be given by the CSs on another day so that, at least, our Members can get answers directly from them. At times, Members refuse to take answers because they are uncomfortable and they need real time answers from the CSs. So, that is the challenge

I thank God because I think this is timely. We are having the BBI in place and it is proposing that CSs should come from this House. So, we will handle our issues and not struggle to meet with CSs like we are doing now.

Thank you, Hon. Speaker.

Hon. Speaker: Perhaps, you could raise that in the Motion appearing as Order No.8. Let us have the Member for Ndhiwa.

Hon. Martin Owino (Ndhiwa, ODM): Thank you, Hon. Speaker. Failing to appear is one thing but also, sending to the committees answers that lack substance is another. Just like my Chair has just said, we have sent away the people of that CS three times and he does not seem to learn any lesson from that. My question is: When it comes to sub-standard answers, at what point do we tell the Members who originated those questions?

Today, about four Members have rejected the answers saying they were literature review or cut and paste. This means that the departments that were involved with those Questions were not given the directions to research on what we were looking for. So, when we receive the answers to the questions, do we alert Members to go through them or do we call them to reject them when the CS is there? At what point do we determine that the answers are substandard so that Members are not dissatisfied?

Hon. Speaker: The Member who asked the question must be present. That is the first rule. The Member who asked the question should be present and, ordinarily, even in the former system, would be the first one to get a shot at the first supplementary question in response to an answer given.

It is the Member who will draw the attention of the Chairperson that the answer is not adequate and that it does not address the issue he or she sought to be addressed. If the chairperson is also persuaded and convinced... I have said this so many times that the chairperson is at liberty. If you think what has been given is sub-standard and it does not meet the basic threshold of response and the Member asking the question is telling the rest of the membership that the answer is unsatisfactory, the Chair is at liberty to send back or kick out that CS or whoever it is to bring something that is sensible.

I do not understand because most Chairs have become so meek in the presence of CSs. I think when you see them and start laughing and smiling at them, that is how you cannot get good answers. You have no business smiling. They are coming to do business. If a Member says the answer is not satisfactory, as the chairperson, you have a duty to ensure what is tabled is an answer even you can feel it makes sense.

It may not satisfy what the Member has been asking 100 per cent, but there should be some threshold. There is nowhere you will learn this. You must exercise that discretion as the chairperson. You should be able to tell that this does not add up. As Hon. Martin Owino is saying, answers that are cut and paste are what you should pick and throw back at them and tell them to bring an answer that reflects the actual basics of the question. What is the question? The question will direct whether the answer being given really addresses the issues.

So, Member for Ndhiwa, I think it is the chairpersons who must rise to the occasion to serve Members. Chairpersons and vice-chairpersons do not laugh with people because they come showing their funny teeth. You are in serious business. So, chairpersons and vice-chairpersons, please, exercise your mandate.

Hon. (Ms.) Sabina Chege, Hon. Mwathi, Hon. (Ms.) Jesire and Hon. (Ms.) Fatuma Gedi, exercise your mandate. Do not allow people... When they come and walk away saying they will just come here and eat *mandazi* with you and have tea, it is not right. You can invite people for *mandazi* when they have answered questions, but not before. You must do business. Hon. Mwathi, I am just saying this as an example and not that I have anything against what you may have done. Nobody has complained about what you do. I know you are very firm. We work together in the Committee on Powers and Privileges.

Let us move on to the next Order.

PROCEDURAL MOTION

LIMITATION OF DEBATE

Hon. Speaker: Let us have the Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, I beg to move the following Procedural Motion:

THAT, pursuant to the provisions of Standing Order 97(1) and notwithstanding the Resolution of the House of 18th February 2020, the House further Orders that, during the Sittings of the House of 3rd November 2020 up to and including December 3, 2020, each speech in debate on Bills, Motions (including Special Motions), Sessional Papers and Committee Reports, shall be limited as follows:

A maximum of two and half hours with not more than ten (10) minutes for the Mover in moving and five (5) minutes in replying and a maximum of five (5) minutes for any other Member speaking, except for the Leader of the Majority Party, the Leader of the Minority Party and the Chairperson of the relevant Committee who shall be limited to a maximum of ten (10) minutes, and that priority in speaking be accorded to the Leader of the Majority Party, the Leader of the Minority Party and Chairperson of the relevant Committee, in that order.

Hon. Speaker, this is a fairly routine Motion that we do to just set up the parameters for the time that people will be allowed to do business within the next one month. I wish Members will support. I ask the Leader of the Minority Party to second.

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

Hon. John Mbadi (Suba South, ODM): Hon. Speaker, this is straightforward. It is something that we are not doing for the first time. It is actually a Procedural Motion. I do not want to talk much on it. It is basically to help as many Members as possible to contribute to debates in this House, given our numbers.

I second.

(Hon. (Ms.) Joyce Korir walked in the Gangway)

Hon. Speaker: I think Hon. Joyce Korir has been away for a long time.

(Question proposed)

Hon. Members: Put the Question!

Hon. Speaker: Hon. Joyce, the Member for Bomet County, I think you can take a seat now.

(Question put and agreed to)

Hon. Speaker: Hon. Members, I also want to point out that, notwithstanding this Resolution, in appropriate cases where whoever is on the Chair feels that a particular Member

has more material to offer on any particular Bill, they may be given extra or additional time. That is the practice the world over.

Next Order!

MOTIONS

ALTERATION OF THE CALENDAR

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, I beg to move the following Motion:

THAT, pursuant to the provisions of Standing Order 28(4), and taking cognizance of the rise in the spread of COVID-19 Pandemic in the country, this House resolves to further alter its Calendar for the Fourth Session (*Regular Sessions*), as amended on September 8, 2020 and, therefore, orders as follows with respect to the Sittings of the House during the period November 3 to December 3, 2020–

(a) That, the House will hold–

(i) Afternoon Sittings on Tuesdays commencing at 2.30 p.m.; and,

(ii) Morning and Afternoon Sittings on Thursdays commencing at 10.00 a.m. and at 2.30 p.m., respectively;

(b) That, with effect from November 4, 2020, the sittings of the House of Wednesdays (Morning and Afternoon) stand suspended; and,

(c) That, notwithstanding the provisions of Standing Order 40(3), on Thursday Mornings, business not sponsored by the Majority, the Minority Party or a Committee shall have precedence over all other business, in such order as the House Business Committee shall determine.

Again, Hon. Speaker, this is after deliberations within the House Business Committee (HBC) to continue the same pattern we had adopted in the last Session, where we meet on Tuesday, which is basically the scheduled day after the Calendar, we skip Wednesday to allow for fumigation and cleaning up of the House, and then reconvene on Thursday mornings and afternoons.

So, we have three sittings, but with one sitting dedicated specifically for Private Members' business, which is Thursday morning. Again, it is limiting our time and the actual production time that we have. But we all know that, should the business require more time, I am sure Members will be willing to add the sitting hours or even have another session. But the spacing is mainly to comply with the health protocols. It is something that we have done before, and we will be monitoring to see – because we have only one month and there are so many Bills to be done before we go for the long recess – whether this should be shifted. But when we get to that bridge, we will come to you Hon. Members.

So, I ask for your support and ask, once again, the Leader of the Minority Party to second.

Hon. Speaker: The Leader of the Minority Party, you have the Floor.

Hon. John Mbadia (Suba South, ODM): Again, Hon. Speaker, this is a Procedural Motion but just for clarity, as the Leader of the Majority Party has said, we have just suspended the sittings of Wednesday mornings and afternoons. But in the place of those two sittings, we have introduced one extra sitting on Thursday morning. So, basically, we will be losing one sitting a week. But it is understandable because we thought that, at this time, probably, cases of Covid-19 would be on the downward trend. But, unfortunately, the first few weeks have not been encouraging and so, as a House, we still need to take precautions. But, again, on Thursday mornings, because of the Private Members' Bills and Motions, that day has replaced the Wednesday morning sittings. So,

Hon. Members, this is not the first time we are doing this. I think this is, probably, the third time we are bringing this Procedural Motion in this House.

I just urge Members to approve this Motion so that between now and December, we monitor the situation. When we come back in February, I am very hopeful that things will be totally different and, probably, we will resume our regular sittings.

Thank you, Hon. Speaker. I second.

Hon. Speaker: Hon. Koros, a question must be proposed first.

(Question proposed)

Hon. Koros, you wanted to say something? Member for Sigowet/Soin, you have the Floor.

Hon. Kipsengeret Koros (Sigowet/Soin, Independent): Thank you, Hon. Speaker. I just wanted to add on what the Leader of the Minority Party was saying. I think we have a concern as Members of Parliament during this pandemic. I wish the relevant individuals who are in charge of our medical cover could bring the guys who have been doing testing for us out here, so that--- It is good when we interact here, Hon. Speaker, we also know of our status. We could be---

Hon. Speaker: Sorry! What are you saying, Hon. Koros?

Hon. Kipsengeret Koros (Sigowet/Soin, Independent): Hon. Speaker, I was saying that it is good if our medical team here in the National Assembly can organise for us a team to test for Covid-19. It is good when we are here to know our status as Members of Parliament. We can do regular testing.

Hon. Speaker: How regular? Maybe, we could get some... You see Hon. Koros, we have provided, as Parliamentary Service Commission, for any Member desiring to go for tests can always access. But I hear what you are suggesting. It is something that is good. I know what you are saying is not outlandish at all! It makes a lot of sense. It may make sense for us to know who is... You see, there is no stigma because this virus is, sometimes, all over. Dr. Nyikal will tell us. It is all over. So, it is really no stigma so that if you get infected, do not just hide and start mingling with your colleagues here. Just self-isolate! But you see, we are not getting that kind of... That is why I have sympathy with what Hon. Koros is saying.

Who is that now? It is very difficult with the masks on. Is that Hon. Ogotu?

Hon. (Prof.) Zadoc Ogotu (Bomachoge Borabu, Independent): Hon. Speaker, I just wanted to add on to what Hon. Koros has said. I happen to have had a patient this morning and looking at the queues that are now growing in the hospitals, I think could be in order for Parliament to arrange for quick testing services within the premises, especially for Members who may suspect that they may test positive for Covid19 or fear that they need to be checked. That is my humble request. I submit.

Hon. Speaker: You said efficient services?

Hon. (Prof.) Zadoc Ogotu (Bomachoge Borabu, Independent): No, Hon. Speaker. I said, testing services.

Hon. Speaker: I see. Let us hear the Member for Nambale, Hon. Sakwa Bunyasi.

Hon. Sakwa Bunyasi (Nambale, ANC): Thank you, Hon. Speaker. I rise to make a brief comment to what the Leader of the Majority has just said, in respect of the variation in the Calendar. Personally, I do not believe that Coronavirus will go away any time soon, not even next year. Given the nature of its reproduction, I do not see it going away for us to go back to normality. I was wondering whether, other than proposing how we shall proceed, would it be feasible to ask,

what is the burden of work that we have and what would it take to deliver that burden? Then we need to work back and see the implications for the kind of calendar that we should have. That is because as it is, I see a proposal of going forward in a linear way, but I worry that we may end up with a big bulge that we shall never be able to recover, especially, in the next heady days, judging by the nature of agenda that I was told was discussed in Naivasha - although I was not invited - that may be quite heavy. We should then pose the question: How do we deal with this? What kind of effort should we put in, and then begin to juggle with the calendar to work with the hours from that point of view?

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Cheruiyot, do you also want to say something?

Hon. (Ms.) Gladwell Cheruiyot (Baringo CWR, KANU): No, Hon. Speaker.

Hon. Speaker: Hon. Sabina Chege.

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): Thank you, Hon. Speaker. I just want to support my colleagues here on the issue of testing. You asked Hon. Koros to suggest how many times. I suggest once we come back from the long recess. It is important for Members to be tested. I encourage my colleagues as the Chair of the Departmental Committee on Health. It would be important if Members would disclose if they have tested positive for Covid-19. This will fight the stigma that was initially there.

It would be unfair if somebody tests positive for Covid-19 and interacts with colleagues who do not know, just because they feel that they are going to have stigma. Where we are with Covid-19, we have seen prime ministers and other senior government officials in other countries coming out to say they have Covid-19. This is not a Sexually Transmitted Disease (STD). It is airborne; it is a virus! There is nothing to hide about. The worst part is that, every time we go to the weekends, we are interacting with our people and we are going to churches. I have attended a funeral of a principal who initially, it was not disclosed that the person had Covid-19. The family is now infected. It is important not only for Members of Parliament! I want to encourage the public, if anyone tests positive, just share that information with people. By now, almost all of us know somebody who has been affected or a family that has been affected by Covid-19. It is no longer a fallacy where people were saying Covid-19 is not real. It is real and it is here with us. The only way we can protect each other and ourselves is coming out fully and disclosing our status even as Members of Parliament. I know some of my colleagues – some of whom I serve in the same committee - say they were in hospital for about 42 days. If they can come out and speak, I am sure other members of the society like the clergy or principles, will also come out and speak about it. It is not right when we try to hide. I have said Covid-19 is real. Let us not shy away from it. It is not anybody's mistake and that is why I used the example of STDs. I do not know whether it is a mistake or not when people engage in sex, but all I want to say is that, Covid-19 is airborne and anybody can get it. You can get it; I can get it. Let us come out and support one another, say our status so that we can encourage the public to do the same and together we can fight it.

I thank you.

Hon. Speaker: Now, apparently, we appear to be discussing Covid-19. The only reason I am allowing this is, because part of the reason given is the spread of Covid-19 pandemic. Otherwise, it would not be within the parameters. Let me hear from Hon. Dr. Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): Thank you, Hon. Speaker. I know you are referring to the rule of relevance. The whole reason we are looking at the Calendar is because of Covid-19. As I sit here, I feel sad! We are appealing to people on what they should do, not realising that there are guidelines that are in place. What we should then be asking ourselves and the

Ministry of Health is this: Who is ensuring that the guidelines are adhered to? This is why, as the Departmental Committee on Health, we were very concerned. We called the Cabinet Secretary last week and he did not come! Today, he did not come. Although there was relaxation, people have not gone according to the relaxation measures. They just dropped everything. There were rules on how to handle funerals and churches. So, what is the issue here? I want to take this opportunity - and I hope somebody from the Ministry is listening... The Ministry is letting us down because people are even asking: "What do I do if I test positive? Do I go to work?" Wherever you are being tested, if you are positive, it should be clear. You are told: "Now that you are positive, you are supposed to do one, two three."

So, I think it is important that the Ministry goes back and gives guidance and the other Arms of Government should enforce. There was just relaxation. We did not drop everything. We should have adhered to the rules and the guidelines in the new relaxation. Even in restaurants, there were rules that were supposed to be adhered to. The workers were supposed to be tested and so forth. Nothing like that is happening! So, the problem has been that the Ministry has relaxed on its guidance and the Government on its enforcement.

Thank you, Hon. Speaker.

Hon. Speaker: Let us hear Hon. Wangwe.

Hon. Emmanuel Wangwe (Navakholo, JP): Thank you, Hon. Speaker. As I support the Motion by the Leader of the Majority Party on the Motion on alteration of Calendar, I also take the angle Hon. Koros has taken in two aspects. That is because, whereas, the Parliamentary Service Commission (PSC) has endeavored to clean the precincts of Parliament, this disease does not find itself in Parliament. Instead, it is likely to be brought through our vehicles, our aides and ourselves, as we interact with other people outside. Therefore, it is important that for proper utilisation of time, PSC can make available that facility just to test both the Members and our staff, who might be victims of this pandemic. It will save us time, and we will move forward as a team.

Thank you, Hon. Speaker.

Hon. Speaker: Well, Member for Taita Taveta. Is that so?

Hon. (Ms.) Haika Mizighi (Taita Taveta CWR, JP): Yes. Hon. Speaker, I thank you. I also want to agree with my colleagues. It is high time for people to start disclosing their status of Covid-19. That is because I have overheard in many conversations where people are saying that they have never seen somebody suffering from Covid-19 and stuff like that. This makes many people not to believe that this thing is there. It is there, it is real and it is killing our people. I am, therefore, in support of people coming out and disclosing their status.

Thank you for this opportunity. I support.

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

Hon. Jared Okelo (Nyando, ODM): Hon. Speaker, once again, I thank you very much. I agree with the Majority Leader on his proposal that, as long as this disease is still with us, we shall still continue to reposition our Calendar until such a time that it will be crystal clear that the disease will be gone. I remember with nostalgia when this disease firstly erupted, and the whole country was laughing at us, that as Members of Parliament, we closed as soon as nursery kids closed, to be with them at home. But you realised how important it is, to transact the business of the country through this House. That is why we have been able to, at least, stagger our meetings and, at the same time, control the number of Members of Parliament attending sessions here. That is very important because, either way, the country has to move forward.

Hon. Speaker, this is a very harsh indictment on politicians. Some of us are as guilty as charged. Some of us, especially those sitting in the Executive Arm of the Government, enjoy very

good health perks and medical schemes. When they fall sick, they can quickly be rushed out of the country or get the best medical care within the borders of this country. We have seen how this airborne disease spreads so quickly, but at the same time, you see mammoth crowds of people attending political functions. This makes us look very careless, as the political class.

Therefore, in retrospect, how do we look at the benefits of our people? Politics will come and go. In any event, there is no election this year or next year, but we are putting the lives of our people to great jeopardy just because we want to be seen on television controlling huge crowds of people to the detriment of their lives. As politicians, can we step back, reflect further and retool politically, so that we give an opportunity to the health experts to run the show? At the end of the day, when everything is clear, we can move across the country and visit our peers and relatives to compare notes politically. At this point and time, the President of this country, together with the former Prime Minister, have made clarion calls for us to scale down the politics and our movements around the country. That is because as we do that, there is a vulnerable lot, which includes our parents. My mother is now 75 years old. I have not seen her since the outbreak of the Coronavirus pandemic because I fear that if I infect her, I will live with guilt forever. So, let her get the little money that I send when I do. It is not very usual that I get money, but when I do, I do send her some so that, at least, she is around for a while and we are not blamed for having spread this disease across the country.

Thank you, Hon. Speaker.

Hon. Speaker: Members, let us get to business now. The Motion was seconded, but as I said, the reason behind the re-arrangement of our business Calendar is because of COVID-19. That is why we have allowed most of the contributions to revolve around COVID-19. I also wish to say that I thank those Members who have come forward and disclosed that they have gone through the COVID-19 cycle and they are now okay. I am aware of those others that you may not have seen today because they are taking the necessary precautions. However, it is not for me to say who they are. However, just like the Chairperson of the Departmental Committee on Health has said, there is no stigma about this disease. If you come into contact with a person who has been infected, it is only fair that you quarantine yourself. Even in that kind of situation that does not confirm you as infected, it is good to take some precautions and self-isolate for some time until you have been examined and tested. That is why Hon. Koros raised the issue on testing. We will look into it; it is important. We cannot just station people here and there is nobody who is going for testing. When we bring those people to assist us in assessing the situation, we should also make use of those facilities so that we become each other's keeper.

(Question put and agreed to)

ADOPTION OF SESSIONAL PAPER No.2 OF 2019 ON THE
NATIONAL POLICY ON GENDER AND DEVELOPMENT

THAT, this House adopts the Report of the Departmental Committee on Labour and Social Welfare on its consideration of the Sessional Paper No.2 of 2019 on the National Policy on Gender and Development laid on the Table of the House on Thursday, October 8, 2020, and further approves Sessional Paper No. 2 of 2019 on the National Policy on Gender and Development.

Hon. Speaker: Hon. Members, this Motion was moved by Hon. Peter Mwathi after whom the following Members spoke: Hon. Kosgey Kimutai, Hon. (Ms.) Millie Odhiambo, Hon. Hulufu Oda, Hon. Onda Mboya, Hon. (Dr.) Otiende Amollo, Hon. Amos Kimunya, Hon. (Ms.) Eve Obara, Hon. Wambugu Munene, Hon. Joshua Kandie, Hon. Gladwell Jesire...

According to the records, Hon. Gladwell Cheruiyot Jesire spoke and the person who had just finished contributing is Hon. Ayub Savula. At 16.47 p.m., Hon. (Ms.) Millie Odhiambo rose in her place and claimed that there was no quorum. Nobody was on the Floor and thus anybody can contribute.

Let us have Hon. (Ms.) Wanga Nyasuna.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you, Hon. Speaker. I rise to support this Sessional Paper on National Gender and Development. When President Obama visited Kenya when he was the sitting President of the United States of America (USA), he said that to have a team and only have half of your members play is a folly of the century. In this country, we have women at 52 per cent being more than the men. Therefore, it is important that both genders have equal participation opportunities in the development of this country.

A lot of progress has been made in the gender debate. As women, we are grateful to the 2010 Constitution for the introduction of Article 27 that speaks about ensuring gender equality as well as Articles 81(b) and 100 and these other articles within the Constitution that gave rise to the position in which we are today. There has been progressive engagement of women. Today, we stand on the verge of history, and I say this with cautious optimism that, probably, the world's most powerful democracy, that is, the USA, might end up with the first woman Vice-President in its history. So, we will not sleep tonight as we wait for the results. However, knowing what happened in 2016, we are expressing cautious optimism.

There are some items that were clearly stipulated in the 2010 Constitution. For example, there are the rights stipulated in Article 43 of the Constitution which directly engage both genders. Particularly, it is important to women to have the right to health, clean water and housing. We put them as rights in the Constitution, but we did not have any mechanism for measuring their implementation. This is why we are happy to engage in the current debate of the BBI. If you look at the BBI Report, it stipulates how we will measure the rights in Article 43 of the Constitution.

The President, in his State of the Nation Address, like he will come to present here next week, after the passing of the BBI, will have to then state what his Government has done in the achievement of the rights in Article 43 of the Constitution. That is an important question in gender and development.

In the Constitution, we have the two-thirds gender rule. We have brought Bills here and struggled to attain it. It has not been easy because people were asking themselves: "Who is the 'State'?" Hon. Speaker, you had in one of your Communications questioned: "Who is the 'State' that was now mandated to ensure... You told us a story of somebody who said: "You people, you are the Government, but us, we are the State because for you, you come every five years, but for us, we are here throughout." It was not clear how that was going to be attained.

If the BBI can then stipulate, within the Constitution, how to attain the two-thirds gender rule, then that is where our solution lies. As women, we do not want to be misled or politics to be made on this matter because this is a big historic opportunity for women to achieve the two-thirds gender rule as clearly stipulated within the Constitution. This will ensure that we will not look for it with a torch to know exactly where it was. So, the BBI has resolved that question. It is very clear in all the pages of the BBI.

I would like to proceed by saying that equality of opportunity in decision-making is a very important fact for us moving forward. So, to have governors with deputies of the opposite gender is like bringing both your players to the team on a fifty-fifty basis. That is bringing everybody onto the team. To have a Senate that has a fifty-fifty gender balance is like bringing both teams to the field so that you can score perfect goals. That is where Kenya is going.

As we debate this national gender policy, we hope, as we move forward, that the question of whether the two-thirds gender rule is observed will cease to be there. We will now have the question of the quality of people, that is, men and women that, we will bring to perform tasks within this Assembly and in all our structures of Government. So, we hope that this is the last time we have this debate. Kenyans will continue to elect both genders so that our field is leveled.

With those many remarks, I support this policy.

(Applause)

Hon. Speaker: Hon. Members, if you want to raise a point of order, just press the interjection button. Otherwise, I am unlikely to see you.

Hon. (Prof.) Oduol, the Floor is yours.

Hon. (Prof.) Jacqueline Oduol (Nominated, ODM): Thank you, Hon. Speaker, for giving me the opportunity to contribute to this Motion. At the outset, I would like to indicate that I support Sessional Paper No.2 of 2019 on the National Policy on Gender and Development.

I support this because it is clearly a review of the National Policy on Gender and Development that was in place in the year 2000. We are aware that issues that deal with development and particularly, those that seek to ensure that we, as a country, do not in any way exclude anyone on account of their gender need to be reviewed. I also support it because, as we look at it, we see that it will address the issue of the slow pace at which we were achieving the goal when we look at issues of planning and budgeting. This is because it will not only look into the manner in which we have the capacity that we would require in the respective county and national Governments, but also the necessary attitude change among the populace. From that, we can see that there was, indeed, a need to ensure that there is a timely review.

Therefore, I support this Sessional Paper because as we prepare the budget and allocate finances for various developments, we know that the work will get done. If we look at the Report, we can see that the State Department for Gender under the Ministry had a proposed budget of Kshs500 million, but they only got Kshs15 million. So, the Sessional Paper is, indeed, important because it is not only showing us the slow pace at which gender issues are being implemented, but also recommends that there is need to accelerate such issues. The approaches that have been identified include the involvement of men. I noted that whenever we talk about gender in the august House, we sometimes seem to assume that we are talking about women.

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

[The Temporary Deputy Speaker (Hon. Patrick Mariru) took the Chair]

Hon. Temporary Deputy Speaker, I support this Sessional Paper because in its review, which is very appropriate, it is saying that we need to ensure that we mainstream gender, integrate it in all the planned interventions, look at both regional and global treaties and particularly, look at the Kenya Vision 2030 and very relevant areas such as the Millennium Development Goals

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(MDGs). I am particularly pleased that we are spelling out the involvement of men. Therefore, we would want to build the capacity of not just the institutions, but also of the men, women, boys and girls in our country.

Hon. Speaker, as I support this Sessional Paper, one of the things I hope the Committee can consider is monitoring and evaluation which has been identified as a very key area. One of the challenges that we have experienced is that, as we talk about gender, precisely because of the miscommunication and misunderstanding, there has been a lot of drawbacks. We have seen an increasing number of gender based violence despite there being legislation in that regard and we have seen many cases where young boys seem to think that they are not part of the programme and, therefore, they tend to lose their confidence by not working hard. When we look at performance in education, we are happy that girls are doing well but it seems that in some cases, young boys seem to think that this is not something of great concern.

Therefore, as I support, I would like to urge the Committee to consider an area we have not paid attention to; that is, the use of indigenous knowledge to understand ways of enabling young girls and young boys to grow and know that there is a functional placement. We are not just talking about rights, but we are also talking about responsibilities. In a way, when we talk about the human rights of women, we need to ask ourselves who has the responsibility of meeting them and when we talk about human rights of women, we remember that there are also human rights of men and get to have a... (*Technical hitch*).

As I conclude, I support this, but as the policy says, we need to have disaggregation of data. As we talk about gender, we do not allow it to be a discussion that becomes much generalised, but we begin to use data and see clear implementation at the family level, at the work place and in all the areas, specifically that enable us to understand it. We have the Land Act, 2012 and many other pieces of legislation. When we look at the legislations on one hand and on the other we look at the practice, we really are in some ways even far back than we were before 1975. In 1975, the first world Conference on Women was held.

As I support this Sessional Paper, I appeal to the Committee that there is a sense in which we are doing great in getting statements and policies, but we need to ensure that there is, as this policy indicates, a kind of balance between the policy statement and practice. I do not see any other way that we would get this done, other than through a very effective monitoring and evaluation that shows us the Acts and legislations like the Land Act and where we are. This can be done through disaggregation of data.

I support, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Ogotu Abel, you have the Floor.

Hon. (Prof.) Zadoc Ogotu (Bomachoge Borabu, Independent): Thank you, Hon. Temporary Deputy Speaker. I begin by supporting this policy framework on gender and development on a number of grounds.

By the intelligence of the Almighty, men and woman were created and so were the youth and the elderly. For the accomplishment of our role as human beings and also attainment of our prosperity, we need to engage all the gender in every way possible to make sure that the gifts and talents that they have been given are well used to transform humanity in general. As a nation, Kenya has made a number of strides towards ensuring that gender is mainstreamed into development and that both the young and old and men and women are given a chance to work. But, unfortunately, as much as the Government works towards that advancement, there are a

number of areas that have been acting as obstacles. I believe that this Sessional Paper brings out the challenges and tries to bring in options and solutions to how the challenges can be addressed.

When we look at various sectors, we find that a certain gender is more sidelined. In education, the girl child has her challenges. I know programmes like menstruation management have been introduced, but they have not been successful. This Sessional Paper brings to the attention of those who are responsible of the management of the very sensitive programmes to ensure that they are accountable and that the programmes achieve the objectives they are set to achieve.

When we talk about gender development, we are talking about health for men and women, especially the safety of women, access to health services especially for women who form the foundation of the family and access to essential facilities, at the family level, like water and electricity. When we address the challenges of accessing them, we are talking about offering opportunity for men and women to participate in development.

This Sessional Paper also brings to our attention the need that, as we advance as a nation in technology, to ensure that the technology is gender sensitive for the youth, the elderly and to people with disabilities to have the opportunity to benefit from technologies. If the technologies are tailored to their needs, a number of issues that affect our development will be addressed.

This Sessional Paper comes at a time when the country is grappling with a number of political issues. This has been well captured in the recently launched BBI Report. It brings on board a number of constitutional amendments which provide men and women opportunities to adequately participate in the development of this country.

(Applause)

At the same time, it proposes a number of legislations which give the youth, women and people with disabilities the opportunity to contribute to this nation.

(Applause)

It is for this reason that the Sessional Paper is a wonderful framework that will embrace some of the changes that have begun to take place.

Finally, regionally, Kenya is not alone. It is learning from what is happening in neighbouring countries like Rwanda and Uganda, that have gone a little bit ahead in terms of policy frameworks that address gender. If we embrace this Sessional Paper, it will provide us with a step forward in terms of fitting into the regional discourses and transformations.

Hon. Temporary Deputy Speaker, I support this Sessional Paper. Thank you very much.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Sossion Wilson, you have the Floor.

Hon. Wilson Sossion (Nominated, ODM) Thank you, Hon. Temporary Deputy Speaker. I rise to support this Motion on the Sessional Paper that has been tabled in the House. Gender and development is one of the most discussed item world over.

That tells us that even as we look at the Sustainable Development Agenda, many nations have met the objectives of various aspects of the Sustainable Development Goals (SDGs) but, one area that has not been achieved globally is that of gender equality. That is why this Sessional Paper is extremely relevant even as we reflect thoroughly, going into the future, about the aspects of gender and equality.

I wish to bring to the attention of this House that SDG 5's target on education and gender parity in schools is still a tall order. It was not achieved in the Education for All goals which expired in 2015. In the SDG Agenda of 2030, it is still listed as one of the targets that must be achieved. In the Global Monitoring Report, even within this country, gender parity remains a key issue. I would like to challenge the honourable women of this National Assembly, particularly with one programme to do with sanitary towels. We have seen this is one programme that makes a difference in the life of the girl child. But we have seen it has been so politicised that even the procurement systems keep rotating from the Ministry of Education to the Ministry of Gender.

I think the women legislators in this House owe a duty to the girl-child in the school system to ensure that the procurement system of sanitary towels is full proof, properly budgeted for and targeted.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Hon. Sossion! What is out of order, Hon. Oduol? Order, Hon. Sossion. Please have your seat. There is a Member on a point of order.

Hon. (Prof.) Jacqueline Oduol (Nominated, ODM): Thank you, Hon. Temporary Deputy Speaker.

Is it in order for Hon. Sossion, looking at the Sessional Paper that clearly speaks to gender and development, to continue to refer to "women Members of the Legislature"? We do not have before us any sessional paper on women in development. We have a Sessional Paper on gender and development. Gender is men and women. Is he in order?

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Oduol, I did not get it. Is he offending anything? I thought he did not refer that in a sort of a negative way. Anyway, Hon. Sossion, you must be advised. I am sure you have been advised by Professor Oduol.

Hon. Wilson Sossion (Nominated, ODM): Hon. Temporary Deputy Speaker, as a diligent teacher, I accept that humble and honourable correction. We are talking about gender and development. When you talk about gender, we know it is not men or women only. Therefore, I proceed to make my comments on this Motion.

I was urging the Members of Parliament, the Women Representatives in this National Assembly and all of us; it is time we take seriously the welfare of the girl-child in our education system. It will be futile to pass a Bill while, practically and in the most immediate environment, obligation and responsibilities within us, we see certain issues that are not working right.

We should focus on the issue of gender rights as we move forward. Even within the BBI that was signed between our two leaders in this Republic, the issue of equality and rights is well outlined on one of the nine issues that were raised. Equality and rights remains a contentious issue. Therefore, in this country and nation, as we discuss the BBI, I would like to appeal to the people of Kenya not to over-politicise some of the sensitive issues that can make a difference in this country. I very strongly support the BBI agenda. I believe it is time we subscribe and submit to the three pillars of the Vision 2030. One strong pillar is the political pillar that seeks and advises the people of Kenya that our politics should be issue-based. Indeed, if they were issue-based and we stick to issues, we will speak to this agenda beyond the referendum, after it is passed. It is one thing to pass a constitutional amendment in a referendum and another thing to implement the very objectives. The nine objectives of the BBI are very salient, very key and, very dear to this country and one of them is gender and development.

Therefore, this Sessional Paper will serve to help us to implement some of those proposals and objectives in this aspect. It is my desire and belief that, by the year 2030, when this country goes through the Global Monitoring Report both in the SDGs and education, of course gender

equality is an integral component of all aspects of development, we will have a standing as a country among nations globally that we have done very well in the aspect of gender and development.

I support.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Joyce, press the intervention button if you have a point of order. You shall certainly get an opportunity to raise your intervention. I am sure I will be able to see it from here that you have an intervention if you press the intervention button.

For now, let us have Hon. Dennitah.

Hon. (Ms.) Dennitah Ghati (Nominated, ODM): Hon. Temporary Deputy Speaker, thank you very much for giving me the opportunity to debate and discuss about this very important Paper.

At the outset, I do support Sessional Paper No.2 of 2019 on gender and development. I support not because I am a woman or a woman with disability but, because I am a Kenyan. Women's rights are human rights. That is why it is an issue that requires attention so that we see how we support initiatives that advance women. This discussion is coming at a great time in this country. We are at a very strong constitutional moment of the BBI. We are also at a very important time in this country when, only November last year, you will remember, Kenya hosted the Nairobi Summit on the ICPD25.

I have been in the women's movement since 2008 when I started working for the League of Kenya Women Voters. These are the issues. When we are talking about women in this country or women of gender all over the world, people always tend to think that we are talking about women. But we have known along the way and along the line that when you empower a woman, that woman and those benefits generally benefit her community and her country. Therefore, we have no choice than to really support women.

Hon. Temporary Deputy Speaker, if you are aware, Kenya as a country that we love is a signatory to so many international conventions and treaties that are actually put together to promote the rights of women. Kenya is a signatory to the SDGs. Kenya is a signatory to the Convention on Human and People's Rights. Kenya is also a signatory to an international treaty we call the CEDAW—the Convention on the Elimination of All Forms of Discrimination against Women. So, Kenya has no shortage of laws regarding women. What we probably need to strengthen as a country is the implementation of those laws. Our Constitution is clear on our rights. We have no choice.

Again, when we are talking about women or gender in this country, I want to bring the voices of women with disability in this country. When we are talking about women in this country, we have somehow tended to leave behind women with disability who are our wives, our sisters and our mothers. We cannot afford to do that because I bring their voices to this House.

Even with this Sessional Paper, we still know and see that women's representation has been wanting. It is in this House, in the last Parliament, where we failed to even pass the two-thirds gender rule. One year later, and after the International Conference in Population Development (ICPD) 25 was held in Nairobi, we are discussing the Sessional Paper. The spaces we enjoy as women representatives or as nominated Members are as a result of the women that came before us. Those are the women who provided the spaces for us to sit here. The spirit of the BBI is purely for the women of this country. For the first time in law, we will engender the political process that has been wanting.

As we move forward, I want to state that Female Genital Mutilation (FGM) continues to cause havoc for our girls in the rural areas. We must address the issue in this House. Girls are not

sleeping in their homes; they are seeking shelter elsewhere because of that culture. Of what use is a culture that is detrimental to the girl-child? The Ministry of Gender should come out clear on these issues. How many people has it prosecuted? There are so many actors in this fight. How many prosecutions have they brought forth? What has been done to the chiefs and perpetrators of FGM? We must address serious issues that affect women in this country. It is time that women baked the cake and shared it. Our work should not just be to clap and arrange chairs in meetings, and when the cake is ready, we are only given the tail. We have left that point. In my view, this Paper seeks to ensure that women rights are respected.

Gender based violence is still prevalent. Women in the rural areas are bearing the brunt. How many shelters does the Government have? Every county and constituency must have a shelter to help women find peace when there is no peace in their homes. The intention of Sessional Paper No.2 of 2019 is good and clear. We only want to see its implementation. In this country, we cannot talk about women without talking about women with disabilities. Those two people must find themselves in one sentence. That is the only way we can move forward.

Before I conclude, Hillary Clinton once said that there is nothing more important in development than the empowerment of women. Women should not be seen as a competition. Gender issues must be clearly understood in this country. When we talk about gender, we are not talking about one sex, but women and men sharing the same platform in equality. That is the only way to move forward. Last month, as much as we were talking about universal health, we saw a woman delivering at the gate of Pumwani Hospital as she went to seek maternity services. What a shame! We have no choice but to translate every action into reality for women to enjoy the cake they bake. In this House, I am one of the supporters of BBI and I am not ashamed. I will rally my people to support it because the idea of BBI is to cure what we have struggled with in this House – the realisation of the two-thirds gender principle. How do we ensure by law that we support an arrangement that brings in women? Development cannot occur anywhere without women helping in baking, sharing and eating the cake. That is not much to ask. Sessional Paper No.2 of 2019 is in the best interest of this country. We must be serious if we want to support women empowerment.

I want to bring to the attention of this House about the issue of agriculture in this country. In our rural areas, you will find 90 per cent of women toiling and sweating cultivating the land, but statistics show that less than 0.1 per cent of women have title deeds to those land parcels. We are not serious.

Hon. Temporary Deputy Speaker, it is also unfortunate that there are Members and leaders that support practices that undermine our girls. In our areas, you will find leaders supporting FGM and yet they know it is detrimental to girl-child education. Leaders must be honest when discussing women empowerment. I want to state that any leader demeaning women in the guise of culture and tradition are not leaders. I want to conclude and state that I support Sessional Paper No.2 of 2019 that seeks to actualise the commitments that the country has made to the women of this country.

Thank you.

The Temporary Deputy Speaker (Hon. Patrick Mariru): I will now move to my left. Hon. Nyikal, you have the Floor.

Hon. James Nyikal (Seme, ODM): Thank you, Hon. Temporary Deputy Speaker. I rise to support the Motion. It is clear that the Sessional Paper is a revision of a document that was done in 2000 – the National Policy on Gender and Development. From that point alone, there is need to have this document. If a document was approved in 2000, it must be reviewed now. The constitutional changes that have occurred such as Articles 10 and 27 of the Constitution imply that

the document is no longer relevant. This review is coming a bit too late and that is why we need this Sessional Paper to do that review. Since that document was approved by the Cabinet, we have had many laws such as the Matrimonial Property Act, the Marriage Act, the Land Act, and the Trafficking of Persons Act. All those Acts cannot be in line with a document that was done in 2000. Things have changed. We must support this Sessional Paper. The need for equity and equality between the two genders is something we need. My colleagues have talked about it and we hear it every day; the boy-child, the girl-child and the two-thirds gender principle. The cultural practices that bring genders down must be stopped. Those are not the arguments now. But we should pass this Paper and push for its implementation.

Hon. Temporary Deputy Speaker, we are party to many international agreements and conventions. In March every year, we go to New York in large numbers for the Commission on the Status of Women Conference, to listen to nations giving reports on the status of women. We are party to that event and we attend regularly. We are also a party to the Commission on Total Elimination of Discrimination against Women, and the Maputo Declaration within Africa. There is no question as to whether we should discuss this, but we are just doing it as a formality. We must support this Sessional Paper. As I conclude, the most important thing is the implementation of the policies that we put in place. If we had time, we would amend the recommendations. What we need is monetary. We have the policies. The Ministry in charge of gender should develop that data. The data and indices of gender equity in development are there. That is needed. If the Chair or any Member of the Committee is here, I propose that we have the data and indices developed and then every year, we have a gender data report telling us the gender proportion in areas of legislation, education and Government. That should be published every year, so that we can put people to task. That is something that we need to do.

Another thing that needs to be done as part of the recommendation is gender mainstreaming. Gender issues are not sex issues; they are development issues. If you start thinking of gender issues, for example, in health, you will not just think of family planning. You will think of provision and availability of health services to children not even for women because to a large extent, in this country, children are taken care of by their mothers. Therefore, if those facilities are not easy to access, it is a gender issue. The availability of water to a large extent - that may later change - is still a burden of women. We need to know how the availability of water will contribute to gender equity. This is more complicated than what we see. The ministry responsible should develop all those indices. In agriculture, availability of fertilizers and use of equipment... There are many things that say this is meant for ladies and that is for men. It is important that what men do is looked at as a gender issue. When that data is available, it should be reported every year so that we can look at it. We should mainstream this in ministries, departments and parastatals. When we look at financial organisations, how do we mainstream gender in them?

When we started the Women Enterprise Development Fund, it was realised that there were many women who wanted to get loans, but the arrangement in banks, as we know, is complex. We wondered, if that was relaxed just for women, what about men? We said that it does not have to be that an organisation is basically for women. It can be one that men are in it and if its leadership is fair enough, it can qualify to get the Women Enterprise Development Fund money. This is something that we need to do. What we should do is to have another - and the Members of the Committee are here - recommendation as number four in monitoring, using data and indices that will give us the status of gender equity in all areas. We also need to mainstream gender issues in all departments and policies.

With that, I support this Sessional Paper.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Chege.

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): Thank you, Hon. Temporary Deputy Speaker. I support this Sessional Paper No.2 of 2019. When we talk about gender, we look at women, men, boys and girls. A lot of people have spoken in support of the Sessional Paper, especially on the gap we have in gender legislation and participation of women. A lot of the times when you talk about gender equality and discrimination, this nation's policymakers tend to look at only Parliament on legislation. However, I am sure if policymakers look at participation of all genders in health, education and other areas of the Government, this issue of gender inequality and discrimination will be a thing of the past. I happened to be involved in looking at the new document that is the talk of town, the BBI and one of my concerns was about the Constitution of Kenya, 2010 and the gains that it has given to the women of this nation. Some of us, like I, got to this House through the affirmative action as a Woman Representative. I am currently serving my second term.

What has been worrying is that even when people give a lot of lip service and say that they support women leadership, we are still tied by a patriarchal system, cultures and religion in our society. Women are still seen as belonging to the kitchen and not meant to go out there to offer leadership. I want to thank the drafters of the Constitution of Kenya, 2010, because they gave us an opportunity to showcase that what a man can do, a woman can do better. At this level, if you look at the BBI document, I want to urge the women in this House that we have been given an opportunity where we will not have to come back to this House and ask its Members to pass a law that is supposed to give us gender equality. I was in the 11th Parliament, and we went out of our way as women leadership to take the men in the House for a dance. We offered dinner, but at the end of the day, the ones who could not say openly that they were opposing the two-thirds gender rule Bill, went to the lounge to tell stories so that they were not seen to be opposing the women. It has been mentioned that the women of this nation are 52 per cent of the population. So, we need their participation in all levels. At this point, I want to urge the women of this nation to support the BBI. We have a permanent solution for the two-thirds gender rule.

If you go to our universities - I am back to school and that is why I requested to speak early - majority of the students are female, even in my class. In our constituencies, the majority of the people who are leading songs and actively participating in school meetings are women. Where do we lose it as a nation that we do not have women as the majority in leadership? As the Constitution says, the sovereignty of this nation is key. People should be allowed to vote for the people they wish to become their leaders. That is the spirit of the BBI Report. I urge Kenyans to give women a chance. If that fails, we have a permanent solution that has been offered by the BBI Report.

Hon Sossion has brought up the issue about sanitary towels. It is something that we struggled with when I was the Chair of the Departmental Committee on Education and Research. When sanitary towels were taken to the Ministry of Education, they could not reach the girls in schools. When it came to gender, the Woman Representatives did a great job by going to schools. That only lasted for one year. I hope the Committee that deals with issues of gender will give a permanent solution. Currently, our girls are at home. They have no sanitary towels. How do we reach them? There are several initiatives that are on the ground. I have seen several Members trying to give out sanitary towels. Unfortunately, our teenage girls are getting pregnant because they cannot afford to buy sanitary towels. So, as we look at reopening of schools during the COVID-19 Pandemic, even if it is next year, we as Members of Parliament and the Ministry of Education must make sure that the girls who were unfortunate to get pregnant are given a chance to go back to school to get their education, so that they can support their children.

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All said and done, I support the issue of sharing of benefits during dissolution of a marriage. On the issue of property and access to inheritance, it has been said before that girls cannot inherit property in many cultures. Every child is equal. So, I support and urge every Member here, not just the ladies, to support because it is an issue of gender. As I have said, the way the country is implementing the gender provisions, though we have a sunset clause of 2032 in the BBI Report - you never know - in 2022, we might want to add more men when women will have taken over. That would be a dream come true. I support and urge the ladies and every Member to support. As Hon. Nyikal has said, a lot of policies are written in this country. We have a lot of policies on paper. Could we actualise what is on paper?

I thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Let us have the Whip of the Majority Party, Hon. Wangwe.

Hon. Emmanuel Wangwe (Navakholo, JP): Thank you, Hon. Temporary Deputy Speaker. On the outset, allow me to support the Report of the Departmental Committee on Labour and Social Welfare on Sessional Paper No. 2 of 2019 on the National Policy on Gender and Development. One thing worth noting is the achievement that is supposed to come with this Sessional Paper. When you look at the policy in totality, you realise the achievements expected, including the achievement of gender equality through creation of a just society where women, men, boys and girls have equal access to political, economic, cultural and social rights.

This document is timely. It comes at a time when the country is in a political mood. It comes at a time when the BBI Report has already been accepted by the majority and is going to the people to make a decision. I want to emphasise that gender includes both women and men. If you look at the country today, the weaker gender is the female. But there are very good professional women who are ahead. We can take the example of this House where the Chair of the Departmental Committee on Finance and Planning and the Chair of the Departmental Committee on Health are woman and they are doing a good job. We want to see more women coming out. In this House, there is a lady captain - Captain Ruweida, who is one of the few good scholars we have in this House. Therefore, the gender issue should be addressed with a very good paper like the one we are discussing today. This Paper encourages growth in the sense that whereas today we are pushing the weaker female gender to rise, let the boy-child also be pushed in a similar way. If males in this House do not wake up, we are likely to be surpassed by the female gender by the time we get to 2032.

I want to look at the proposed economic empowerment of our youth. The youth have been left behind. What are we doing to make them move? We have passed the access to Government procurement opportunity programme in the House, but when the youth submit their invoices for payment, they are not paid on time. That is why the BBI Report says that we should have a prompt payment Act. Sixty days should be good enough to pay invoices so that the youth can pay back the money they have borrowed from banks to do business. We are also proposing that the youth should have a forum where they can discuss their issues. When we were growing up, we had age sets. When you got initiated through circumcision, removal of teeth or whatever method of initiation, the youth enjoyed their own language. So, we have to give them a commission, so that they can discuss their issues. We need a youth commission which will be led by the youth who understand their own language. That is a good thing being proposed in the BBI Report so that we can move together with the youth as one.

Kenya domesticates international treaties that we ratify in this House. We are a signatory to international treaties on women from various global fora. We want to respect those agreements.

That respect is being exercised through this policy. We want to tell the Chair of the Departmental Committee on Labour and Social Welfare that the Committee has combed through this policy well. It is a good policy. We need to embrace it so that Kenyan ladies, men, youth, boys and girls can live to see a better country than what we have had. This policy seeks to ensure that we have equality in education as per Article 43 of the Constitution. I was the Mover of the Bill that sought to eradicate examination fees for the Kenyan child in Standard Eight and Form Four. The Act provides that no child can be chased away from school because of non-payment of examination fees. Today, all Kenyan children enjoy the benefits of the law. That means that any boy or girl whether from a marginalised community or from the richest community, will sit for the same exam and compete. Education makes us equal. You may even find a child from a poor family defeating a child from a rich family. So, this policy gives us equality and helps us to shape the future of both genders. Let us not see any gender as being superior to the other.

Finally, this policy addresses itself to the issue of marriage. We represent our people in the constituencies. A young man wrote me a message sometime back saying he was being chased away from his house. He is a lawyer like yourself, Hon. Temporary Deputy Speaker, but he is a young man. He does not understand how to manage a family. This policy gives us the rationale to respect our women. We no longer have to rule a woman by a slap, otherwise, they will run away. If possible, all of us should be like 001. He does not have legs, but he is a very strong man elsewhere.

(Laughter)

We are all equal in all spheres of life as long as we respect our gender positions.

Thank you, Hon. Temporary Deputy Speaker. I support.

The Temporary Deputy Speaker (Hon. Patrick Mariru): The strength of Hon. ole Sankok has been confirmed to be elsewhere.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Patrick Mariru): What is out of order, Hon. Gladys?

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Speaker, I am curious to know how the Whip of the Majority Party learnt of this strength of 001. I thought people like myself should be the ones confessing to the strength in any other places. That is my curiosity.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Gladys Wanga, you know the strength has not been specifically identified. It is still a generality.

Hon. Wanyonyi.

Hon. Ferdinand Wanyonyi (Kwanza, FORD-K): Hon. Temporary Deputy Speaker, I expected that point of order from Hon. Wangwe, not Hon. Gladys.

I want to take this opportunity to be on record that I support this policy on gender and development. Hon. Gladys was right to say that this country has over 52 per cent of women. It is not fair for us to continue the way we are doing. I want to be on record that I support this Sessional Paper. We need to empower our ladies but we will do that by coming up with programmes for them. I went to some place and was told by an elder that women are only there to be seen and not to be heard. That is archaic! Today, women are very articulate in their presentations. In the United

States of America I think, they will have a woman as the Vice-President. I will not be surprised. It is because they have developed the gender rule. We should not be left behind.

Today, as I was coming from upcountry, I visited some schools in my constituencies. I noted that in the mixed secondary schools, almost 60 per cent are girls. If we do not have a policy in place then, of course, eventually, we are going to run out of time. We should do what the Hon. Member actually mentioned: that we develop this particular policy so that women can occupy their place. However, I am also not very sure. I want to put a question there. I think ladies sometimes are their own enemies. In this House, in 2016, we all wanted to support our ladies. You know what happened when it came to voting? There were very few ladies in the House at that time. One of them is here, but I do not want to mention names. They went to New York. Yes, that happened. If you were not here then please know that happened.

Therefore, Hon. Temporary Deputy Speaker...

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Hon. Wanyonyi. There is a point of order from Hon. Akoth.

Hon. Ferdinand Wanyonyi (Kwanza, FORD-K): We were here when...

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Hon. Wanyonyi!

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Wanyonyi, while Hon. Millie is upstanding you shall take your seat.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order! Hon. Odhiambo-Mabona, do not go beyond the boundaries. You are on your feet now. Hon. Wanyonyi, Hon. Odhiambo Mabona is on a point of order.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker. I just go by the Standing Orders, if I am upstanding he has to be seated. However, is Hon. Wanyonyi in order to propagate this falsehood that every time that there is a matter brought here, that women are in New York? We know that every year there is something called the Commission on the Status of Women. We are not the ones who have not put up the commission on the status of men and we can lobby for them to have it. However, even when we have that, women are here. Therefore, this propagation of misinformation must end and can I please request that you actually get a record of the *Hansard* so that this thing becomes history? You cannot be holding this as a sword on our heads every time we are discussing anything on gender. Like right now if you look at the House there are very many women Members of Parliament but tomorrow you will hear them saying that we were not in the House.

My point of order is that you are misleading the House. The information you are giving is not correct and that is why I am calling on the Temporary Deputy Speaker to give us the *Hansard* to give the correct information of what was....

The Temporary Deputy Speaker (Hon. Patrick Mariru): Very well.

Hon. Ferdinand Wanyonyi (Kwanza, FORD-K): Hon. Temporary Deputy Speaker that was a point of information.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order! Hon. Wanyonyi. Order, Hon. Wanyonyi. Hon. Wanyonyi you know, a point of order has been raised. It is not upon you to say whether that was a point of information or a point of order. The point is, that issue actually came up some time back, I think, two weeks ago when Hon. Gladys and Hon. Wamalwa... Actually, it is the same issue. Therefore, Hon. Wanyonyi, let us not go back to that part. I know there was quite a conversation around that area. Please, prosecute your case beyond that point, Hon. Wanyonyi so that we move on.

Hon. Ferdinand Wanyonyi (Kwanza, FORD-K): Hon. Temporary Deputy Speaker, I want to be on record that I support the policy. I will be the last person to oppose this because even in my own house I have three ladies and one man. Moreover, I have gone to schools and realized women are more than men and I am even saying they are very articulate. They do things very well. I do some construction in my constituency and I saw ladies actually driving machines better than boys. I support this policy. Let us be gradual and move steadily so that we remove this notion that ladies are there to be seen and not to be heard. That is what I am saying. I am supporting you.

This policy has come at the right time and therefore let us support it. Come 2022 we want to see more women here than men. The world today has more ladies because they are very articulate. We had this motion before but we did not go very far. This is the right time to come up with it. Count on my support. However, at the same time, let us have things done gradually and systematically so that they can empower the able sex.

With those few remarks, I am sorry if I hurt somebody but it is true when we were voting here, you guys were in New York.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Hon. Wanyonyi.

Hon. Ferdinand Wanyonyi (Kwanza, FORD-K): I support.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order! Let us have Hon. Mnene. Let us not get back to that point.

Hon. (Ms.) Haika Mizighi (Taita Taveta CWR, JP): Asante sana, Naibu Spika wa Muda kwa kunipatia hii fursa na pia mimi niweze kuchangia suala hili ambalo linahusu mambo ya usawa wa jinsia na maendeleo. Tunaongea kuhusu jinsia ya kiume na kike. Tunaongea kuhusu maendeleo, afya, ugavi wa kazi, elimu na masuala mengineyo ya kuboresha maisha ya jamii nzima. Tumeona mara nyingi kina mama wakienda barabarani kuitisha haki zao hapa na pale. Tumeona vijana na vile vile watu wanaoishi na ulemavu wakiwa barabarani wakisema, 'Haki yetu, haki yetu!' Haki hii haifai kuombwa bali ni vile wanajisikia wakiwa wamenyanyasika na hawapati hiyo haki yao. Kwa hivyo, kama Hoja hii itaboresha mambo na kuleta mwafaka, basi mimi naunga mkono.

Kuna suala la BBI ambalo limetajwa. Mimi bado niko pale pa kusoma. Naendelea kusoma, lakini ni huzuni kwamba nafasi hii ya kiti cha Mwakilishi wa Wanawake ambacho kilinileta hapa Bungeni naona kama tutaenda kukikosa kupitia hii BBI. Bado naendelea kusoma.

Asante kwa hii fursa.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Let us have Hon. Kimani Kuria.

Hon. Kuria Kimani (Molo, JP): Thank you very much, Hon. Temporary Deputy Speaker for giving me this chance to contribute to this debate. From the outset, I would like to say that I support this Sessional Paper. However, I would like to caution my colleagues. The gender discussion cannot be a woman discussion. When we talk about gender we do not talk about women. It is both men and women. Recently, Kenya became the first African country to carry out a census of another gender that we were calling intersex and it showed that we have 1,524 intersex people. These are people who are neither male nor female. This Sessional Paper is trying to say that we need equality in terms of gender, but how do we get to achieve this equality? It is when we are sure there is a fair playfield for people of whichever gender that we pick on. Various speakers have demonstrated that we have great leaders. Some of them happen to be women and men. Therefore, there should be no time where someone should be discriminated against for a particular position because they belong to a particular gender.

Maybe this even calls for a discussion in our families and our meetings. Why is it that every time we even have a small meeting we tell women to take minutes? It is probably because we still

have that thinking that a woman can only be to a level of a secretary. I am not saying being a secretary is bad, but there is a way as a society we have put women that shows that they are supposed to only do particular jobs. This needs to end. How do we achieve that? It is not just putting on paper like we are doing today, but change of heart as a country, community and as a nation.

When we have places where we can employ people of different gender, do we do that? As Members of Parliament, what is the composition of our parliamentary staff? In your constituencies, what is the composition of your staff? We can put all these things on paper, but it is going to take goodwill to make sure that whichever gender we pick on, we give them opportunities and we do not discriminate which gender they come from.

It is quite a shame that women and especially young girls still have to struggle with matters of menstrual health. It is such an embarrassment that we hear tales of young girls using mattresses and all manner of things. If you go to some of these public offices, you find packets of condoms displayed for free in the toilets and yet basic things like sanitary towels are not available to the people. Every year, it becomes an audit query even when the Government plans to support girls with sanitary towels. It becomes an audit query every year. If we cannot give our young girls sanitary towels, how can we pride ourselves as a nation? How can we even have a gender discussion? How can we even go to these conventions and say how much we have achieved in gender parity in this country? This issue must be put to rest.

I saw the proposal on the BBI that suggests that the issue of menstrual health and provision of sanitary towels should be free to every school-going child in this country.

(Applause)

If there is a way it can be implemented - even before we wait to see whether the BBI Report will pass or not - in the current budget for the Ministry of Public Service and Gender and the Ministry of Education, it can be good. I have been telling myself that when it was school-going time, the Ministry would provide sanitary towels to girls. During the COVID-19 period, I have not seen any ministry distributing sanitary towels. What happened? Do girls get their menses only when they are at school and not at home? We need to be very candid. These things that touch very closely to this gender must be well thought through.

In 2020, we are still talking about girls who have been forced to undergo female genital mutilation. We still have elders and *Nyumba Kumi* leaders who are sitting in the villages discussing about 13-year-old girls who have been married to 60-year-old men. We are still having family conversations about a 12-year-old girl who has been impregnated by a 50-year-old man, and now we are putting it as a discussion of how much compensation we should give to the girl. These are things that people of goodwill like leaders must stand up against and make sure they never happen again. That is why I started by saying that gender is not a woman issue, but a humanity issue.

In the same way, there are matters affecting our boys that have not been looked into for a very long time. I will, for example, take the issue of circumcision. What scrutiny is done to the young boys when they go to that initiation during Christmas? We are slightly heading to Christmas. Sometimes, that transition period is used to radicalise our young people to introduce them to drugs and some ideologies that make them become rogue people when they grow up. As much as we are looking at empowerment programmes for our other gender, when we make gender conversation and not a man or woman issue, then we will make sure that no one is left behind including boy and

girl-child. No one should be left behind because of what is in between their legs. Nobody choses what is between their legs and so I support this conversation.

Allow me to add one thing. It is very disheartening that we still choose to refer to “woman” as an insult. In 2020, we imagine that calling somebody “mama”, ama “ako na umama” is an insult. These are some of the discussions that bring us down as a community from having a harmonious gender sensitive community.

With that, I support.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Osotsi.

Hon. Godfrey Osotsi (Nominated, ANC): Thank you, Hon. Temporary Deputy Speaker for the opportunity to contribute to this very important Motion.

I rise to also support this policy. It is long overdue. As we are aware, various institutions including the United Nations (UN) and the African Union (AU) have come up with similar policy and member states were also required to do the same. All the same, I think it is better late than never.

As many Members have said, women have gained immensely in the BBI Report. We want to encourage the slow readers and the scientists to read very fast so that they can join the rest of us in saying that we have made a major breakthrough in terms of women empowerment through the BBI. One of the things I am happy about in the BBI is that recently the Chief Justice wrote an advisory calling for the dissolution of the Parliament. It all appeared like the responsibility to ensure that gender balance was on Parliament. The BBI has spread the responsibility to political parties, the Independent Electoral and Boundaries Commission (IEBC) and even the Executive to ensure that all these institutions ensure that we have gender parity. That is very important. It is very unfair to put that responsibility on Parliament alone yet Members are not involved in choosing who comes to Parliament. We want to tell the IEBC to ensure that as recommended in the BBI, the list they get comply with the gender balance rule that has been provided in the BBI Report.

One thing I want to say from my experience is that I hope the laws that will emanate from the BBI Report will be very specific. For example, the BBI Report says a third of those listed on the political parties list must be of either gender. I know most political parties will simply fill those slots with regions where they do not have support. In law, we must insist that there is some quota in the strong holds of political parties, so that we eventually have, progressively, more women being elected to Parliament. The other very important thing is that the Executive will now have to comply with the gender balance principle. We cannot talk about Parliament and not talk about the Executive. We want to see the gender balance rule being obeyed even by the Cabinet, the Judiciary and key institutions in the Government. That is provided in the BBI Report. I urge the slow readers, such as Nominee 001, to try and read very fast, so that they are on the same page with the rest of us, so that women can get the gains that are included in the BBI Report.

Hon. Temporary Deputy Speaker, the global performance is 25 per cent representation of women in Parliament. In Kenya, we have set the threshold at one-third, which is about 33 per cent. So, we need to work hard so that we can achieve that high target that we have set for ourselves. However, reading the BBI Report, I am very confident that we are going to achieve it. The Member for Taita has talked about the removal of the County Woman Representative (CWR) position. As we talk about that, let us also talk about the 70 positions which are also going to be available for women.

I urge Kenyans to support the BBI Report and avoid the unnecessary propaganda that has no meaning that is being spread by people who claim not to have read the Report. They are moving

around talking about it and yet they have not read it. We are slowly noting the people who are against the women in this country. They are the people opposed to the BBI Report.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Hon. Osotsi. What is out of order, Hon. Sankok?

Hon. David ole Sankok (Nominated, JP): Hon. Temporary Deputy Speaker, Hon. Osotsi is out of order for keeping on saying that some of us, who are scientists, are slow learners and readers. Some of us read and understand.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Sankok, what is out of order? I am trying to...

Hon. David ole Sankok (Nominated, JP): I am not a slow reader. I read and understand unlike him, who reads as if he is reading the alphabets. No!

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Hon. Sankok! You look like you are getting out of order yourself.

Hon. Osotsi? The Member is done. Okay let us have Hon. Sankok.

Hon. David ole Sankok (Nominated, JP): Thank you very much. From the outset, I am happy to see Hon. Millie Odhiambo in the House. I do not know if she is through with her honeymoon in Naivasha or it was cut short.

Hon. Temporary Deputy Speaker, I support this Sessional Paper on representation of gender. It is from the Committee in which I sit. We have canvassed it at length so that we have more women representatives in both the three arms of the Government. Hon. Sabina Chege has said that what a man can do, a woman can do better. We have witnessed this in our schools when they defeat us in exams. They need these opportunities. They are better managers than most of us.

If you have Kshs100 today, as a man, you may not know what to do with it. However, if you give that money to a rural woman, she will buy sugar, salt and cooking oil. I do not know how they balance. We need them so that we can jumpstart the economy. In political parties' representation, I will expect that we start from the top. Even this Paper addresses this issue. As Hon. Osotsi puts it, it does not only condemn Parliament, but also the Cabinet and parastatals, so that we have a two-thirds gender rule applying in all the institutions.

I can say, for instance, in the Cabinet, we may not need the BBI. We only need to say that the President and the Deputy President are men, so, let us have a majority of the cabinet secretaries being women. I am shocked that those who are claiming to be fast readers are not aware that the CWR positions have been taken to the Senate. The National Government Affirmative Action Fund (NGAF) component that is under the purview of women has been done away with. If you take resources from any section of the society, it means you are not supporting them. You are demeaning them. The women are going to the Senate, but the cabinet secretaries will not come from the Senate.

Hon. (Ms.) Fatuma Gedi (Wajir CWR, PDR): On a point of order.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Sankok, there is a point of order from Hon. Gedi.

What is out order, Hon. Gedi?

Hon. (Ms.) Fatuma Gedi (Wajir CWR, PDR): Thank you, Hon. Temporary Deputy Speaker. Is Hon. Sankok in order to mislead the nation and the House by claiming that the position of County Woman Representative has been moved from the National Assembly to the Senate? In fact, those are new seats that have been created for women. It is a gain for the women in Kenya because they will have equal voting rights. As per now, women are not voting. So, he must withdraw and should not mislead Kenyans.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Fabian, we cannot have a point of order over another point of order. Hon. Fabian, Hon. Sankok and Hon Gedi, the discussion here is not about the BBI. We are navigating into the BBI. We do not know who is saying what. Hon. Ole Sankok, why can you not get to gender and development and then we make progress?

Hon. David ole Sankok (Nominated, JP): Hon. Temporary Deputy Speaker, I am laughing because I have just understood that some of us are not only quick readers, but we do not also understand anything. The 290 constituencies have been retained in the BBI. There are additional 70 seats that the party lists will try and balance. The position of CWR has been removed and the NGAF will subsequently disappear. That is a fact that we have to face. The Senate will no longer have power over the revenue allocation formula. So, they cannot allocate resources and they cannot have cabinet secretaries.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): On a point of order.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Hon. Sankok. Members, I am wondering why there is this excitement.

Hon. Wanga, what is so much out of order?

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Speaker, Hon. Sankok is a very sharp Member of this House. Actually, he makes contributions on every matter on the Floor of the House. However, his discussion of the gains of women within the BBI Report is out of place because he is misinformed. I think he is part of the team of scientists that is yet to complete reading the BBI Report. Since Hon. Sankok speaks so well on matters of disability and gender, we are allies. Let him stick to the issues he knows about and has read about. We will not bother to interrupt him.

Now that you have given me this opportunity, and Hon. Millie canvased this matter on the day that Hon. Wamalwa accused...

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Hon. Wanga!

Hon. (Ms.) Gladys Wanga (Homa Bay (CWR), ODM); Hon. Temporary Deputy Speaker, I want to say this on the Floor of this House because we brought the HANSARD here. Every moment there was a vote, I was on the HANSARD as having voted for the...

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order! Order, Hon. Wanga! I am sure you were on record sometimes back and you did very well on this issue... But anyway, we are past that now. Hon. Sankok, let us concentrate on what is on the Table now. I can see we are getting to uncharted waters. Let Hon. Sankok finish his words, so we can make progress.

Hon. David ole Sankok (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker. This House is for all of us. We cannot have a section that can discuss the BBI at will and when I put my input, it becomes a problem. I am not a squatter in this House. I represent 6.5 million Kenyans living with disability.

When I talk of gender issues, I know there are women with disabilities who also deserve these positions. When I talk of the slots that have been given in BBI, I talk with a lot of authority because I represent persons with disabilities. I do not want them to be dumped, but to be given their rightful positions as per the Constitution of Kenya in Article 54, the United Nations Convention on the Rights of Persons with Disabilities which Kenya ratified in 2008 and is domesticated, and the Persons with Disability Act No.14 of 2003.

I am speaking with authority. Thank you, Hon. Gladys Wanga, we have always been allies, but on this one, we may not be allies. Remember the issues that affect women as the affirmative action group also affect persons with disabilities. Before I was rudely interrupted, I was saying that we need women in leadership positions. This particular Paper has addressed these issues by

not only condemning Parliament alone, but has addressed these issues broadly. In our parastatals, we need women and gender issues addressed.

Our country is made up of team *mafisi*. We cannot have distribution of condoms in schools and in buses, but when it comes to sanitary towels, it is a problem to distribute them to the needy children who may drop out of school due to lack of sanitary towels.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Hon. Sankok! Let us use terms that are very clear. When you say team *mafisi*, Hon. Wangwe seated next to you may not understand what that is. Hon. Sankok, please, finalise your part.

Hon. David ole Sankok (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker. I support this Sessional Paper. Unless we are persuaded further, I will not support the BBI before I see the positions of women with disabilities. They should not be in the Senate where there will be no cabinet secretaries, the position of Prime Minister and the National Government Affirmative Action Fund. The party lists should not be played by parties, but should be mandatory to have representation of persons with disabilities of, at least, five per cent.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Sankok, Hon. Wangwe is there and you can explain to him what that team means. He looks keen to know. Hon. Ochanda.

Hon. Gideon Ochanda (Bondo, ODM): Thank you, Hon. Temporary Deputy Speaker. I want to bring a completely different direction to this debate. In as much as I accept and agree that this Sessional Paper at the time it is falling in, is really commendable, the two aspects I want to bring around is the whole issue of timing. This is not the first Paper. We have had this debate before and we have an existing Sessional Paper. When the Sessional Paper No.2 came in, I thought if we were to do a good service to it, we needed to do a very serious audit of what happened between 1999 and 2000 when we talked seriously about gender mainstreaming.

In the last 20 years, what has happened? Have we achieved anything and where are the challenges? In my view, these are some of the issues which would have really enriched the Sessional Paper that we are discussing at the moment. There are gains we have had and they need to be recognised. There are sectors where women have done very well and really surpassed men. Also, there are sectors where men are still ahead of women. These are some of the questions that needed to have been raised.

For example, look at what is happening in some sectors like the informal banking. Banking is still dominated by men, but informal banking is dominated by women. What does this mean in real sense? The informal banking that we are talking about, what is it? It is more of what we have in the merry go rounds and table banking. But if you do a critical analysis of what this means, it is one area women are losing big. The amounts of money they are ploughing back in the small groups is much higher than formal banking.

If one takes time and borrows per week or per month and repays in a week or month with 10 per cent interest, what does this mean if you look at it in relation to an annual repayment in a formal banking arrangement? You will realise that you are paying more than 100 per cent interest. Many women are in this and what are we doing about it? In my view, this Sessional Paper ought to have looked at some of the sectors dominated by either gender. In terms of what the gains are and to what extent are they losing, like in the informal banking I am talking about where women are losing big yet many of them are there because of issues of access, collaterals and many other little issues here and there.

At the time we were talking about gender and development, these are the areas that needed to have been isolated, brought out and addressed. Otherwise, we are letting women dominate certain sectors where the returns are lower looking at it the other way round.

We need to look at what has happened in education that we are experiencing a reversal. In as much as girls have challenges here and there in terms of education, the data we have indicates that girls have surpassed boys and this is a good indicator. When we have something good like this, what are we doing in the reverse? How do we retarget such that the boys catchup or do we want a situation where we will claim at one moment boys were left behind and girls are in front?

These are some of the areas, in my view, that still need to be checked because we have information and data. We have been talking about gender mainstreaming in everything else. Who has sat down and indicated what has happened? We are talking about gender mainstreaming in the budget process. What has happened in the last 20 years and where have women gained in terms of access? Where in terms of policy and engagement do we put our capital and money?

I think these are some of the issues, in my view, this Sessional Paper still needs to be checked and added up. They may not be added now because it will be passed, but in terms of actualisation. The big question is how other departments of Government are going to actualise this Sessional Paper. Will they say this Sessional Paper belongs to the Departments of Labour or Gender? What will happen? These are some of the issues that we ought to have picked up.

What the Sessional Paper has brought out should cut across all the sectors. The first question which each department needs to ask is how they will engage with this Sessional Paper. Otherwise, we will pass this Paper and it will rest as many other Papers have done. We have a lot of smart Papers in our shelves collecting a lot of dirt, but when it comes to actual implementation, we come up with another third Sessional Paper without auditing what happened in the first or second one. We come out with a very beautiful Sessional Paper No.3 and life goes on.

I think this is the stage where we need to change as a country. This is exactly where we have this problem when we are talking about issues that have emerged after the 2010 Constitution. There has been an audit. This House has done an audit. There was a report here in the 11th Parliament that indicated areas of weaknesses of the 2010 Constitution. When you look at that against the process that is running now, the things merge very well, that now there were weaknesses that must be sorted out as at now. One of those was this un-implementable Article that we were talking about of achieving the one-third gender rule in the House. It is not easy achieving it after elections. It is not easy achieving it in this House. Where will you get other Members if the law restricts you that you have 290 constituencies and all of them or 250 of them go to men and only 40 of them go to women? So, where do you get the other third?

So, these are hard questions that this new process that we are talking about must be supported. Thank you, Hon. Speaker.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Gedi.

Hon. (Ms.) Fatuma Gedi (Wajir CWR, PDR): Thank you, Hon. Temporary Deputy Speaker, for the opportunity. I thank the Chair of the Committee. I congratulate him for a job well done and for bringing such a critical matter on gender and the Kenyan women. This Sessional Paper is very important. There is a lot of diversity. It is talking about diversity and empowering women and the girl child.

Where I come from, there is a lot of discrimination in terms of one gender being empowered and another, more so the women, not being empowered. Look at Parliament and the Government. The institutions which are led by women, whether ministers or Members of Parliament, have done well and their contribution is being felt on the ground. In terms of resources, ministries or institutions that are led by women utilise resources well and there is no misappropriation of funds. So, to that effect, I can say confidently that mainstreaming gender is a very important thing. We need to stop this discrimination based on gender.

Having said that, we heard...

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

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order! Hon. Sankok, what is it?

Hon. David ole Sankok (Nominated, JP): You know this is a House of records. We cannot keep on misleading this House. If we say that ministries that have been led by women are the best performing, we should remember the infamous NYS. That ministry was led by a woman. We know the mafia in the Ministry of Health when Sicily Kariuki was the Cabinet Secretary. So, let us speak the truth. She is out of order. Let us not mislead the House. Women do better, but not in ministries.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Sankok, I actually did not get what is absolutely out of order. She is misleading you? Order, Hon. Sankok. I know you were caucusing earlier, but let her progress.

Hon. (Ms.) Fatuma Gedi (Wajir CWR, PDR): Hon. Temporary Deputy Speaker, you see the hypocrisy I was talking about. Look at Hon. Sankok who is now castigating women who have performed better. I can give you facts, my friend. The brain behind the NYS and Huduma Centre Project was a woman and she performed very well. The NYS Jiko Kwa Wamama Project in all the slums was done by a woman. You know the contributions the former Minister for Lands, who is now a governor, Hon. Charity Ngilu, made. You know what she did when she streamlined that ministry. Currently, as a governor, Kitui is the one providing us with face masks that we are wearing. What are you telling us? This is hypocrisy. A while ago, he was complaining about women being removed from here to the Senate. He was pretending to be an ally of women. Right now, he is castigating women.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Gedi, address the Chair. Leave Hon. Sankok.

Hon. (Ms.) Fatuma Gedi (Wajir CWR, PDR): Hon. Temporary Deputy Speaker, let us be honest with each other. This Sessional Paper is very important. It has come when we have a conversation in this country. All I can see in this Sessional Paper is the conversation that today we are engaged in and having as a country moving forward.

Talking about women accessing land or matrimonial property, different people have different cultures and that is a fact. However, there are people who use culture more than religion. The religion I come from regards women highly and protects them. It recognises the women's ability to own property. People use culture and forget about religion.

So, this is a very good policy paper. As a woman, I cannot sit without saying this. The conversation that we have as a country is very important for us and it is a big gain for us as women. Yes, we have the National Government Affirmative Action Fund. That is what has made many women to contest for constituency seats or gubernatorial seats.

The other thing is that no woman is being removed from this House. So, it is also bad if we use the gender card to divide the country or mislead Kenyans. For us as women, it is a big gain to have an equal voting right in the Senate. Having 47 women in the Senate is a big gain. Hon. Temporary Deputy Speaker, I beg for your protection. I want you to protect me. Having women...

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Gedi, remember you also stood on a point of order earlier when Hon. Sankok was contributing to this Motion. I am going to apply the same rules of relevance to you as I did to your colleague, Hon. Sankok, earlier on. Please, proceed with that in mind.

Hon. (Ms.) Fatuma Gedi (Wajir CWR, PDR): No, it is part of my contribution and I am guided, Hon. Temporary Deputy Speaker, but it will not be right if I do not appreciate the

conversation that we are having that will empower women. What we are talking about here is women empowerment and gender. As a woman who represents thousands of women, I must say this is a good conversation and let us not mislead Kenyans. Women for 50 years have been fighting for a third representation in this House. Right now, we have it. So, going forward, I will want all the ministries and even county governments to make sure that gender is promoted and women are supported across. Whether you are from one region or the other, let us not use culture and let us also mainstream gender.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Fabian, you have the Floor.

Hon. Fabian Muli (Kangundo, Muungano): Thank you, Temporary Deputy Speaker, for giving me the opportunity to articulate on the Sessional Paper on the National Policy on Gender and Development. This policy has come against the goodwill of Article 27(1) where you understand that the Kenyan community grows from our culture where women used not to inherit land. Women were property. They could not engage themselves with education in the community. Women were not supposed to inherit land and that is why you see now Article 27(1) expounds on the equality of men and women.

The same policy on Article 27(3) gives women the right to participate in politics, the right to be in white collar employment, the right to be heard as well as men, the right to migrate and the right for inheritance. I think this Sessional Paper is supposed to come with a Bill which can also solve the issue of Article 27(8). Article 27(8) is where the conflict of the same Article 27(1) gives. If you see the judgement which came from the Supreme Court, the Supreme Court analysed their judgement. They did not understand that to implement any law, there must be a progressive test.

I congratulate this House for having shown a proper progressive test in articulating Article 100, by bringing policies on the gender rule. In the statement from the advisory from the Chief Justice, he did not consider Article 27(8) which talks about two-thirds gender rule on the political organs, departments and ministries. My question which comes to bring a conflict of the law is, if today you say that this House needs to have two-thirds gender rule, are you saying that the voters who elected us to this House did not know what they were doing as they elected us? The other question is, historically we have known that the boy child and girl child have been given the same opportunity, you want to tell the generation of today that it is serving the historical injustice in terms of implementation of activities, so that the boy child of today should not go to school to learn politics or medicine? Does it mean that that judgment from our Chief Justice means that you cut the growth of the boy child to grow the girl child?

The Chief Justice should have understood the progressive test which has been done by this House. We support anything given to our sisters, daughters, and our mothers. We support anything to improve the livelihood or anything for women. However, this judgment came like a law being implemented on the spot. It is a norm. We are in a culture where things have to grow progressively. I checked many laws that have come to this House. They give a good hand in terms of our women. It has also taken care of youth giving them opportunities. Currently, we have the NGAAF and many other opportunities for women. So, Article 27(8) needs to be revisited. The court needs to revisit that Article and understand that it cannot be 100 per cent implemented. You cannot wake up today and say that the House must be two-thirds gender compliant.

The other argument which I support this Sessional Paper for is that the policy is analysing and giving analytical state where we can follow and attain the development of a girl child. Even if you say that you give a human being a certain environment to grow by himself, he cannot. A

human being must grow within a competition. This Sessional Paper has given a good environment for the girl child to compete with the boy child. That is why I am supporting this Sessional Paper in understanding that we will have many legislations, but every legislation must follow a process. I am, therefore, arguing that this policy is good and it is better to have a legislative process about it or make a good Bill about it to operationalise Article 100, which gives two-thirds gender rule.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Let us have Hon. Ibrahim. After him, the Mover, please be ready to reply

Hon. Ibrahim Abdi (Lafey, EFP): Hon. Temporary Deputy Speaker, I rise to support this Motion. I think it has been the talk of the day that this House was almost disbanded on grounds of gender issues. Unfortunately, when we are discussing such sensitive issues, I expect the female leaders to be here, but I can just see two of them. Most of them seem to be out.

(An. Hon. Member consulted loudly)

That does not mean that my sister at the back there... I am trying to say that we expect them to aggressively push this agenda more than men. Last time, I remember when we were discussing these issues, their number in the House was low. I will urge them to ensure that they are there to push for their agenda. When we are talking about gender, it does imply that we are talking about female empowerment, but both the boy child and the girl child to be treated equally. That said, I think the disparity is clear and there is need to support an affirmative action to ensure that the same is pushed. Of course, the BBI has been so kind to the ladies because it ensures that 70 seats have been set aside to empower the female gender. Hold your horses. It is clear in the document. I am not campaigning for the BBI at this juncture, but it has been so kind to them, so that 70 seats have been set aside for female leaders and our assumption is that... Whether you call it zebra or whatever, it is in the public domain. It is clear that affirmative action has been well enshrined in that document and our expectation is that a favourable condition has been set in that document including those with disabilities like my friend who is fighting the document.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Hon. Ibrahim. Hon. Sankok, you have had quite a bit of energy this afternoon. Hon. Sankok is on a point of order.

Hon. David ole Sankok (Nominated, JP): Hon. Temporary Deputy Speaker, it is not the issue of energy. We cannot keep on misleading this House. If you are not reading the BBI Report or you are reading it backwards... There are no 70 slots for women. There is actually no single slot that has been set aside for people living with disabilities. Why is he misleading the public and the House? He is actually out of order. It is not in order to mislead the House. Where are the 70 seats for women? Where are the seats for persons with disability?

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Hon. Ibrahim! Before you came, there was...

Hon. Ibrahim Abdi (Lafey, EFP): Hon. Temporary Deputy Speaker, I think it is important to protect me. My assumption is that when we are raising points of order, a Member is expected to give us the point of order he is rising on, so that we are cognizant of the issue the Member is rising on. Hon. Temporary Deputy Speaker, I am not responding to the Member.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Ibrahim, before you came, there was a whole discussion of people getting into the BBI because Hon. Sankok will say, this is not in the BBI, Hon. Ibrahim will say, this is in the BBI. I am sure there will be a time and space when we shall discuss the BBI. For now, let us deal with gender and development.

Hon. Ibrahim Abdi (Lafey, EFP): Well guided. Of course, there will be adequate civic education on the ground and people will be conversant with the content of the document and those with opposing views will come to the field and advise us otherwise. Otherwise, I will sincerely support this position and a position where we will create a conducive environment where our ladies can competitively play political roles. Politics and development are intertwined and we cannot separate them. We can only give them conducive environment, allowing and providing them with all the required incentives.

I will urge non-State actors like NGOs to ensure that they provide adequate civic education to our ladies to ensure that they invest in this field. I have no doubt they have the highest number in this country as opposed to men. Of course, I am trying to sensitise them on their rights. Definitely, they will play their rightful role in politics and invest in ladies, of course.

(Hon. David ole Sankok consulted loudly)

It is important that when this stranger who comes from the *tangatanga* squad is out of order, it is only fair that you say he is out of order. Otherwise, I strongly support this position and no doubt, I support the BBI. I am confident that the BBI strongly supports the girl child education. There is no group of people who are called pastoralists. We are all pastoralists. We support the BBI...

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Member!

Hon. Ibrahim Abdi (Lafey, EFP): Thank you, Hon. Temporary Deputy Speaker.

(Loud consultations)

(Hon. David ole Sankok consulted loudly)

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Members! Order, Hon. Sankok!

I appreciate the energy, excitement, zeal or enthusiasm by the Members. However, we have some business to do. Hon. Mwathi, you have the Floor.

Hon. Peter Mwathi (Limuru, JP): Thank you, Hon. Temporary Deputy Speaker. From the outset, let me thank all the Members who have contributed positively to this Motion on Sessional Paper No. 2 of 2019 on the National Policy on Gender and Development. Very many issues have been brought up. From what has been said on the Floor of the House, my Committee is now very well seized of the matters and has received enrichment of the same policy issues pertaining to women, men, boys and girls. I, therefore, thank all the Members.

Secondly, it is worth noting that this document comes 20 years after the one that was written first. It largely tries to align gender issues with the Constitution, 2010 and some of the issues that have been touched here by Members who are very excited about the BBI this afternoon. The best thing to do is to discuss that document when it comes to the House. The moment you start saying what is in there or what is not there and you have not seen the document, then you will mislead the country. The issues of economic empowerment of all genders, equity and equality have been discussed. Members have contributed to them. Issues of women participation in politics, especially violence against them during political campaigns, are spoken to in this Sessional Paper.

It is also worth noting that traditionally, women have always been suppressed. It went on until a point where I heard during coffee time that even men are suppressed. The gender equality

that is being brought out by this Sessional Paper will now cut across gender. It is not about women, men, boys or girls. It is about all of them at the same time.

As I end, I want to remind Members that this Sessional Paper gives us a platform for budgeting and gender mainstreaming like what Hon. Nyikal said. It is very important for us to be seized of the matters that are ongoing currently, especially in regard to the affirmative funds which are there like the Youth Enterprise Development Fund, the Women Enterprise Fund and the Uwezo Fund. I heard a very valid point here. When you look at all those Funds, they leave one gender of a certain age out. The men who are 35 years old are not captured anywhere. As we move forward, it is an issue that we need to address. We also want to persuade this House because this Policy must be implemented. I like the suggestions which we will pick from Hon. Nyikal on monitoring, evaluation and getting gender data report from all State departments and sectors. That is very strong. We will pick it up. Hon. Members, the budget of the implementation of this Policy was Kshs500 million, but we appropriated only Kshs15 million. When the Supplementary Budget is brought to the House, let us look at this document which we have supported well.

We should look at it in a manner that we are going to put enough money to implement, monitor and evaluate how successful it is.

Hon. Speaker, with those many remarks, I beg to reply.

The Temporary Deputy Speaker (Patrick Mariru): Hon. Members, we shall put the Question for that Order at a subsequent time when it will be scheduled.

Now, we have only five minutes to 7.00 p.m. and the House must rise then. The next agenda, which Hon. Mwathi was to move, has an allocation of an hour yet we only have five minutes remaining. So, for the convenience of the House, I will direct that the next Order be picked when it is next scheduled.

ADJOURNMENT

The Temporary Deputy Speaker (Patrick Mariru): Hon. Members, the time being 6.56 p.m. this House stands adjourned until Thursday, 5th November 2020 at 10.00 a.m.

The House rose at 6.56 p.m.