

# PARLIAMENT OF KENYA

## THE NATIONAL ASSEMBLY

### THE HANSARD

Tuesday, 9<sup>th</sup> November 2021

The House met at 2.30 p.m.

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

#### PRAYERS

#### MESSAGES

**Hon. Speaker:** Hon. Kangogo, Member for Marakwet East, please, walk in.  
Hon. Members, this is a Message from the Senate.

#### PASSAGE OF BILLS BY THE SENATE

**Hon. Speaker:** Hon. Members, pursuant to the provisions of Standing Order 41, I wish to report to the House that I have received a Message from the Senate regarding its passage of the following six Bills:

- (i) The Public Private Partnerships Bill (National Assembly Bills No. 6 of 2021);
- (ii) The Health (Amendment) Bill (Senate Bills No. 26 of 2020);
- (iii) The Investment Promotion (Amendment) Bill (Senate Bills No. 2 of 2021);
- (iv) The Office of the County Printer Bill (Senate Bill No. 13 of 2021);
- (v) The Disaster Risk Management Bill (Senate Bills No. 14 of 2021); and
- (vi) The County Boundaries Bill (Senate Bills No.20 of 2021).

Hon. Members, the first Message is in respect of the passage of the Public Private Partnerships Bill (National Assembly Bill No.6 of 2021). Members will recall that this Bill, which sought to “provide for the participation of the private sector in the financing, construction, development, operation or maintenance of infrastructure or development projects through public private partnerships”, was passed by the National Assembly on 30<sup>th</sup> June 2021. The Message conveys in part, “That the Senate considered and passed the said Bill with amendments on Thursday, 21<sup>st</sup> October, 2021 and now seeks the concurrence of the National Assembly in accordance with the provisions of Article 112(1) (b) of the Constitution.” Consequently, the Senate has proposed amendments to Clauses 6, 33 and 75 and inserted New Clauses 75A, 75B, 75C and 75D.

Hon. Members, the second Message relates to the passage of the Health (Amendment) Bill (Senate Bill No.26 of 2020) published *vide* Kenya Gazette Supplement No.198 of 19<sup>th</sup> November 2020 and passed with amendments on 21<sup>st</sup> October 2021. The Bill seeks “to amend the Health Act, to enhance the functions of the Kenya Human Resources Advisory Council in order to empower

it to advise the national and the respective county governments on health human resources and for connected purposes.”

Hon. Members, the third Message is in respect of the passage of the Investment Promotion (Amendment) Bill (Senate Bill No.2 of 2021) published vide *Kenya Gazette* Supplement No.11 of 12<sup>th</sup> February 2021 seeking “to amend the Investment Promotion Act, to ensure the participation of county governments in the promotion of trade in the country and for connected purposes.” The Bill was passed with amendments on Thursday, 21<sup>st</sup> October 2021.

Hon. Members, the fourth Message is in respect of the passage of the Office of the County Printer Bill (Senate Bill No.13 of 2021) which sought “to establish the office of the County Printer in each county, to provide for the functions, mandate, management and administration of the office, and for connected purposes.” The Bill was published vide *Kenya Gazette* Supplement No.11 of 12<sup>th</sup> February 2021 and passed with amendments on Thursday, 21<sup>st</sup> October 2021.

Hon. Members, the fifth Message relates to the Disaster Risk Management Bill (Senate Bill No.14 of 2021), which seeks to “establish the National Disaster Risk Management Authority and County Disaster Risk Management Committees; to provide a legal framework for the coordination of disaster risk management activities and for connected purposes.” The Bill was published vide *Kenya Gazette* Supplement No.34 of 12<sup>th</sup> March 2021 and passed without amendments on Thursday, 21<sup>st</sup> October 2021.

The sixth Message relates to the County Boundaries Bill (Senate Bills No. 20 of 2021) published vide *Kenya Gazette* Supplement No.42 of 23<sup>rd</sup> March 2021 and passed with amendments on Thursday 21<sup>st</sup> October 2021.

The Bill seeks to “provide for county boundaries; to provide for a mechanism for the resolution of county boundary disputes; to give effect to Article 188 of the Constitution by providing for the procedure for alteration of county boundaries; to provide for the establishment of an independent county boundaries commission, and for connected purposes.

Hon. Members, as you may have noticed, all those Bills were passed on the same day on 21<sup>st</sup> October because the other House passes in delegation. After Mashujaa Day, the delegates were able to come. The Senate, having considered and passed the six Bills, now seeks the concurrence of this House.

Our Standing Orders require the Speaker to cause a Bill received from the Senate to be read a First Time upon conveyance of its Message. The House Business Committee will schedule the five Senate Bills for First Reading in tomorrow’s afternoon’s Order Paper. After the First Reading and pursuant to the provisions of Standing Order No.127, the Bills will be referred to the respective committees as follows:

- (i) The Health (Amendment) Bill (Senate Bills No.26 of 2020) will stand committed to the Departmental Committee on Health;
- (ii) The Investment Promotion (Amendment) Bill (Senate Bills No.2 of 2021) will stand committed to the Departmental Committee on Trade, Industry and Cooperatives;
- (iii) The Office of the County Printer Bill (Senate Bills No.13 of 2021) will stand committed to the Departmental Committee on Administration and National Security;
- (iv) The County Boundaries Bill (Senate Bills No.20 of 2021) will stand committed to the Departmental Committee on Justice and Legal Affairs; and
- (v) The Disaster Risk Management Bill (Senate Bills No.14 of 2021) will stand committed to the Departmental Committee on Administration and National Security of this House.

Hon. Members, in considering the Bills, the said committees will be expected to, among other things, apply themselves to the provisions of Articles 109(5) and 114 of the Constitution relating to origination and definition of a money Bill and make appropriate recommendations to the House as required by the Constitution. The Committees should also refer to my Message dated 30<sup>th</sup> September 2021 on consideration of Senate Bills. The reports of the respective committees shall assist in guiding the House with respect to the next stages and prioritisation of the said Bills, especially given the fact that three of the Bills, namely, the Office of the County Printer Bill, the County Boundaries Bill and the Disaster Risk Management Bill, appear to have been republished by the Senate. I, therefore, request the committees to prioritise the five Senate Bills in their respective agenda.

Hon. Members, with regard to the Public Private Partnerships Bill (National Assembly Bills No.6 of 2021), I direct the Clerk to circulate the amendments to all Members in accordance with Standing Order No.145.

Further, the Senate amendments on the Bill are hereby committed to the Departmental Committee on Finance and National Planning for consideration. The Committee is expected to submit its report before the amendments are considered by the House. For avoidance of doubt, the House is reminded that the National Assembly will only consider the amendments made by the Senate to the Bill and not any other part of the Bill.

I thank you, Hon. Members.

Members can make their way in before I deliver the other Message.

*(Several Hon. Members walked into the Chamber)*

I thought those Members who were standing there were on their way coming in. Some are just signing and taking off to the toilets. I thought the intention was to come in.

REQUEST FOR NOMINATION FOR APPOINTMENT  
TO THE EQUALISATION FUND ADVISORY BOARD

Hon. Members, this is a Message from the National Executive and it relates to a request for nomination of a person for appointment to the Equalisation Fund Advisory Board.

Pursuant to the provisions of Standing Order No.42(4) relating to Messages received from a Cabinet Secretary, I wish to convey to the House that I have received a Message from the Cabinet Secretary for the National Treasury and Planning requesting for nomination of a person for appointment to the Equalisation Fund Advisory Board. This is in accordance with the requirements of the Public Finance Management (Equalisation Fund Administration) Regulations, 2021.

Hon. Members, Regulation 4(1) of the Public Finance Management (Equalisation Fund Administration) Regulations, 2021 provides as follows:

“(4) (1) There is established an advisory board to be known as the Equalisation Fund Advisory Board which shall comprise of —

- (a) the Chairperson who shall be appointed by the Cabinet Secretary;
- (b) the Principal Secretary to the National Treasury or his representative designated in writing;
- (c) the Principal Secretary for matters relating to devolution or his or her representative designated in writing;
- (d) one person from a pastoralist community nominated by the National

Assembly;

(The emphasis is on pastoralist community. So, please, do not write to me. It is not me. I know some of you have written to me. Do not write those kind of letters because you will start circulating them on social media that you have written to me. It is not me. It is one person from a pastoralist community nominated by the National Assembly. It is not by the Speaker)

- (e) one person nominated by the Senate;
- (f) one person nominated by the Council of Governors drawn from the areas defined as marginalised;
- (g) the Chief Executive Officer who shall be the secretary to the Board; and,
- (h) three other persons nominated from organisations working in Equalisation Fund beneficiary counties and special interest groups, appointed by the Cabinet Secretary.”

Hon. Members, Regulation 5 further provides for the qualifications of persons appointed under paragraphs (a), (d), (e), (f), and (h) as follows, and (d) is one of those ones from the pastoralist communities.

*(Hon. Jimmy Angwenyi spoke off record)*

Hon. Jimmy Angwenyi does not qualify.

- a) a citizen of Kenya (even though you are one);
- b) holds a degree from a university recognised in Kenya (even if he does);
- c) has at least five years’ professional experience in a relevant field (even though he has);
- d) meets the requirements of Chapter Six of the Constitution, (I suspect he may be).

Hon. Members, in this regard, the Cabinet Secretary for the National Treasury and Planning is requesting the National Assembly to nominate a Member for subsequent appointment in line with the Public Finance Management (Equalisation Fund Administration) Regulations, 2021, to enable full operationalisation of the Equalisation Fund.

Hon. Members, I think this is important because this House has really deliberated on the issue of this Fund. Hon. Members, this is a relatively new procedure as the House is not typically involved in the nomination of persons to public offices. As such, even as I refer this Message to the Departmental Committee on Finance and National Planning for consideration, I wish to give some further guidance. The Committee will be required to convert itself into a selection panel and undertake an exercise to competitively recruit and interview suitable candidates. The Committee will then be expected to submit its report on the successful nominee to the House within set timelines for consideration by the House for nomination to the Cabinet Secretary.

The House is, therefore, accordingly guided. Thank you.

## PAPERS LAID

Let us have the Whip of the Majority Party.

**Hon. Emmanuel Wangwe** (Navakholo, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Legal Notice No. 163 of 2021 relating to the Retirement Benefits (Individual Retirement Benefit Schemes) (Amendment) Regulations 2021;

Legal Notice No. 164 of 2021 relating to the Retirement Benefits (Occupational Retirement Benefit Schemes) (Amendment) Regulations 2021;

Legal Notice No. 165 of 2021 relating to the Retirement Benefits (Umbrella Retirement Benefit Schemes) (Amendment) Regulations 2021;

Legal Notice No. 212 of 2021 relating to the Partnerships, Limited Partnerships Regulations 2021;

Audited Financial Statement for Laikipia University for the year ended 30<sup>th</sup> June 2019.

Report of the Auditor-General on the Financial Statement of Coast Development Authority for the year ended 30<sup>th</sup> June 2019.

Report of the Auditor-General on the Financial Statements of Karumo Technical Training Institute for the year ended 30<sup>th</sup> June 2019.

Report of the Auditor-General on the Financial Statements of Water Resources Authority for the year ended 30<sup>th</sup> June 2019.

Report of the Auditor-General on the Kenya Institute of Supplies Management for the year ended 31<sup>st</sup> December 2019.

The Consolidated National Government Investment Report for the Financial year 2020/202; and,

Report of the Auditor-General and Financial Statements of the National Government—Constituencies Development Fund in respect of the following constituencies for the year ended 30<sup>th</sup> June 2019 and the certificates therein:

- a. Chagamwe Constituency;
- b. Mavoko Constituency;
- c. Kilome Constituency;
- d. Buuri Constituency;
- e. Kinango Constituency;
- f. Runyenjes Constituency;
- g. Taveta Constituency;
- h. North Horr Constituency;
- i. Ndia Constituency;
- j. Jomvu Constituency;
- k. Moyale Constituency;
- l. Gem Constituency;
- m. Bondo Constituency.
- n. Kisumu Central Constituency;
- o. Rongo Constituency; and
- p. Nyaribari Masaba Constituency.

Thank you, Hon. Speaker.

**Hon. Speaker:** The Vice-Chairperson, Departmental Committee on Finance and National Planning, Hon. Waihenya Ndirangu.

**Hon. Isaac Ndirangu** (Roysambu, JP): Thank you, Hon. Speaker. I beg to lay the following Papers on the Table of the House:

Report of the Departmental Committee on Finance and National Planning on its consideration of nominees for appointment as members of the Privatisation Commission and the Competition Authority of Kenya respectively.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Shamalla.

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Justice and Legal Affairs on its consideration of nominees for appointment as members of the Ethics and Anti-Corruption Commission.

**Hon. Speaker:** Very well. Next Order.

### NOTICES OF MOTIONS

#### NOMINEES FOR APPOINTMENT AS MEMBERS OF THE PRIVATISATION COMMISSION AND COMPETITION AUTHORITY OF KENYA

**Hon. Isaac Ndirangu** (Roysambu, 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 Finance and National Planning in its report on its consideration of nominees for appointment as members of the Privatisation Commission and the Competition Authority of Kenya, laid on the Table of the House on Tuesday, 9<sup>th</sup> November 2021, and pursuant to the provisions of Section 5(1)(d) of the Privatisation Act 2005 and Section 10(b) of the Competition Act 2010, respectively, and Sections 3 and 8 of the Public Appointments (Parliamentary Approval) Act 2011, this House approves the appointment of the following persons to the respective institution:

- a. Privatisation Commission
  1. Dr. Edward Kombuthi, PhD - Member
  2. Irene Njeri Wanyoike - Member
  3. Ms. Celine Anyango Orata - Member
  4. Mr. Salah Adan Abdi - Member
  5. CPA David J. O. Nyakang'o - Member
  6. Amb. Wellington Pakia Godo - Member
- b. Competition Authority of Kenya:
  1. Ms. Lena Munuve - Member
  2. Ms. Alome K. Achayo - Member.
  3. Dr. David Wanyonyi Wanyama - Member
  4. Mr. Abdi A. Mohamed - Member

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Shamalla.

#### NOMINEES FOR APPOINTMENT TO THE ETHICS AND ANTI-CORRUPTION COMMISSION

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Hon. Speaker, I beg to give notice of the following Motion:

THAT, taking into consideration the findings of the Departmental Committee on Justice and Legal Affairs in its report on its consideration of nominees for appointment as members of the Ethics and Anti-Corruption Commission, laid of the Table of the House on Tuesday 9<sup>th</sup> November 2021 and pursuant to the provisions of Section 10(3) of the Ethics and Anti-Corruption Commission Act 2011 and Sections 3 and 8 of the Public Appointments (Parliamentary Approval)

Act 2011, this House approves the appointment of Col. (Rtd.) Alfred Mutweta Mshimba and Dr. Monica Wanjiru Muriu as members of the Ethics and Anti-Corruption Commission.

**Hon. Speaker:** Next Order.

## ORDINARY QUESTIONS

*Question No. 447/2021*

### RECLASSIFICATION OF MUNGATSI-MUYANGA-KIMAETI- LWAKHAKHA ROAD

**Hon. Oku Kaunya** (Teso North, ANC): Thank you, Hon. Speaker for according me this opportunity. I rise to ask Question No. 447/2021 directed to Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works:

- (i) Does the Ministry have any plans to re-classify Mungatsi- Muyanga-Kimaeti-Lwakhakha Road (C32) which passes through a number of constituencies including Teso North Constituency and to upgrade it to bitumen standards?
- (ii) Out of the total funds allocated towards construction of the said road, how much has been disbursed and utilised to date considering the contractor is yet to commence any works?
- (iii) What steps is the Ministry taking to ensure that construction of the said road commences and is completed on time?

Thank you, Hon. Speaker.

**Hon. Speaker:** The Question will be replied before the Committee of Hon. Pkosing. The next Question is by the Member for Tharaka, Hon. Murugara.

*Question No. 448/2021*

### PAYMENT OF BENEFITS TO FORMER COUNCILORS

**Hon. George Gitonga** (Tharaka, DP): Thank you very much, Hon. Speaker. I rise to ask Question No. 448 of 2021 directed to the Cabinet Secretary for National Treasury and Planning.

- (i) Could the Cabinet Secretary state how much money has been set aside for payment of pensions, gratuities and other benefits to former councillors who served in the former county councils between 1963 and 2012?
- (ii) Could the Cabinet Secretary state how many of these former councillors are set to benefit from the allocation?
- (iii) When does the Ministry plan to release the payments to the respective former councillors?

Thank you, Hon. Speaker.

**Hon. Speaker:** The Question will be replied before the Departmental Committee on Finance and National Planning.

The next Question is by Nominated Member, Hon. Dennitah Ghati, who has requested for its deferment, which I acceded to. Therefore, the Question is deferred to 16<sup>th</sup> November 2021.

*Question No. 451/2021*

CONSTRUCTION STATUS OF NGURUNA GENDER BASED  
VIOLENCE AND WOMEN CENTRE IN MIGORI COUNTY

*(Question deferred)*

The next Question is by the Member for Kericho County, Hon. Florence Bore.

*Question No. 452/2021*

OWNERSHIP STATUS OF LAND OCCUPIED BY BOMAS OF KENYA LIMITED

**Hon. (Ms.) Florence C.K. Bore** (Kericho CWR, JP): Thank you, Hon. Speaker. I rise to ask Question No. 452/2021 to the Cabinet Secretary for Lands and Physical Planning:

- (i) Could the Cabinet Secretary provide the ownership status and the total acreage of land occupied by the Bomas of Kenya Limited in Lang'ata Constituency, Nairobi County?
- (ii) Could the Cabinet Secretary explain why the Bomas of Kenya Limited was not compensated like any other Government agency when part of its land was acquired compulsorily by the Government?

Thank you, Hon. Speaker.

**Hon. Speaker:** The Question will be replied to before the Departmental Committee on Lands.

The Next Question is by the Member for Marsabit County, Hon. Safia Abdi.

*Question No.458/2021*

STATUS OF WATER SUPPLY PROJECTS IN MARSABIT COUNTY

**Hon. (Ms.) Safia Sheikh** (Marsabit CWR, JP): Thank you, Hon. Speaker. I rise to ask Question No.458/2021 to the Cabinet Secretary for Water and Sanitation:

- (i) What plans has the Ministry put in place to establish more water supply projects in Marsabit County and in particular Saku Constituency to curb increased water shortage in Marsabit County?
- (ii) What measures has the Ministry put in place to ensure that majority of households are able to get access to water for their livestock and home use, which will go a long way in reducing conflicts in Marsabit County?

Thank you, Hon. Speaker.

**Hon. Speaker:** The Question will be replied to before the Departmental Committee on Environment and Natural Resources.

The next Question is by the Member for Tetu, Hon. James Gichuhi.

*Question No. 461/2021*

REGULATION AND CERTIFICATION OF ANIMAL FEEDS AND DRUGS



**Hon. James Gichuhi** (Tetu, JP): Thank you, Hon. Speaker. I rise to ask Question No. 461 of 2021 to the Cabinet Secretary for Trade, Industry and Cooperatives:

- (i) What steps is the Ministry taking to compensate Ms. Maureen Wayaga, a rabbit farmer from Tetu Constituency, who lost 500 rabbits after feeding them with rabbit pellets bought and supplied by M/s Unga Feeds Limited PLC, which allegedly contained high levels of aflatoxins despite the products having been certified by Government agencies such as the Kenya Bureau of Standards?
- (ii) What steps is the Ministry taking to ensure that all the regulated and certified animal feeds and drugs are safe for use by farmers and no farmers continue losing their livestock as result of the mentioned incident?

**Hon. Speaker:** The Question will be replied to before the Departmental Committee on Trade, Industry and Cooperatives.

The next Question is by the Member for Tharaka-Nithi County, Hon. Beatrice Nyaga who has written to request deferment to 17<sup>th</sup> November 2021. The request is acceded to. Therefore, the Question will be asked on 17<sup>th</sup> November 2021.

*Question No. 462/2021*

COMPENSATION FOR RESIDENTS RELOCATED IN MAARA CONSTITUENCY

*(Question deferred)*

The next Question is by the Member for Navakholo, the Majority Whip.

*Question No. 463/2021*

DISCHARGE OF MR. BARASA BOB MARVIN FROM KENYA DEFENCE FORCES

**Hon. Emmanuel Wangwe** (Navakholo, JP): Thank you, Hon. Speaker. I rise to ask Question No. 463 of 2021 to the Cabinet Secretary for Defence:

- (i) Could the Cabinet Secretary provide a detailed report including a medical report, if any, that necessitated the discharge of Mr. Barasa Bob Marvin of KDF No.159544 from the Kenya Defence Forces on 14<sup>th</sup> July 2021, while undergoing training at the Recruit Training School in Eldoret?
- (ii) What assistance is the Ministry extending to Mr. Barasa following his discharge from service?

**Hon. Speaker:** The Question will be replied to before the Departmental Committee on Defence and Foreign Relations.

Next Order!

**BILLS**

*First Readings*

THE ELECTION CAMPAIGN FINANCING (AMENDMENT) BILL

THE ELECTIONS (AMENDMENT) BILL

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## THE PETROLEUM PRODUCTS' (TAXES AND LEVIES) (AMENDMENT) BILL

## THE ADVOCATES (AMENDMENT) BILL

*(Orders for First Readings read - Read the First Time and ordered to be referred to the relevant Departmental Committees)*

**POINT OF ORDER**

## REVIEW OF COVID-19 PROTOCOL GUIDELINES ON SEATING ARRANGEMENT IN THE CHAMBER

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

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

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I rise under Standing Order No.259 (1) and Standing Order No.1.

One year ago, you issued COVID-19 protocol guidelines in as far as seating arrangement in this Chamber is concerned. Your first guideline was on 60 Members sitting inside the Chamber and you later reviewed it to 120 Members. You are one of the leading pack of many leaders in our country who asked for the country to be opened. The country has now been opened, curfew has been lifted and 99 per cent of the Members of this House have been vaccinated as well as our staff.

I want to indulge you. Given that the Legislature is very critical in dispensing its legislative matters of representation, legislation and oversight, I want to urge you to give direction and open the House to all Members in line with the current COVID-19 protocols, so that every Member can sit on a chair with a microphone and participate.

We really want your guidance on this matter because we have gone very far in terms of vaccination, not only in this House, but even in the whole country, which has reached some very substantial level. The only thing I will ask is that maybe, you restrict the number of visitors coming to the precincts of Parliament. I want to ask you to allow us to exercise our functions in accordance with Articles 93, 94 and 95 of the Constitution so that we can be part of the country. The Judiciary is gradually opening up. I want you to give further guidance that this House comes back to normal. Our staff are back to normal and we only need to comply with the current COVID-19 protocols and be part of the country. I want to ask you to give direction on that matter.

**Hon. Speaker:** Is this a matter that people want to weigh in on? Member for Ndaragwa.

**Hon. Jeremiah Kioni** (Ndaragwa, JP): Thank you, Hon. Speaker. I want to appreciate the point raised by Hon. Duale, but even as you consider that request, it is important that we still maintain some social distance. It is one of the most important things that we can do so that everyone is comfortable as they transact business, not just within the House, but even outside.

**Hon. Speaker:** Hon. Shamalla.

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Thank you, Hon. Speaker. While I take cognizance of the fact that it is important for every Member of Parliament to contribute from within the chamber, my concern is that even now, we are not complying with the current COVID-19 regulations. Hon. Duale has said that we should sit where there is a microphone. I am concerned because we do not want to get into a situation where we have shouting matches or confrontations within the chamber and some Members are not wearing their masks. Majority of the Members have complied, but there are some who do not wear their masks or maintain social distancing.

Hon. Speaker, as you make a decision on this, I humbly request that you take those issues into consideration.

**Hon. Speaker:** Hon. Shamalla, did you say that there are some Members who do not have their masks on?

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Not right now, but sometimes. If you look in that direction, you will see Members without masks. I can see, at least, two on this side. One has covered up and there is another one.

**Hon. Speaker:** Is that Hon. Abdullswamad? Is he the one you may be referring to?

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): It might be. I cannot see clearly.

**Hon. Speaker:** Is it Hon. Bashir? I am trying to look around to see who does not have a mask on. Anyhow, your point is made, Hon. Shamalla.

Let us have Hon. Wachira Kabinga.

**Hon. Josphat Kabinga** (Mwea, JP): Thank you, Hon. Speaker. While I support Hon. Duale on this, you need to be guided by the fact that we are not saying that COVID-19 has been fully eradicated in the country. The COVID-19 pandemic is still with us and, therefore, you may probably want to consider increasing the number of Members, but not opening up the House completely. As you do so, I urge that we continue observing the current COVID-19 regulations. Even as my brother, Hon. Duale, was addressing this issue, he was not wearing a mask. That is not very good for us.

**Hon. Speaker:** Let us have the Member for Tharaka.

**Hon. George Gitonga** (Tharaka, DP): Thank you very much, Hon. Speaker. I also support that we need to reconsider our position. We know very well that some of the COVID-19 rules and regulations are still in force. Most importantly, we have to learn to live with the disease. It is part of life and we have to be careful at all times to ensure that our safety and that of Kenyans is taken care of.

We are not oblivious to the fact that we are heading towards an election year and political rallies have started. What we are seeing is not anywhere near compliance with the COVID-19 rules and regulations. That notwithstanding, we cannot throw caution to the wind. Let us be observant and encourage the country to continue observing the COVID-19 rules and regulations.

**Hon. Speaker:** Let us have the Member for Ndhiwa.

**Hon. Martin Owino** (Ndhiwa, ODM): Thank you, Hon. Speaker. As much as the curfew has been lifted, it is important to realise that we are dealing with a very mutative virus. In other countries, breakthrough infections have been realised and those countries are back to another wave. You can increase the number of Members in the House, but COVID-19 protocols like wearing masks, social distancing and others must be enforced.

Lastly, if I look at the age bracket of the Members here, they are still at risk. We should not lower our guard.

**Hon. Speaker:** Let us have the Member for Emurua Dikirr.

**Hon. Kipyegon Ngeno** (Emurua Dikirr, KANU): Thank you, Hon. Speaker. I also wish to voice my concerns on the same. Notwithstanding the lifting of the curfew, we politicians are hypocrites. We issue regulations in this House and try to follow them strictly, but when we go out there, we hold rallies like it is normal. Sometimes I wonder whether we suspend the Coronavirus when we go for rallies out there and then bring it here when we come back. As much as we want to follow the COVID-19 rules, regulations and protocols, let us not be hypocritical.

Allow Members to come to the House. We are almost adjourning. We need to deal with all the business here. We want to adjourn and go back home.

**Hon. Speaker:** Let us have the Member for Kilifi North.

**Hon. Owen Baya** (Kilifi North, ODM): Hon. Speaker, I support Hon. Duale's sentiments. I agree with him that it is time to allow Members to come to the House. As the Member for Emurua Dikirr has said, we have seen massive rallies conducted by politicians out there, the same people who come to this chamber and tell us that we have to sit in a certain way. They do not do that out there when they hold rallies. Hon. Speaker, you have been out there in rallies and you do not tell the crowds to sit one metre apart. It is important that we open up so that Members can exercise their mandate.

Yesterday, I saw that the positivity rate was around 0.6 per cent, namely, 20 people out of 3,600. The vaccination exercise is going on and almost everyone in this House has been vaccinated. It is time the House is opened for Members to exercise their mandate without any restrictions. Of course, we will keep the masks on, but I would like to sit near my brother. I always sit here, but today I have been displaced. I am the acting Leader of the Minority Party for today. However, I want to go back to my seat, exchange ideas with my brother and debate like we have always done. Hon. Speaker, open the House.

**Hon. Speaker:** Let us have the Member for Yatta.

**Hon. Charles Kilonzo** (Yatta, Independent): Hon. Speaker, I am of a contrary view. As you make your ruling, you need to borrow from countries that have effectively controlled the COVID-19 pandemic.

In Europe, you cannot enter Parliament unless you are vaccinated. There are Members of this House who have refused to get vaccinated. We cannot force them. However, being vaccinated does not mean that you cannot contract COVID-19. As you make your ruling, consider that COVID-19 is still there. The latest report is that COVID-19 has hit Germany at a higher rate than ever before. As you make your ruling, consider the fact that we have visitors coming to Parliament. Must they be vaccinated before coming here as is the practice in countries which have been worst hit? Also, what do we do with Members who have refused to get vaccinated and still want to come to Parliament?

**Hon. Speaker:** Let us have the Member for Kiminini.

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD-K): Thank you, Hon. Speaker. Currently, the country has been opened up. In terms of vaccination, we assume that the House is 100 per cent vaccinated. Anyone unwilling to be vaccinated should not be allowed to come into the House.

I flew to the United States of America about two weeks ago, where I was invited to the Senate, and things are totally different. They are only maintaining the wearing of masks and sanitisation. My humble request is that we allow everything to go on, but we maintain putting on of masks and sanitisation, which the House has done very well.

As I conclude, I also want the House to know that I am the new Secretary-General of FORD-K, elected by the National Delegates Conference (NDC). I thank them. I am the *de jure* Secretary General of FORD-K. I humbly request Members to join the Simba Party, so that we are part of the next Government.

**Hon. Speaker:** Let us have the Member for Saku.

**Hon. Ali Rasso** (Saku, JP): Thank you very much, Hon. Speaker. I wish to add my voice to what Hon. Duale has raised. This is the House of people's representatives in Kenya. It is constituted of 349 Members, but only 112 are able to sit in here. In that case, almost two-thirds of the House is missing at every sitting. My colleagues have raised the issue that COVID-19 is still with us and that people have been vaccinated. Those are all issues out there. However, you should use your wisdom as you have always done under Standing Order No.1 to increase the number of

Members by two-thirds or by another one-third. Currently, we only have one-third of the Members in the House. The Order Paper has some very important issues that are coming up and many Members must be present to debate or contribute to them.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Emuhaya.

**Hon. Omboko Milemba** (Emuhaya, ANC): Thank you Hon. Speaker for giving me this chance. I thank Hon. Duale for moving the issue of COVID-19 and the opening up of our chamber.

Hon. Speaker, when you will be considering the matter, you should also put in mind the fact that we were here before the recess and rarely did we have a full House even though the COVID-19 rules were in place. That means that even the protocols you had put in place in the National Assembly have been overtaken by events such that, at no given time before we went on recess was the House full. When making the decision, Hon. Speaker, have in mind that the tents that were pitched out there to provide extra sitting space are no longer there and nobody thinks about them. That also includes the space outside the chamber. It means that somewhat we are unable to accommodate the Members who are available. Given that we are approaching elections and there are times when certain decisions may have to be taken here where everybody has to participate, I propose, Hon. Speaker, that kindly retain the health protocols but, at the same time, open the House to all Members so that there is no excuse from anyone, especially when we will be dealing with the Bill on petroleum. You know one might say that one could not enter the House because of the COVID-19 protocols.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Lamu.

**Hon. (Ms) Ruweida Obo** (Lamu CWR, JP): Ahsante, Mhe. Spika. Naona ikifunguliwa au isifunguliwe, yote ni sawa. Kupata akidi katika Jumba hili ni taabu sasa. Kwa hivyo, ifunguliwe au isifunguliwe ni kuwapatia nafasi wengine ambao wanatafuta sababu. Kupata akidi imekuwa shida. Kwa hivyo, vyovyote vile, ni sawa.

Ahsante, Mhe. Spika.

*(Laughter)*

**Hon. Speaker:** Hon. Keynan.

**Hon. Adan Keynan** (Eldas, JP): Thank you, Hon. Speaker. Let us not trivialise a very important issue. Since the onset of COVID-19, we have lost many dear friends who were here with us. I know death is natural. I am surprised because this is not an issue that requires debate but common sense.

Hon. Speaker, if I were you, and I appeal to you... This is august House. It is not a village market nor an extension of the village *barazas*. We are dealing with the lives and health of the leadership of the Republic of Kenya. It is not something we can trivialise. I plead with you to disregard that appeal and urge Members who have not been vaccinated to get vaccinated. In fact, let us lead by example and ensure that we are number one in observing the health protocols. I know right now everyone is trying to create a niche and space for certain things. That is not the issue. This is not an issue that requires petty politics. It is about our lives, our health and existence.

I plead with you, Hon. Speaker, to disregard the request from my colleagues and continue to show leadership. There are countries like Israel, United States of America and Italy that lifted the health protocols and within a very short time, they saw a sudden surge in new cases and lost many people. Let us not be misled by the decrease in the numbers. Maybe, God has a reason for

it. I plead with you, Hon. Speaker, that kindly, let us lead by example by observing the COVID-19 health protocols. A time will come for the health protocols to be lifted for the whole country but, for now, this is Parliament. Let us be a good example to other Kenyans.

I oppose the request by my colleague that the health protocols be lifted. Thank you, Hon. Speaker.

**Hon. Speaker:** That is the way it is done in Parliament. You oppose or support. Since the appeal was made to me, leave it to me. But it is important for me to hear a few of you. Let me hear the Member for Mavoko.

**Hon Patrick Makau** (Mavoko, WDM-K): Thank you, Hon. Speaker. I have a lot of respect for Hon. Duale.

The one million dollar question we should ask ourselves is this: How many Kenyans have been vaccinated so far? How many Parliamentarians in this House have been vaccinated? I agree with Members who have said that we should not trivialise the COVID-19 matter. It is a disease that mutates every day. If in a first world country like Russia people are dying every day, what about us Kenyans? Where are we Kenyans? How can we assume that filling this House is a way of making it active? At what point did we fill this House in the last four months? I agree with Members that let us observe the COVID-19 protocols until the time we will be okayed by the Ministry of Health and the world over.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Alego Usonga.

**Hon. Samuel Atandi** (Alego-Usonga, ODM); Thank you, Hon. Speaker. I agree with everyone that it is important for us to observe the health protocols. But in line with the new regulations where the country is now free, it is important for us to free this House also.

When Members complain that if we fill the House we will be exposed to COVID-19, let us also remember that some of the Members attend very large political rallies out there and do not care about the health of the members of the public. Last week, Hon. Duale was in a very big rally in Juja where he even accused the President of some stuff. So, let us lead by example by avoiding large rallies and when we come here, let us free Members. In fact, there are some Members who have not had a chance to speak in this House because of the COVID-19 protocols. When are they going to speak as their constituents are waiting for them? Let us free the House. That is my view. Thank you.

**Hon. Speaker:** Member for Kitutu Chache North.

**Hon. Jimmy Angwenyi** (Kitutu Chache North, JP): I do not have a card.

**Hon. Speaker:** That is the more reason you should not speak.

**Hon. Jimmy Angwenyi** (Kitutu Chache North, JP): Thank you Hon. Speaker for giving me a chance to contribute on this emotive issue.

We should not treat COVID-19 normally, otherwise, it will treat us abnormally. We have seen countries which have been able to manage COVID-19 like New Zealand and China but, when they have two or three new cases of COVID-19, they close down their borders. We must protect ourselves. How many people have died of COVID-19, but we are not told the truth? Members who have passed on in the last one year died of COVID-19. Many of our constituents are dying of COVID-19. Let us not copy a bad example because some of the politicians are holding political rallies all over the country without wearing masks. We should not copy wrong examples. This House should provide an example of how Kenyans should behave against COVID-19. Hon. Speaker, I beg you not to allow what my former boss is asking for. Do not allow it because you will be condemning us to death.

Thank you, Hon. Speaker.

**Hon. Speaker:** I know you rarely come into the Chamber on account of...

*(Laughter)*

Member for Seme.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Speaker. This is an issue that cannot be decided by numbers or voting. This is a technical issue. When we closed, we did so on technical grounds. Even during the opening of the country basically, the only thing that happened was that the curfew was lifted. But even the announcement that removed the curfew indicated that all the other measures like social distancing, sanitising and wearing of masks should remain. So, this House cannot go ahead and disobey that because we will be giving a wrong message contrary to what the President said.

Secondly, being vaccinated is not full proof. The only sure thing is that if you are vaccinated and get the disease, you have a lesser chance of getting serious illness. However, you can get the disease and spread it and this is still happening. We are comparing ourselves with other countries which are opening up and yet, they have done 60 to 70 per cent vaccination. We are at about 2 or so per cent vaccination of the whole population. So, how can we make that comparison?

Further, even the countries with 60 or 70 per cent vaccination which have opened up are having problems. Europe is having problems and I am sure it is the same thing in Britain. I know people there. The numbers are going up! Similarly, in Germany the numbers are going up. Israel was the first country to achieve 100 per cent vaccination, but the numbers are going up. So, I think it would be wrong to make a decision on the basis of what we feel politically. It has to be upon technical advice. We should not open this House until we have data indicating that we do so.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Kitutu Masaba.

**Hon. Shadrack Mose** (Kitutu Masaba, JP): Thank you, Hon. Speaker, for giving me a chance to also add my voice to this very emotive matter. COVID-19 is still ravaging the country. We want to invoke your discretion because currently, about 112 Members are attending the Sitting. Through your discretion, I want to urge that this number be slightly increased. I also urge the Members present who have not been vaccinated to get vaccinated. This is because if you are seated here and you have not been vaccinated, it shows you are irresponsible. We need to follow the laid down conditions. It will do us no harm if you increase the numbers to a level that will resonate with what is happening in the country.

Hon. Speaker, with that, I urge you to increase the numbers.

**Hon. Speaker:** Member for Mvita.

**Hon. Abdullswamad Nassir** (Mvita, ODM): Ahsante, Mhe. Spika. Nakubaliana na alivyozungumza Mhe. Duale, kwamba tusiwe watu wanaozungumza lugha nyingine hapa na kule nje tunazungumza lugha tofauti. Siyo kuwa Wakenya hawatuoni. Kila mmoja hapa ikifika siku ya Ijumaa, anarejea mashinani na hadhara ya watu wanaomzingira si chache. Kisha hapa tuweka sheria yani sisi wenyewe kifalme falme hatufai kukaa baina ya watu wawili. Lakini tukifika kule nje, hakuna hata siku moja umesikia mtu akizungumza katika mkutano wa hadhara wa kisiasa kwamba watu wapeane nafasi ndiyo wavute pumzi.

Wengi hapa wamezungumza kuwa kuna matatizo katika nchi zingine ambazo idadi ya watu waliochanjwa ni kubwa. Lakini pia tukumbuke kuwa Mwenyezi Mungu alivyoamua yeye hapa vifo vyetu si vingi kama vya kule. Huku miili yetu imebarikiwa. Mhe. Spika kama unakumbuka, kuna ile Hoja yangu kwamba ni lazima nchi ifunguliwe sasa hivi. Suluhisho ni kuwa anayetaka

kuingia katika Jumba hili lazima aonyeshe cheti chake kuwa amedungwa sindano ya chanjo na watu waendeleo kuishi maisha yao. Kila wakati tunaketi namna hii na Wakenya wote wanatuangalia sura zetu. Ni kitu gani ama ulaghai gani tunafanya? Ni unafiki gani ikiwa tunasema hapa eti ni lazima kupeana nafasi ndani ya Bunge ilhali huko nje tunajazana na watu wengi sana?

**Hon. Speaker:** Member for Wajir South.

**Hon. Mohamed Mohamud** (Wajir South, JP): Thank you, very much, Hon. Speaker. I do concur with my colleagues. One very important thing we must acknowledge is that COVID-19 is no longer considered a pandemic but endemic. Endemicity of a disease determines the level of virulence and this is balanced through herd immunity. I am saying, albeit the opening up of the economy, that is, pubs, clubs and closure time being taken away, it does not mean the conditions will not continue deteriorating in terms of the disease. Therefore, we must understand that rallies can become the hub of the spread of this disease. So, we must curb political rallies that are totally unnecessary.

I stop there. Thank you, very much.

**Hon. Speaker:** Member for Mogotio.

**Hon. Daniel Tuitoek** (Mogotio, JP): Thank you, Hon. Speaker, for giving me this chance to also say one or two things about this disease. The President opened up the country and yet, we can see the disease is still with us. We are still losing our loved ones although the positivity rate has come down to around 0.5 or one-point something per cent which indicates good management of the disease.

I still believe that this disease is still dangerous and I agree with Hon. (Dr.) Nyikal that we should keep the protocols. I do not think it costs much if we keep the masks on because you do not know when you might get this disease which is quite dangerous when it strikes. We have seen that people who are vaccinated can still die from the disease, for instance, General Colin Powell of the United States of America who had been fully vaccinated was brought down by this disease. So, we should not underrate it. Unless we all agree that everybody who is working here in Parliament and not only the Members of Parliament but also all members of staff be vaccinated, then we can allow the opening up. Otherwise, I second that we keep the protocols in place.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Kwanza.

**Hon. Ferdinand Wanyonyi** (Kwanza, FORD - K): Thank you, Hon. Speaker, for giving me the opportunity. I agree with what my friend has said and let us not be emotional. The positivity rate is low at zero-point something per cent but it can go up. According to me, we should keep the protocols. I remember one time they said that the positivity rate was very low but when His Excellency the President went to Kisumu, we saw what happened.

The whole nation is looking at us. So, let us not be emotional. We come from different places. We should keep the protocols as we wait. Hon. Speaker, I request you look at this from the technical point of view. I am an economist and do not know anything about diseases. Let the technical team advise you because the whole world is looking at us and if we make a mistake, we will be the ones to be blamed. So, let us keep the protocols.

Thank you.

**Hon. Speaker:** Member for Limuru.

**Hon. Peter Mwathi** (Limuru, JP): Thank you, Hon. Speaker. I was answering a question which was brought to me and then I realised that you had given me a chance.

Otherwise, let me weigh in on this matter. It is true that the country has been partially opened and the curfew has been lifted. At the same time, truth be told like what Members have



said, the disease has not gone and it is still with us. We must be quite careful how we handle the situation. Hon. (Dr.) Nyikal has said that we have done about five to seven per cent vaccination and yet other countries that have done higher vaccination percentages are still having problems — some opening and others closing.

So, I want to persuade you, Hon. Speaker, that even though there are politicians out there who are holding rallies without taking due consideration to COVID-19 protocols, let them carry their baggage. They should not carry ours because we are a House of rules. We cannot just mess because we think other people are messing. We can as well do with what we have now, the current arrangement. Even if we were to review, we should review in accordance with the reviewed COVID-19 protocols.

That is my submission, Hon. Speaker. Thank you.

**Hon. Speaker:** Member for Matungulu.

**Hon. Stephen Mule** (Matungulu, WDM-K): Thank you, Hon. Speaker.

I want to suggest that we stick to our protocols of COVID-19. I want to give this House a personal experience. I am fully vaccinated and my wife was fully vaccinated but she got COVID-19 from our daughter. Things were terrible for her despite having been vaccinated. This is not an issue to just imagine. This is a very serious issue. Latvia has vaccinated 80 per cent of her population, but this week it has gone on lockdown because the disease is within the community. The most serious part of opening up this Chamber is that we have our colleagues who are now fully vaccinated, we have rallies over the weekend and then on Monday and Tuesday, we are in this Chamber where we are not even sure of ventilation. Makau here is sweating the whole afternoon because the air condition is not working. We must maintain our full COVID-19 protocols. Let us not trivialise this issue.

If you look at the statistics in the country right now, we have just vaccinated less than 5 per cent of Kenyans. We, Members of Parliament, are interacting with those members of the public over the weekends. Kenyans are still dying of COVID-19. There are statements that may look obviously popular but we should not look popular anymore when we are dealing with the oath Members took, let alone the leadership of the country which is the National Assembly. We must show the country that we still maintain COVID-19 protocols so that Kenyans can follow them too.

Hon. Duale, you are my friend but we cannot agree on this one. If you look at this Chamber right now, we have seats that are reserved for MPs to come and debate here, but they are not here. The seats are empty. What are we trying to show Kenyans?

Hon. Speaker, I urge and beg you. You are a man of wisdom. Reject that proposal from Hon. Duale and we maintain the COVID-19 protocols because of the experience I underwent with my wife.

**Hon. Speaker:** Nominee 001.

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Speaker. I rise to also weigh in on this issue. The Hon. Member who has just spoken was not even wearing his mask properly and yet, he was pretending to be one of the proponents of keeping COVID-19 protocols. It should start with you.

I think there have been reviews of the protocols over time. When we started, we had only a few Members because we were staying at a social distance of more than five or six metres. Currently, the reviewed protocols are that we can stay as far as we wear our masks properly, at a distance of 1.5 metres apart. I think it is time we gave more Members room to come into the House and debate. We are at around two metres from each other. If we can just make it one-and-a-half metres, I think more Members can access the Chamber so that we have more contribution. Unlike

some of us who come very early, some come a bit late and find that seats are already occupied and yet, they may be having important issues to discuss. But we should lead by example and always put on our masks properly. Properly means you have to wear your mask over your nose. It is even better you leave your mouth and cover your nose because you can cover your mouth with your lips. But the nose can never be closed. It is always open and you can really project some organisms during sneezing.

So, I support Hon. Duale that we should review our COVID-19 protocols.

**Hon. Speaker:** Member for Gichugu.

**Hon. Gichimu Githinji** (Gichugu, JP): Thank you, Hon. Speaker.

Before you consider the request that has been made by Hon. Duale, it is good to, first of all, see where we are coming from and where we are going. I know that for you to review the sitting arrangement in this House, you have always followed the requisite advice from technical people. In my view, I would not say that you review to increase or reduce the numbers. Within your wisdom, I am sure you are able to seek some advice from a technical committee which can advise you on how to deal with this matter.

The request by Hon. Duale is generally very good for the Members but, particularly, it does not seem to add up because there is no Member who has come into this House and not gotten a space to sit. As we go on and because there are matters that might attract a lot of interest from Members during voting, I think it is important, as you look into this matter, to note that it is not within your discretion and neither the discretion of this House through voting, or any other process, but the advice of a technical committee that might comprise of health officials who are well versed with the matter.

**Hon. Speaker:** Member for Taita Taveta.

**Hon. (Ms.) Haika Mizighi** (Taita Taveta CWR, JP): Thank you, Hon. Speaker, for giving me this opportunity.

I want to say that, being the leaders that we are, we should always lead by example. No matter what happens out there, we should always be on the right. We should not put our guard down as pertains to COVID-19 protocols. Therefore, I think we should continue following the protocols as we were doing before.

**Hon. Speaker:** Member for Pokot South.

**Hon. David Pkosing** (Pokot South, JP): I thank you, Hon. Speaker, for giving me this opportunity to weigh in on the matter.

Reviews are compulsory—that is the truth—whether to increase or reduce. Therefore, number one is that the review must be done. But, then, what guides the review? This is my suggestion: In terms of people coming to the House and lacking seats; that should not be the reason. I have been in this House and I have never seen anybody coming and missing a seat. That is the truth. Nobody. These are sufficient seats, except in one instance when we were doing that Motion on some report of the Departmental Committee on Administration and National Security. That is when I saw a full House. That is number one.

Two, if you look at the truth of what is going on, maybe, people come into the House and wear masks because we are live on television. Go to the lobby when people are having tea. What happens? To be honest, everybody is okay. People come and talk here as if we are talking on the moon. It is not true. You go to the lobby here when we are taking tea. It is true. We just talk and have tea like everybody else or everywhere, as if we are in our houses.

*(Applause)*

That is the truth, and this is Parliament. It is not right if we come to the House and lie to ourselves that we should not review and people go to tea when we leave here. You follow them. They will be having no masks. In fact, there was an example in one of the newspapers. What was happening was that this person was showing a caricature of Kenyans discussing Tanzanians not having masks. Do you know how they were wearing masks? They had masks on their chins and discussing how Tanzanians do not have masks. The Kenyans themselves did not have masks. So, reviewing the protocols is compulsory. Maybe, what you need to do is to look at the protocols and talk with health officials. People put on masks because they are on camera. When they leave this House, they do not have masks. They drink tea and have lunch while discussing what they did over the weekend. They do not even know where their colleagues were over the weekend. Review is compulsory. You will be guided by health officers.

I thank you, Hon. Speaker.

**Hon. Speaker:** Very well. I think that suffices. As you know, the protocols guide us in what we do. Of course, it is fair to acknowledge and appreciate what has happened in other areas like places of worship and in public transport where there has been an increase in the number of people. Places where most of you go to in the evenings have also had their numbers reviewed. So, there is nothing wrong with a review save that we will be advised accordingly as to what is best for us in the circumstances. We are a Chamber of 350. If we were to follow what was designated for others, perhaps, it may be an upward review in the numbers. We do not want any Member to say that they have been unable to come and vote or participate on account that they feared they would be infected by many of you and yet, they do not fear you when you are eating *mandazi*. When you are out there eating *mandazi*, nobody is worried about the other.

We are already in the process of seeking some technical advice on the matter. Indeed, I can thank Hon. Duale for raising the matter today. As the administration, we are already in the process of seeking some advice on how best to address this situation. Sometimes, you may even have a joint sitting of the Houses. In such a case, obviously 120 Members would be a very limited number. But it is good to always take advice from the health professionals responsible for those matters. So, communication addressing that issue will come. It was necessary to hear many of you, including the Member for Matungulu, so that he does not think that he is alone, as well as Hon. Angwenyi, who has since completed his participation in the Chamber.

Let us move to the next Order.

## COMMITTEE OF THE WHOLE HOUSE

**Hon. Speaker:** Hon. Members, before we move to that order, I have a communication to make.

## COMMUNICATION FROM THE CHAIR

### INADMISSIBILITY OF PROPOSED AMENDMENTS TO THE WAQF BILL

**Hon. Speaker:** As you are aware, the Waqf Bill (National Assembly Bill No. 73 of 2019) which seeks to provide for the establishment of the Waqf Commission and administration of Waqf property and for connected purposes is due for consideration in Committee of the whole House in accordance with the requirements of Standing Order 130. To this end, a schedule of various

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amendments proposed to be considered at the Committee of the whole House has been published in the Order Paper as “Notice of Amendments”. Other than the Departmental Committee on Justice and Legal Affairs, the Member for Garissa Township, Hon. Aden Duale, the Member for Mbita, Hon. Odhiambo-Mabona, and the Member for Mvita, Hon. Abdullswamad Nassir, have given notice of proposed amendments to the Bill. I wish to inform you that I have since received, through the Office of the Clerk, a Memorandum from the Supreme Council of Kenya Muslims raising several issues with respect to the amendments proposed by the Departmental Committee on Justice and Legal Affairs on Clauses 2 and 8 of the Bill.

Just as a way of a highlight, the Departmental Committee on Justice and Legal Affairs has proposed amendments to Clause 2 of the Bill to introduce a new definition of the term “Hajj”. Further, the Committee proposes an amendment to Clause 8 in order to expand the functions of the Waqf Commission to include coordination, licensing, supervision and regulation of services relating to Hajj in Kenya and representation of Kenya in matters relating to Hajj. These are contained in the proposed new paragraphs (gc) and (gd).

The Supreme Council of Kenya Muslims, in their Memorandum to the Speaker, objects to the inclusion of the amendments touching on Hajj. The Council contends, among other grounds, that the proposed amendments to the Bill in Clause 2 and Clause 8 in the proposed new paragraphs (gc) and (gd) are misplaced as they propose to bring Hajj matters under the Waqf Commission which conventionally deals with Waqf property and related trusteeship. Consequently, I have examined the proposed amendment to Clause 2 and the proposed new paragraphs (gc) and (gd) in Clause 8 against the provisions of Standing Order 133(5). Standing Order 133(5) provides as follows:

“No amendment shall be permitted to be moved if the amendment deals with a different subject or proposes to unreasonably or unduly expand the subject of the Bill, or is not appropriate or is not in logical sequence to the subject matter of the Bill”.

Looking at the Long Title of the Bill, it is clear that the Waqf Bill only seeks to provide for the establishment of the Waqf Commission and administration of Waqf property and for connected purposes. Indeed, this is further espoused in the application clause of the Bill in Clause 3, which provides that, once enacted, the new law shall apply to the making and administration of Waqf property. It is on this basis that Clause 8 of the Bill provides for the functions of the Waqf Commission which, from a close reading of the Bill, all relate to the administration of Waqf property as the subject of the proposed legislation. The Bill has no single provision dealing with the Hajj, not even a remote mention of pilgrimage.

You may, therefore, agree with me that the proposed amendment by the Committee to Clause 2 and new paragraphs (gc) and (gd) of Clause 8 by the Committee and Hon. Abdullswamad Nassir, relating to the subject of Muslim Hajj are contrary to the provisions of Standing Order No.133(5), as they deal with a different subject matter and propose to unreasonably and unduly expand the subject of the Bill. At this stage, the question that the Speaker has to address is, if the proposed amendments deal with a different subject matter, should they be admitted for consideration and thereafter, a vote by the House?

Hon. Members, it is worth noting that if the impugned proposed amendments were to be admitted for consideration, the House would undoubtedly offend the provisions of Article 118 of the Constitution on the question of public participation. These are new matters for which the general public was never invited to have a chance to interact with and give their views on.

Hon. Members, whereas I commend the Departmental Committee on Justice and Legal Affairs for discharging their mandate in consideration of the Waqf Bill culminating in their report

to the House and a schedule of proposed amendments, I find that the proposed amendment to Clause 2 proposing to define the word “Hajj” and the proposed new paragraphs (gc) and (gd) under Clause 8 proposing to expand the conventional role of a Waqf Commission beyond the administration of Waqf property and trusteeship are contrary to the provisions of Article 118 of the Constitution with regard to public participation, and Standing Order No.133(5) and hence shall not be considered at the Committee of the whole House. The rest of the amendments proposed by the Committee to the Bill are admissible for consideration by the Committee of the whole House as well as the other amendments proposed by the other Members.

The House is accordingly guided.

I thank you.

*(Loud consultations)*

Hon. Millie Odhiambo.

**Hon. (Ms.) Hon. Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Speaker. Let me first indicate that my constituency, Suba North, used to be Mbita Constituency.

I am ready to proceed with my amendment, but I have been given an indication that Hon. Sharif may want us to do some harmonisation. If that is the way he wants to go, I am okay. I also want to encourage our colleagues that whenever they bring amendments, the best way to go about it is to discuss with Members, because that is how we operate. There is nothing that is ever cast in stone. We convince each other and we are reasonable. Before some of the amendments come to the House, is it possible to drop and harmonise them? We have done it before. We have started discussions with Hon. Duale. He gave me a lawyer and we have looked at some things and there are some that we agree on. Actually, we agree on many, but I am willing. I am ready to proceed, but if they want us to discuss further, I am also ready, able and willing for that as well.

**Hon. Speaker:** Majority Whip.

**Hon. Emmanuel Wangwe** (Navakholo, JP): Thank you, Hon. Speaker. First, I want to commend your guidance in line with what Hon. Millie has said *via* Standing Order No.131. It seeks that Hon. Abdullswamad, Hon. Aden Duale together with Hon. Millie Odhiambo, whom I have had a discussion with this afternoon... What is coming out of the discussion is that they just have few issues to polish, so that we can go through the Committee of the whole House. With that, I seek that you step down this Bill rather than going into the Committee of the whole House this afternoon. If you can give us an appropriate time, preferably tomorrow, it will be good enough so that the three of us would have harmonised our details so that we can move together.

**Hon. Speaker:** Hon. Murugara.

**Hon. George Gitonga** (Tharaka, DP): Thank you, Hon. Speaker. I was going to move the proposed amendments in the Committee of the whole House, but when I got the proposed amendments, I had issues with Sections 2 and 8. The reason is that I have tried to stretch my imagination as to when, in that Committee, we ever discussed Hajj. I am not disowning this, but on a serious note, I do not recollect. If there are Members of the Departmental Committee on Justice and Legal Affairs here, they can confirm that we did this in a very nice way, but these introductions have a few question marks. I will proceed to hand over the matter to the Chairman so that he can look at it and answer where this came from. In essence, they are dropped anyway and I think you rightly did so.

Thank you.

**Hon. Speaker:** Hon. Shakeel Shabbir.

**Hon. Shakeel Shabbir** (Kisumu East, Independent): Thank you, Hon. Speaker. I thank you for your guidance and respect of the issue of Hajj. I had raised an objection to the amendment of the Waqf Bill and, as instructed, forwarded it to the Deputy Clerk, Ms. Serah Kioko, on 29<sup>th</sup> October 2021. I note that my objection was also not captured on the Order Paper. I have been following through and I am told there might have been an oversight. I am requesting that if this matter is to be heard at a later date, the objection that I had raised in writing, as required by the procedure, be incorporated.

**Hon. Speaker:** Were you objecting to the entire Bill or to a particular clause?

**Hon. Shakeel Shabbir** (Kisumu East, Independent): I was objecting Paragraph 8(c) and (d).

**Hon. Speaker:** On the functions?

**Hon. Shakeel Shabbir** (Kisumu East, Independent): Yes, Hajj.

**Hon. Speaker:** That is no longer a subject of consideration.

**Hon. Shakeel Shabbir** (Kisumu East, Independent): However, there were other issues covered in the same objection.

**Hon. Speaker:** Not objection. Maybe, proposed amendments.

**Hon. Shakeel Shabbir** (Kisumu East, Independent): Yes, proposed amendments.

**Hon. Speaker:** How do you just object?

**Hon. Shakeel Shabbir** (Kisumu East, Independent): It was my amendment. May I request, through your kindness, Hon. Speaker, if the Clerk could incorporate those amendments in the next Order Paper, so that they are recorded?

**Hon. Speaker:** However, not on this one dealing with this particular aspect, because this would not be included.

**Hon. Shakeel Shabbir** (Kisumu East, Independent): I understand there are other aspects covered here.

**Hon. Speaker:** Which you had submitted?

**Hon. Shakeel Shabbir** (Kisumu East, Independent): I had submitted it as required by the Clerk, but I did not see them on the Order Paper.

**Hon. Speaker:** Well, could you find out from the Deputy Clerk, Ms. Serah Kioko? When you looked at the Order Paper, Hon. Shakeel, you should have walked to her office and demanded to know from her why your amendments were not there, if at all you had handed them over to her.

**Hon. Shakeel Shabbir** (Kisumu East, Independent): I did call, but she is not in Parliament. She referred me to the Director, Legal Services, Ms. Vane, whom I could not get through to. I have been trying to follow up on the issue the whole day. However, they told me it was going to come up this afternoon, so that whatever you are asking would not be done, unless it is postponed.

**Hon. Speaker:** Hon. Shakeel, if you have other amendments, it is your right to propose them. If they are not unreasonable, they should be included. The decision is not for the Clerk, but mine.

**Hon. Shakeel Shabbir** (Kisumu East, Independent): I am surprised it has not come to you.

**Hon. Speaker:** The Deputy Director, Legislative and Procedural Services, Mr. Kirui, will deal with that matter.

**Hon. Shakeel Shabbir** (Kisumu East, Independent): Thank you.

**Hon. Speaker:** Very well. Hon. Bashir.

**Hon. Major (Rtd.) Bashir S. Abdullahi** (Mandera North, JP): Hon. Speaker, first and foremost, I want to thank you for your sober guidance on the fact that you excluded the aspect of Hajj on that Bill, because it deviated from the main aspect of the entire Bill. It is also shocking that

a Member of the Committee is confirming that he is even shocked to learn how it even came to the Committee Report. That tells you that it is important. I also thank the Majority Whip for turning it down so that we can build consensus. This morning, we had a caucus with Hon. Abdullswamad and others, where we agreed that the way to go is to build consensus, and I am happy that Hon. Millie has agreed. Some time, we had a number of presentations from the consumers of the Bill, ultimately who are largely Muslims, and their concerns are that they are the ones who are going to consume this law, and yet we have issues that are being brought in that ultimately would not be good or would affect how the Waqf Bill or the Waqf Commission will operate. I am very happy that we stand down the whole thing, so that we can build consensus and agree on the way forward.

**Hon. Speaker:** Hon. Abdullswamad.

**Hon. Abdullswamad Nassir** (Mvita, ODM): Thank you very much, Hon. Speaker. First of all, I want to congratulate you on the great wisdom. You will note that my amendments on the issue of Hajj came after the Committee proposed. I only said that there is no need for them to be the ones handling Hajj, and if anything at all, they should just license them. With that said, now that you have made that ruling, my amendment automatically takes a back seat. I had a word with Hon. Millie, and had a meeting with a number of other Members earlier on. With your indulgence and the leadership of this House, we would greatly be honoured if you allow us to meet as a caucus by tomorrow. We also want to request you to allow us to meet with Hon. Millie, because all these came at a time when we were all on recess and we could not sit down with her because we were out of Nairobi. However, we want to request you to allow us to meet as a caucus tomorrow and then meet Hon. Millie. With your permission and indulgence, by Thursday, we can finalise on this matter. I understand where Hon. Duale is coming from, but I do not want a situation where Hon. Millie feels that we have ambushed her. I want the caucus that is there on the users of this Bill to totally understand and digest it. This is something that I can sit down with Hon. Duale and my colleagues and finalise, with your indulgence, Hon. Speaker.

**Hon. Speaker:** Are you suggesting Thursday?

*(Hon. Abdullswamad Nassir spoke off record)*

**Hon. Aden Duale** (Garissa Township, JP): Thank you, Hon. Speaker. You have resolved the biggest problem we had using our own Standing Order No.133 and Article 118 of the Constitution. This Bill has my name as the former Leader of the Majority Party. I have the history of how we walked with this Bill. It originated from a task force appointed by the former Attorney-General emeritus, Hon. Githu Muigai. The Muslim leaders and stakeholders put in a lot of effort. The Bill first went to the Cabinet and then to this House. As you correctly said, this will be one of the Communications that you will be remembered for. Together with many Members of the Muslim leadership, we were wondering, because Waqf and Hajj are fundamentally two different things. Therefore, I think you have this afternoon solved 80 per cent of our problem. What remains is nothing. I understand that the amendments by the Committee are very agreeable to all of us. The few amendments by Hon. Millie will be sorted out. I have reminded her that her case is like allowing Muslims to participate in the election of a Pope. That Pope will not become a Catholic Pope. I agree with some of the amendments by Hon. Millie, because she sat with the Muslim lawyers from Jamia Mosque. We are doing very well and what we will disagree on will come to the Floor. The Attorney-General asked whether the Bill was dispensed with, because it has stayed here for too long.

I really want to indulge our colleagues and Hon. Nassir, please, let us have a morning sitting with Hon. Millie and dispense with this matter in the afternoon. I support the Majority Whip. Now that we have resolved the matter of Hajj, I think we can all agree on other issues and convince each other. I only have one amendment. We have looked at the amendment of the Committee, and it is okay. We are only left with the amendments by Hon. Millie and I understand that she has done a lot of consultations with the Muslim legal team.

Tomorrow morning, together with Hon. Nassir, we will look at the few points that we disagree with Hon. Millie and as she has said, it is a matter of give and take. I am sure we will convince each other.

Hon. Speaker, I really want to ask Hon. Nassir to allow us to go by what the Majority Whip said, so that the Speaker can then have a position, and tomorrow at 3.00 p.m., just like today, we can have the Waqf Bill as the first item and dispense with it. This Bill is very important to the Muslim Community. This House will also go into history as one of the Parliaments that did a very good government initiated Bill that will help the Muslim Community to sort out issues of trustees and resources in building the Islamic infrastructure.

Thank you, Hon. Speaker.

**Hon. Speaker:** I can see that Hon. ole Sankok also wants to elect the Pope.

*(Laughter)*

**Hon. David ole Sankok** (Nominated, JP): Thank you, Hon. Speaker. As the Members have congratulated you, I have always said time and again that you are a mobile encyclopedia when it comes to the Constitution and laws of this country. With just one statement, you have solved an issue that was disturbing us. It was a very emotive issue because when it comes to matters of faith, we cannot deal with them superficially. As Hon. Duale has said, you cannot have a Muslim electing a Pope. We need to consult the Supreme Council of Kenya Muslims (SUPKEM) as well as lawyers from Jamia Mosque so as to build consensus. We do not want to further delay the Bill. I saw this Bill a long time ago when it was with the Attorney-General. It is delaying a lot of things and at times, issues of resources attached to faith are very emotive.

I want to indulge you, just as Hon. Duale has said, to let us dispense with this Bill tomorrow. Let them build consensus early tomorrow morning. I want to request Hon. Millie Odhiambo, who is listening to me, that since she is from my faith, she can just forget about dealing with other issues. Some of us had amendments, but we realised the need to wait for Christian law to deal with it and allow our Muslim brothers to deal with their issues. When it comes to faith, it is something that is sometimes concealed and above all human beings.

I really thank and salute you. *Tumekutolea kofia*. Thank you, Hon. Speaker.

**Hon. Speaker:** It looks like consensus is tomorrow afternoon. I also agree with Hon. Millie Odhiambo that it is a matter of give and take. The Majority Whip, Hon. Duale and Hon. Sankok have suggested that we deal with this Bill tomorrow afternoon. Hon. Millie Odhiambo was even ready today, but she is willing to concede for taking out the business from the Order Paper for today. Hon. Abdullswamad, do you agree with that suggestion?

**Hon. Abdullswamad Nassir** (Mvita, ODM): Thank you, Hon. Speaker. This is a House of democracy. You had approved my request to Chair a Committee sitting tomorrow morning. I will try and request my colleague to sit in for me for tomorrow's Committee meeting, because this is a very sensitive matter. I think it will be a very rare occurrence because since I was elected Chairman of the Public Investments Committee, I have only missed one meeting when I was



unwell. This should be a second time and it will be because I will have other national issues to take care of.

**Hon. Speaker:** I am sure you can handle both if you come here between 8.00 a.m. and 9.00 a.m.

**Hon. Abdullswamad Nassir** (Mvita, ODM): Yes, Hon. Speaker.

**Hon. Speaker:** Hon. Millie Odhiambo is a very reasonable person.

*(Hon. (Ms.) Odhiambo-Mabona spoke off record)*

**Hon. Abdullswamad Nassir** (Mvita, ODM): We will actually agree with them on the time. I agree that we meet first thing in the morning.

**Hon. Speaker:** Hon. Millie, do you want to say something?

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Yes. Hon. Speaker, I have actually looked at some of the issues that were sent to me by the Muslim lawyers, and I am willing to drop quite a number of the ones they were unhappy with. We can even meet this afternoon. There is no reason to meet in the morning and Hon. Nassir can continue with his Committee meeting then. I can show you the amendments that you are unhappy with and we can just agree. It will be a very short meeting and I think 10 minutes will be enough.

**Hon. Speaker:** Absolutely. So, let us take it out of the Order Paper for today on condition that it will be on the Order Paper tomorrow afternoon.

**Hon. Christopher Omulele** (Luanda, ODM): On a point of order.

**Hon. Speaker:** Let us have Hon. Omulele

**Hon. Christopher Omulele** (Luanda, ODM): Thank you, Hon. Speaker. It is just a small point that I wish to make this afternoon. It has come to my notice that every time Members of this House speak, they say: "I give indulgence." It is a point of speaking English well. You cannot give indulgence. They can seek your indulgence, Hon. Speaker. I have heard it from Hon. Duale, Hon. Sankok and all manner of Members here saying that they are giving indulgence to the Hon. Speaker. It is them to seek your indulgence. It is only you who can indulge. None of these Members can indulge in this House. It is your privilege and prerogative. Going forward, Members should take note of that.

*(Laughter)*

**Hon. Speaker:** Well, they are accordingly educated. What is it, Hon. Murugara.

**Hon. George Gitonga** (Tharaka, DP): Absolutely. Hon. Omulele is a very good student and a very good master of the language of the Queen. Absolutely, it is that you seek indulgence from the person who is supposed to extend some magnanimity to you. Therefore, to every one of us, we have to approach the Chair and seek his indulgence so that we are permitted to do what it is that we want to do. He is absolutely correct.

**Hon. Speaker:** Hon. Sankok.

**Hon. David ole Sankok** (Nominated, JP): Hon. Speaker, I am quite educated today, but you may have to understand some of us because our English teacher was a mixture of Kamba, Meru and Kisii. So, what matters is whether you can conceptualise what we communicate. Previously, I used to say I give indulgence, but I hereby change to seek your indulgence. Hon. Omulele, being in the Speaker's Panel, is well versed with these issues and should take us through them. There was a day I spoke Maasai here and I was shocked that you also understood me.

I thank you, Hon. Speaker.

**Hon. Speaker:** Soon you will be on the Chair.

Next Order.

## BILL

### *Second Reading*

#### THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (AMENDMENT) BILL

**Hon. Jeremiah Kioni** (Ndaragwa, JP): Thank you, Hon. Speaker. I beg to move that the Kenya National Commission on Human Rights (Amendment) Bill, National Assembly Bill No. 1 of 2020, be read a Second Time.

The main objective of the Bill is to amend the Kenya National Commission on Human Rights (KNCHR) Act No.14 of 2011 in order to merge the KNCHR and the National Gender and Equality Commission (NGEC) in order to retain the Kenya National Human Rights and Equality Commission (KNHREC) as established under Article 59(1) of the Constitution.

Article 59(1) of the Constitution establishes the KNHREC, while Article 59(4) gives Parliament the responsibility of enacting legislation to give full effect to the Constitution with regard to the protection of human rights, including legislation on restructuring of the Commission into two or more separate commissions. Parliament, in 2011, established three commissions, namely, the KNHRC, the NGEC and the Commission on Administrative Justice instead of establishing one commission, the KNHREC, as envisaged under Article 59(1). Article 59(4), which gives Parliament authority to enact legislation to restructure the commission into two or more separate commissions, envisaged that the KNHREC should have been established first.

Hon. Speaker, Section 8 of the said Act of 2011 as read together with Article 59(2) lists the functions of the KNHRC to include among others, promoting respect, protection and observance of human rights, monitoring investigations and reporting on observance of human rights, and receiving and investigating complaints about alleged abuse of human rights. The Act, however, excludes from the functions of KNHRC the duty to receive and investigate complaints about alleged abuses of human rights relating to the violation of the principle of equality and freedom from discrimination. I hope Members will note that distinction. Let me repeat that, that excludes from the functions of the KNHRC the duty to receive and investigate complaints about alleged abuses of human rights relating to violation of the principle of equality and freedom from discrimination, which are vested with the NGEC. The Act also bars the KNHRC from reporting on compliance with obligations under international and regional treaties and conventions relating to the rights of special interest groups, including women, children, persons with disability and marginalised groups on rights relating to equality and non-discrimination.

The Act bars the KNHRC from handling issues I have mentioned that relate to special interest groups. It is reporting on the international and regional treaties on their rights and especially on issues of equality and non-discrimination. However, Chapter 4 of our Constitution on the Bill of Rights protects various rights and fundamental freedoms which are an entitlement of each individual, including but not limited to the right of life, equality and freedom from discrimination, human dignity, freedom and security of the person and the right to a fair trial. These rights apply to all persons regardless of age, gender, social status and other divisions.

The rights and fundamental freedom listed in Chapter 4 of the Constitution are indivisible, interrelated and interdependent. All human rights support and complement one another towards a

dignified life for all people. Non-discrimination and equality contained in Article 27 of the Constitution are core pillars of human rights, and there can be no human rights if one excludes the right to equality and non-discrimination. The exclusion of certain category of human rights and freedoms from the mandate of the KNHRC, therefore, results to any Kenyan who has grievances concerning human rights abuses being referred across different institutions for matters that could be dealt with by one institution.

The fact that these human rights have been split between two institutions confuses Kenyans because they will have to run to different institutions from time to time when they have human rights issues that need to be addressed. There is no marked or diametrical differences in functions between the two institutions. This results in duplication and overlap of functions and duplication of expertise to address similar issues and, of course, a burden to the taxpayer in this country.

However, with the establishment of the three commissions under Article 59 of the Constitution, the Committee observed that the human rights agenda has been fragmented, which is giving poor Kenyans unnecessary challenges in accessing justice. It brings confusion as one does not know where to take which complaint. A Kenyan with a grievance on human rights violation is required to report to different institutions regarding one incident of violation of human rights, namely, the KNCHR, the NGEC and also CAJ. One case that we can use as an example is a case that was reported by the media and which was well covered. I hope I will get it without wasting much time. This was a case where Somalis were put together at Kasarani Stadium sometime back in 2014. Thousands of Kenyan Somalis were rounded up by the police and detained at the Kasarani Stadium. They complained to the KNCHR of various violations, including torture, rape and discrimination, but the KNCHR had to again say: "This particular aspect of violation does not relate to us. You will need to call in NGEC or the CAJ." That confusion, of course, made it difficult for the Kenyans to receive the necessary redress to their issues and due to the limitations in the Kenya human rights statutes on the roles of the NGEC and even the CAJ to address the grievances, eventually it ended up being another form of discrimination or unnecessary torture to the Kenyans because they have to talk to many officers on the same issues. The officers must keep excusing themselves because they will say that that is not an issue within their mandate. It is not a thing that we want to continue for long.

The Committee, in its interaction with the three commissions, noted that despite the three commissions having related functions, they also have separate offices. These offices are in different geographical locations within Nairobi, and when you go to the counties, they are also located in different places within the counties, which requires the person with the complaint to move from one location to the other. Therefore, the Committee was of the view that the functions of the NGEC and those of the KNCHR would be more effectively performed by a single streamlined commission. That is the necessity to merge the functions of the two commissions under reference, namely, the NGEC and the KNCHR.

The Bill, under Sections 2 and 3 of the KNCHR Act No.14 of 2011, seeks to rename the commission to establish, after a merger, a commission to be called the Kenya National Human Rights and Equality Commission. The Bill further amends Section 8 of the KNCHR Act to bring under the functions of the new commission the roles that had been given to NGEC under the Act of 2011, among them the role of promoting gender equality and freedom from discrimination and dealing with affirmative action policies. The Bill also seeks to give the new commission established after the merger the authority to take over complaints already lodged under NGEC and to be bound by the legal rights and obligations subsisting before the merger of the two commissions to take over the functions, assets and liabilities, rights, powers and duties of the NGEC. On the

existing commissioners of NGEN, they will be absorbed in the new commission in the same terms for the unexpired term of their contract. The Committee also intends to introduce an amendment so that the Chairperson of the NGEN becomes the first vice-chairperson of the new Kenya National Human Rights and Equality Commission for their unexpired term, while the officers employed by the NGEN to be re-designated by the Public Service Commission on the same terms of service. Finally, the Bill, through the introduction of a New Section 61, seeks to repeal the NGEN Act No.15 of 2011.

The Committee also received and considered the report of the Auditor-General on the socio-economic audit of the Constitution that was done during the 11<sup>th</sup> Parliament. In the interaction with the various stakeholders on constitutional implementation from the report on the socio-economic audit of the Constitution, the Committee observed that there was duplication of functions by some constitutional commissions resulting in unnecessary expenditure of public resources which could better be utilised by merging some of the functions. What this seems to state is that under the report that was done by the Auditor-General on the socio-economic audit of our 2010 Constitution, that duplication and the unnecessary expense was highlighted and the need to merge some of these commissions was also one of their recommendations. In line with the Constitution and the Standing Orders, the Constitutional Implementation Oversight Committee, in the local daily newspapers of 5<sup>th</sup> June, 2020, invited the public to make written submissions on the Bill. The Committee also invited certain specific institutional stakeholders it considered important in the implementation of the Bill to send written submissions and appear and make all clarifications.

The Committee received various responses from the KNCHR, the NGEN and the CAJ. There was memorandum from the National Treasury and Planning, the Kenya Law Reform Commission, the Office of the Attorney-General and the Department of Justice. We also received memorandums from constitutional commissions and independent offices, the National Council of Persons with Disability, the Civil Society Organisation Network, the Political Parties Liaison Committee, the Association of Older Persons Organisations, the Office of the Registrar of Political Parties, representatives of minority and marginalised groups, World March of Women Kenya Chapter, Premier Peak Leadership Foundation, *Sauti ya Wanawake Pwani*, Coordination Centre for Community Empowerment and Midrift Human Rights Network among others. The NGEN argued that Parliament does not have powers to enact legislation that better the provisions of Article 59(1), (2) and (3). However, we received another submission from the Kenya Law Reform Commission and also the Office of the Attorney-General and the Department of Justice that again clearly informed the Committee that Parliament has those powers to enact legislation and give full effect to Article 59 of the Constitution. Of course, Parliament has a duty under those specific provisions of the Constitution to enact a law to restructure the KNCHR and the NGEN into two or more separate commissions. Therefore, the Committee was within its mandate.

The National Treasury made their submission and clearly stated that this will result in savings and the money saved can be used to ensure that it is committed to developmental issues.

It is with those remarks that I urge Members to support the intended merger. There is unnecessary duplication. You would notice that if your family has been visited by police officers and various human rights are violated, different members of the family will be reporting the same matter to different institutions and some of the institutions will manage to escape from liability because poor Kenyans are not able to follow through those tedious and fairly expensive procedures or processes because of the way we have structured those institutions.

With those few remarks, I beg to move and ask that my Vice-Chairperson, Hon. Kaluma seconds.

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Thank you, Hon. Speaker. I stand to second the Bill.

This Bill comes from the Constitutional Implementation Oversight Committee (CIOC). All we are seeking is to reduce unnecessary expenditure around commissions. Article 59 creates the Kenya National Commission on Human Rights. Article 59 (4) states that Parliament is empowered to create other commissions, and not to split the Kenya National Commission on Human Rights. People may ask why we are seeking to remerge commissions or collapse the National Gender and Equality Commission back to Kenya National Human Rights and Equality Commission.

One, we currently have the Kenya National Commission on Human Rights instead of what Article 59 prescribes. Article 59 establishes the Kenya National Human Rights and Equality Commission. We have established the Kenya National Commission on Human Rights, not the commission which has been established here, which is the Kenya National Human Rights and Equality Commission. Pursuant to Article 59 (4), this House, in its wisdom, established the National Gender and Equality Commission. So, Members of Parliament can see that we have a commission borrowing a bit of the name from what the Constitution has properly established. First, the Bill is aimed at making corrections so that the Kenya National Commission on Human Rights becomes Kenya National Human Rights and Equality Commission as the Constitution contemplates.

Hon. Speaker, if you look at the various provisions of the Constitution singling out the various segments or sections of our society which require specific protection, you will realise that we have the youth, persons with disabilities and older persons. The rights of these people are now rights specifically provided for. By creating a commission specific to gender, there is now legitimate clamour from these other segments of the society singled out as beneficiaries of critical rights to have their own commission, so that it will be legitimate if you have the National Gender and Equality Commission, then the group represented by Nominee 001, the persons with disabilities in Kenya, will also seek that Parliament creates a Persons with Disabilities Commission. It is legitimate. If we continue that way, we will have the youth clamouring for a commission independent of Kenya National Commission on Human Rights and Equality Commission.

You remember a short while ago when we were debating the Building Bridges Initiative (BBI) Bill, there was a proposal that independent of Article 59 (4), we have a youth commission created. The danger we are running into is that we will have a youth commission, a national gender and equality commission, a persons with disabilities commission, a commission dealing with minorities and marginalised groups, a separate commission dealing with older persons, among other commissions. If you approach it that way, then you will have a situation where while we are talking of too much expenditure, we are creating bodies all over. Remember, these commissions must have a minimum of three commissioners and a maximum of nine. So, we will have a situation where several commissions will be doing the same thing for different sections of our society but they are all taking funding. That, to me, is a critical point. That is why we are saying let us have Kenya National Human Rights and Equality Commission, as contemplated in the Constitution, properly established that way. Within that Kenya National Human Rights and Equality Commission, we can have a department headed by a director or so in charge of persons with disabilities. We can have a directorate within the commission in charge of youth matters. We can

have a directorate concerned with gender issues, which is now misinterpreted to mean just women issues. We can have a department...

**Hon. Speaker:** Hon. Janet Ong'era, what is your point of order?

**Hon. (Ms.) Janet Ong'era** (Kisii CWR, ODM): Thank you, Hon. Speaker. Is Hon. Kaluma right to mislead us that the National Gender and Equality Commission only deals with issues of women when it is very clear that it is mandated, under Section 8 of the National Gender and Equality Commission Act, to focus on special interest groups including women, youth, persons with disabilities, children and older members of the society and minority groups? Is he right in saying that the gender commission specifically deals with only women and that is why they would like to merge it to include the youth and persons with disabilities? The gender commission deals with women, youth and persons with disabilities.

**Hon. Speaker:** Well, because you asked whether it is in order, we will add Hon. Kaluma his two minutes. There is nothing out of order. What you have done is to argue your point. There is nothing out of order. Hon. Janet Ong'era, I am sure when you take to the microphone when your chance comes, you will tear him into pieces but please, let him continue living.

**Hon. Peter Kaluma** (Homa Bay Town, ODM): I thank you, Hon. Speaker. For Hon. Janet's favour, I read the provisions of Article 59 (1). The commission it establishes is the Kenya National Human Rights and Equality Commission. Hon. Janet, as a senior lawyer to me, understands that what we have is not so named. It is called the Kenya National Human Rights Commission. That is why I am saying the first intent of the Bill is indeed to correct the error in that nomenclature because Kenya National Commission on Human Rights is not what the Constitution establishes. This is not a commission being established by an Act of Parliament but by the Constitution. So, the name of the Commission must be Kenya National Human Rights and Equality Commission, unless the Constitution is amended.

The point I was making before I was interrupted is, if you look at the Constitution from Article 53, it deals with specialised sections of the community which require particular human rights protection. Under Article 53, you have children and their rights being specifically catered for, for the first time under our laws. You have persons with disabilities under Article 54. You have the youth under Article 55. You have the minorities and marginalised groups under Article 56. You have older members of society under Article 57. People have been asking why we have people like Dr. Oburu Odinga in EALA and not a youth. They do not know that, that is also a special category protected by the Constitution. The point I was making is that the way to approach it better is to have Kenya National Human Rights and Equality Commission as rightly established under the Constitution and then you have departments under the commission dealing with these specialised sections of the society. If you do not, calling it the National Gender and Equality Commission and then saying in the definition of the Act that the youth, persons with disabilities, marginalised groups and minorities are included, does not give that picture.

No doubt, Hon. Ong'era and Hon. Members, you will see a National Gender and Equality Commission more focused on gender issues than those other issues. Hon. Janet, that was the explanation I was giving – that, even in the most recent clamour for constitutional change, you saw the youth saying that they needed a commission. Persons living with disabilities are dissatisfied with the National Gender and Equality Commission discharging their mandate and need their own commission. Older persons and children will soon request for their own commissions. In the long run, based on this constitutional architecture, we will have up to five commissions just dealing with human rights issues specific to those sections of the society. That is why we are saying in order to have good order, let us have the Kenya National Commission on

Human Rights and Equality Commission with those departments, so that we reduce the governance expenses. Hon. Members, you see how much we spend on those commissions yet we do not see any reports coming to Parliament. We do not see any meaningful contributions made to those sectors.

Hon. Speaker, I do not want to water down the good arguments advanced by the Chairman of the Committee, Hon. Kioni, while moving.

I beg to second and urge Members to support the Bill.

*(Question proposed)*

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

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

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): The first person on top of my list is Hon. Baya Yaa but I do not see him in the House. I will, therefore, give the first shot to Hon. Ong'era Janet, the Member for Kisii.

**Hon. (Ms.) Janet Ong'era** (Kisii CWR, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. I oppose this Bill in the strongest terms possible.

The National Gender and Equality Commission Act was specifically enacted so that the rights of affirmative action interest groups could be considered and highlighted because of the manner in which they were disadvantaged in society. It was formed to help women, youth and persons with disabilities so that they can be raised up in society. It really saddens me to now hear the Chairman and the Vice-Chairman of the Committee telling us that we need to merge those two commissions because of budget constraints, and that doing so would be more cost effective. It is the issues of women, youths and persons with disabilities that have been highlighted.

There are so many other commissions in this country that spend money wantonly yet we have never had any committee recommending that they be removed. When we are told that this Commission, which is the only one that deals with gender issues and particularly issues of women, youths and persons living with disabilities, will now be merged with the Kenya National Commission on Human Rights, it behoves me to wonder where we are going when we, as legislators, should be at the forefront in trying to empower and raise the status of women in the country.

First of all, I want to raise some issues I heard some of my colleagues mention. They said that the National Gender and Equality Commission does not cater for issues of youth and persons with disabilities. Looking at that Act, the reason as to why the National Gender and Equality Commission was formed was to try and create an enabling environment where women, youth and persons with disabilities would be able to express their issues. I now see efforts being made towards merging it with the Kenya National Commission on Human Rights. That is a rollback of the gains that women have made over the years. We fought to get 47 seats for women in this House. Reaching there was not easy. Merging these commissions and even saying that the Chairperson of the National Gender and Equality Commission should be made a Vice-Chairperson is really a shame.

I strongly oppose the Bill.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Let us have Hon. Sankok.

**Hon. David ole Sankok** (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker. I support the Bill 100 per cent. I congratulate the Committee for coming up with a very important merger.

The name “National Gender and Equality Commission” is very clear – it deals with gender issues. At the moment, women are the weaker gender. Probably later on, it will be men who will be the weaker gender but for now the Commission only deals with women’s issues as suggested by its name. Again, there is the Kenya National Commission on Human Rights which deals with infringement of human rights, gender-based violence, child labour and rights of persons with disabilities, all of which are human right issues.

Sometimes when reporting cases of infringement of human rights, there is so much fracas that people may not know where to report directly. We have tortured those who are already tortured. A child who has been abused by stepbrothers, stepfathers or stepmothers may not know where to report. He or she goes to the KNCHR and is told that it is a gender issue. If the child is a person living with disabilities, he or she will be told that they should go and report to the National Council for Persons with Disabilities. We torture those who have already been tortured.

In our tradition, some infringements of human rights are issues that one may not want to bring out in the open. When you are supposed to report to three or four commissions, you better hide the information because you do not want it to get out there. Some issues like gender-based violence and sexual abuse are private and you need confidentiality and privacy. How do you get confidentiality and privacy when you have to report to three or four commissions?

Again, when it comes to the issue of expenditure, we are spending so much money to deal with the same issue. I support the merger of the National Gender and Equality Commission and the Kenya National Commission on Human Rights, so that they become the Kenya National Human Rights and Equality Commission. Otherwise, it will be very expensive to maintain them.

Some of us in the disability movement were saying that we also need our own commission - the National Disability Commission of Kenya. I heard that in the Building Bridges Initiative, they wanted to establish a Youth Commission of Kenya. How many commissions will we have in this country? Older persons and children will also demand their own commissions. Are we ready to support them financially?

Hon. Temporary Deputy Speaker, Hon. Kioni’s Committee has just given us a way forward. There are so many other commissions and State corporations that we need to merge. Look at the National Council for Persons with Disabilities, the National Fund for the Disabled of Kenya and the Association for the Physically Disabled of Kenya (APDK). All of them deal with the same person called ‘person with disability’ and spend a lot of money. Both the National Fund for the Disabled of Kenya (NFDK) and the National Council for Persons with Disabilities (NCPWD) are established by Acts of Parliament. They both purport to be assisting persons with disabilities. They are State corporations with board members and trustees, and they spend a lot of money for nothing. In this country, almost 60 per cent is spent on administration and very little goes to the intended beneficiaries. The National Gender and Equality Commission tells us that they need more funds because they do not have offices in every constituency. How can they have offices in every constituency if we have 10 commissions dealing with the same issue? When we merge them, the resources will be more and they will be able to have offices in every constituency without getting additional funds.

I support what Hon. Kioni has said in this Bill that we will have a transition. We will have the NGEC Chairperson becoming a Vice-Chairperson and the Chairperson of the Kenya Human Rights Commission becoming the Chairperson of the new Kenya National Human Rights and



Equality Commission. This will address all our issues because as persons with disabilities we will be very comfortable reporting our issues to the KNHREC. You know I am a human being created in the image of God. As a person with disability, I am uncomfortable reporting my issues to the NGECC. I know that even children and older persons are uncomfortable too. This is because the name itself betrays the functions of that Commission.

Hon. Temporary Deputy Speaker, I urge this House to support this Bill. Let us merge these commissions and let this be the beginning of reducing our wage bill. Currently, our wage bill is way beyond 53 per cent of the national Budget. Having such a wage bill means that this country will go into an economic meltdown because we will not afford to maintain all these commissions and boards. Some of these commissions were politically created to have soft landing spots for friends, relatives and even brothers of some powerful persons. When a politician loses a seat, they have a soft landing spot. If I have a girlfriend and I want to give her a job, she will have a soft landing spot because we have so many commissions and parastatals.

Imagine a country like Kenya having more than 270 State corporations. What are they for? There are many State corporations dealing with drought, famine and forests. We need to clean up our State corporations and merge them; if possible, in the way the Committee led by Hon. Kioni has shown. If this House supports this merger, it will save Kenyans a lot of money. It will have a legacy of cutting on the exorbitant wage bill without laying off workers or reducing services delivered to the citizens of this country.

Hon. Temporary Deputy Speaker, I support this Bill 100 per cent. I urge the whole House, including Hon. (Ms.) Fatuma Gedi, to support it for the sake of this country and have women affairs mainstreamed in the KNHREC. We need these equalities as persons with disabilities, marginalised groups and women but we can have this under one umbrella that will be decentralised to the ward level and constituencies to deal with issues once and for all. The NGECC is based in Nairobi. Someone from Turkana County has to spend around Kshs5,000 travelling to seek their services in Nairobi, and this is impossible.

With those remarks, I support.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Let us now have Hon. (Ms.) Obara Akinyi, Member for Kabondo Kasipul.

**Hon. (Ms.) Eve Obara** (Kabondo Kasipul, ODM): Thank you very much, Hon. Temporary Deputy Speaker. I stand to oppose because NGECC is the only Commission that fully handles matters affecting gender and mainly women. I believe that women's issues are a constituency on their own and stand to be lost in this body that will encompass all other areas. I stand to ask that we retain NGECC as it is and establish other commissions to deal with matters disability and the rest. There is one area the previous speaker has mentioned which I thought was a bit demeaning to the women fraternity. There is no way he can talk about merging and in the same breath talk about those 'commissions that people appoint their girlfriends to'. I beg that he withdraws that statement.

Thank you very much. I oppose.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Let me hear the voice of the youth from the Member for Dagoretti South.

**Hon. John Kiarie** (Dagoretti South, JP): Thank you very much, Hon. Temporary Deputy Speaker. Yes, I am youthful but by any definition, I am not a youth. The United Nations (UN) defines a youth as anyone up to the age of 24 while our Constitution defines youth as anyone less than 40 years. I will own the term 'youthful MP' but I am not a youth by definition of the law.

I stand to support this Bill by the Committee and even before I get into its flesh, I would like to commend it. It is important for us to recognise the work done by hardworking committees. The Constitutional Implementation Oversight Committee is one of them. I had an opportunity to appear before this Committee under the able leadership of Hon. Jeremiah Kioni, leading very esteemed and ranking Members of this House like Hon. Kaluma, Hon. T.J. Kajwang' and others. This is one of the Committees that deserve mention and commendation in the 12<sup>th</sup> Parliament for the work they have done in this Session.

This Bill is not only timely but also urgent. It was urgent many years ago. Bringing together the provisions of Article 59 on the constitutional commissions under one roof is important business. Creation of KNHREC is a timely idea. As we have been told, there are situations where Kenyans have been aggrieved. Even one homogeneous group of Kenyans had to knock on different doors in buildings and organisations seeking restitution and justice while they could get the same under one roof. I support this idea on account that we should handle our rights issues from one commission.

Hon. Temporary Deputy Speaker, the proliferation of commissions in this country is not in the interest of anyone. It is not in the interest of the marginalised groups in our communities. Women, youth, marginalised communities and persons with disabilities do not benefit when we proliferate commissions. If we could get one super commission as has been proposed under the KNHREC, then we will be walking the path the new Constitution envisioned. There could be a few issues that can be raised on gender matters but we have to remind ourselves that when, as a country, we were crafting the Constitution in 2010, we were all in agreement that there are some issues that will be transitional and will have a sunset clause. So, we have to accept that 10 years after the promulgation of the Constitution, it is time to start retiring some of the issues that had sunset clauses with timelines attached to them and start consolidating our institutions so that we can have a leaner and more effective Government. The effort to bring equality issues under one roof is the second reason why I support this Bill.

As the new Commission takes office, they have their work cut out for them. This is a Commission that will have to fight for its independence and have to elbow for their space in this country. They require their independence as has been envisioned by the crafters of the Constitution because some of the violators of human rights are very powerful people, very powerful institutions and very powerful entities. So, the first order of business the new commission will have on its tray is to stamp their authority and showcase their independence as they handle very high profile cases of human rights abuses.

More than 10 years after we promulgated the Constitution this country is still grappling with very basic rights. As a city dweller, I know that the Constitution guarantees proper and quality education for all. The same Constitution guarantees clean affordable drinking water for domestic use and sufficient nutritious food for every individual in this country. Ten years after the promulgation of the Constitution, some of these basic rights are still a pipedream. They are still very far-fetched for some of the people who dwell in the capital city, the biggest city in East and Central Africa. As we talk about human rights, the new Commission will have to start from the basics as we go on to the loftier aspirations of better human rights.

I said some of the offenders of human rights are very high ranking officials, institutions and entities. One of the biggest offenders of human rights is the State itself. For example, we recently realised that the State had been competing with COVID-19 in killing its own people. The number of people who were killed during the periods of lockdown, cessation of movement and curfews competes with the number of people who were killed by the COVID-19 pandemic. So,

the question begs: What kind of country is this where the State is in constant war with its own people? These are people killed by bullets that have been bought using taxes levied from the common man.

The Kenya National Human Rights and Equality Commission has its work cut out for itself. The extrajudicial killings that we witness every day in the city are an issue that should be addressed by this Commission. It is during the pandemic that we have seen untold demolitions and serious violations of human rights where we have criminalised trade in this city. Today it is more dangerous to be a trader in this city than to be a criminal. You stand a higher chance of being shot by a stray bullet in this city if you are a small hustler or a small trader than if you are a criminal. Where agencies like the National Police Service and the Commission on Administrative Justice fail, and where the judicial system falters, the gap needs to be filled by the newly reconstituted Kenya National Human Rights and Equality Commission.

I am in full support of this Bill. I urge some of our honourable ladies who may be having a small contestation on the issue of gender to understand that the proliferation of commissions in this country does not work in their interest. In fact, it works to counter efforts they have tried to make. Let us mainstream issues of women, the youth, the marginalised and people living with disabilities. Rather than proliferate them, let us mainstream them so that they can be tackled on the high table. That is what this Bill seeks to do by bringing the commissions created under Article 59 of the Constitution under one roof.

Hon. Temporary Deputy Speaker, finally, there is a matter I brought to this Committee and it was well handled. I pray that this House and the relevant institutions that are mandated by the Constitution take up the Petition that I brought to the Committee and do as was prescribed by the Committee on the issue of our esteemed civil servants who retire without benefits, making it so dangerous to work in some of these offices that the President appoints citizens to so that we make the public service not a career killer but a career builder.

With those remarks, I strongly support the merging of these Commissions to create Kenya National Human Rights and Equality Commission.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Kiarie, sanctity of life or the right to life can never be gainsaid. That is the ultimate human right. Well spoken. You do a good job in Dagoretti South. I understand why you are speaking to the right to food and all that. I know that you feed the young ones out there. You are doing a good thing.

Next on my list is Hon. Odhiambo Akoth, Member for Suba North but I do not seem to see her in the Chamber. I know she would have loved to speak to this Bill. I will give the next opportunity to Hon. Adagala Kahai, Member for Vihiga.

*(Hon. David ole Sankok spoke off record)*

**Hon. (Ms.) Beatrice Adagala** (Vihiga CWR, ANC): Thank you, Hon. Temporary Deputy Speaker. Protect me from Member 001, *mtoto wa Kenya huyu*.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): You are adequately protected, my County Woman Representative. Hon. Sankok does not mean any ill will towards you. He is just appreciating that you are dressed in similar colours.

Proceed.

**Hon. (Ms.) Beatrice Adagala** (Vihiga CWR, ANC): Thank you, Hon. Temporary Deputy Speaker for the protection. I know Hon. Sankok is in the cold and is admiring to join me in Amani

National Congress. He is very much welcome. His position of nomination is guaranteed. He will get it.

Thank you, Hon. Temporary Deputy Speaker for giving me this chance to speak on the Kenya National Commission on Human Rights (Amendment) Bill. I was disturbed in my thoughts when Hon. Sankok said that when these commissions are created, girlfriends are picked to head them. That is very wrong. He is demeaning women and he should not. Women are the future. Women are mothers, daughters and aunties, and they are given the positions in the right manner as they deserve them. So, let him not demean women. Women have a right to be employed or be given these slots. Thank you very much for apologising.

I support the Bill. More of these commissions should be put in place.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Just hold on, Hon. Adagala. Hon. Ali Fatuma, what is out of order?

**Hon. (Ms.) Fatuma Gedi** (Wajir CWR, PDR): Thank you, Hon. Temporary Deputy Speaker. This is a House of records. If, indeed, what we are hearing from Hon. Adagala and as also mentioned by another Member about girlfriends being appointed to this position is true, then we cannot proceed with this matter. Hon. Sankok has to apologise or substantiate about the girlfriends that he knows are being given this position. As women, we are offended and we cannot continue with this discussion.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Gedi, you must know the rules. If that point had been raised when Hon. Sankok was on his feet, then the Speaker would have dealt with it. However, Hon. Sankok, I do not think anybody appoints his girlfriend to any position in this country. People are appointed because they have qualifications.

**Hon. David ole Sankok** (Nominated, JP): Hon. Temporary Deputy Speaker, let me apologise because I did not actually mean to be rude to women. I started by saying that just like Hon. Raila Odinga appointed his brother to the East African Legislative Assembly (EALA), there are possibilities of even appointing girlfriends and boyfriends. I sincerely apologise and withdraw. It should be expunged from the *Hansard* because I did not really mean that.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): That is enough. Hon. Adagala, proceed.

**Hon. (Ms.) Beatrice Adagala** (Vihiga CWR, ANC): Thank you, Hon. Temporary Deputy Speaker. I would like to say that more commissions should be put in place such as the women commission, youth commission and even children commission. These commissions should be put in place so that they can work for the people of Kenya. We do not want to see any group left behind. We want to see every section covered very well. The positions should be distributed to all regions in Kenya keeping in mind that we have a shortage of job opportunities right now. Our youth are languishing in the streets. Our sons and daughters have degrees and they are just languishing in the streets. Therefore, such commissions should be put in place so that our children can get employment.

Hon. Temporary Deputy Speaker, I support.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Shabbir, Member for Kisumu East.

**Hon. Shakeel Shabbir** (Kisumu East, Independent): Thank you, Hon. Temporary Deputy Speaker. I stand to oppose this proposal. It has never been common sense to merge two of such institutions unless there is a common strength and synergy. These two have no synergy because they work on different issues. You cannot consolidate. If you are saying that you are trying to consolidate because of expenses, then it does not make sense. If you are consolidating because the

two institutions are not serving the purpose for which they were initially put together by the Constitution, then you need to have some sort of research to support that. In this case, there is no justification. It is just that somebody somewhere wishes to restructure these two institutions that were part and parcel of Chapter 4 of the Constitution and the commissions that we set up. I was in the Constitution of Kenya Review Commission (CKRC) and I do not know whether Hon. Kioni was there. We took a lot of time trying to work out how this can be done.

In 2011, with the wisdom of Parliament, these were split into three. The idea is to see which one of these three is not working. You cannot say that since a commission must serve between three and nine years, you are now going to reduce costs by putting them together. You can only put certain things together. You can mix oranges with lemons but you cannot mix oranges with apples.

The basic reason we went through the Constitution was the Bill of Rights which is one of the best in this world. The basic reason that we went through the Constitution was to recognise the right of women and achieve gender equality. There was also the issue of human rights which have been taken out of perspective. As you were saying, human rights are decided by people in the western world. Are you saying that what is human right for them is not a human right for us? Tomorrow, those students who are burning schools will say that it is their human right. What is that human right? In African society, a right is the one that is earned not the one that is given to you because some westerner has said so. However, we are not undermining the question of human rights. That must happen.

I was in Panama when this issue of putting Somalis together and the aspect of human rights came up. The situation was clearly out of place and it was put with a different reason to embarrass Kenya. They forgot the issue of security and other issues. I want to tell Hon. Kioni that you cannot say human rights failed because of that. Human rights failed because they have lost the right direction. If the National Gender and Equality Commission is in the right direction, please take it under the commission that was established under Section 59(4) of Chapter 4 of the Constitution on the Bill of Rights. Until they are fully implemented, they cannot be changed by a resolution. It has to be through a referendum. Article 255(1) of the Constitution states that you cannot use restructuring via administrative power that you are trying to apply here. There is more to be done in putting these things together. I, therefore, disagree.

In that amendment, the powers that you are quoting are incorrect as per Article 255(1)(g) of the Constitution. The merging will reverse all the gains made in the promotion of gender equality. We will lose strategic clarity and focus. The real danger is to mainstream the main issues and the gains that we have made in gender and mix them up with human rights. They are two very different elements and if you are worried about costs, then reduce the commissioners to three in each commission. That will be better than the nine commissioners that we currently have. You are introducing conflict of interest in one body and it may end up like the Kenya Meat Commission (KMC) or something else. This is going to be destroyed. You are trying to destroy something that was put together by the Constitution.

This proposal is misconstrued, mismatched, misadvised and with bad intention. I totally object to this merging. You must consolidate your strengths. You cannot merge your weaknesses. You should consolidate your strengths but this proposal here is not doing so. It is going through the backdoor to alter the ideas, visions and the mission that we had when we were in the CKRC in 2005. Where were you when we were being teargassed? You were not there. Where were you when this was happening? You were not there. I was there. The reason why Nominee 001 is

walking around like a king is because we gave him that power. We gave him that recognition and that is why he grew up.

I sit in the Special Funds Account Committee and they wanted to bring Uwezo Fund, Youth Fund and then Women Fund together. Five years later, they have not been able to do a thing. They have destroyed whatever work Uwezo Fund, Youth fund and Women Fund were doing. They have actually put a stop to it. For five years, my constituency has not had a single Uwezo loan. This is a bad intention of trying to take this country back to where it came from and reverse the gains that we have made in gender equality.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Shabbir, this is not the Chairperson's personal Bill. This is a Bill being sponsored by the Committee. So, do not make it look like it is the personal property of the Member for Ndaragwa. It is the property of the Constitutional Implementation Oversight Committee.

The Hon. Cecily Mbarire.

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker.

I rise to oppose this Bill. I oppose it because I have the institutional memory of where the National Gender and Equality Commission (NGEC) came from. The women of Kenya were deeply involved in the constitution-making process that gave birth to the 2010 Constitution. They were as clear as day and night that there was no other way of addressing issues affecting women in this country other than having an independent commission whose main purpose would be to deal with matters gender and matters affecting women.

Now, while it makes economic sense that we should consolidate, enjoy the economies of scale and make sure people are able to access these services closer home, the experience we are having as women in this Assembly is actually that our fears were true. That, even despite coming up with the NGEC, we still are having to fight for more budgetary allocation to the NGEC in every budget cycle. That explains to you how issues of women are viewed by a majority of people in positions of authority, including in this House. When you tell us that we will even be better taken care of when we are under a bigger umbrella commission, we do not get it. It is because the practical experience is that we are not getting what we ought to get so that the NGEC can perform their functions better.

The question I would want answered is who was involved in the drafting of this Bill. How much public participation took place to arrive at this decision? Was there a study or a survey done, or even any form of consultative process done to understand from the women of Kenya whether they were satisfied with the commission as it is and whether they were willing for this commission to be put under an umbrella bigger commission? If that did not happen, we are doing a disservice to the women of this country. If that did not happen.

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

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

We must remember some of the things that were raised in court concerning any effort to amend the Constitution of this country. That a few people cannot sit and out of their Motion decide "you know what, we do not need the NGEC here. Let us put it here" and do not go back to the

rationale and justification that was brought forth by the stakeholders that made that happen. So, unless we are involved, I wish to tell the Chair of the CIOC that unless you involve the women of Kenya, unless you have a document to bring to us to show us that the NGENC has not performed as it should and the reasons it may not have performed as it should, we are not going to board this bus. It is because this is a dangerous route. This will be dangerous for the women of this country. We will not allow it.

So, I urge the Members of this House not to use economic sense to make a decision on a matter so critical for the women of this country. We keep asking this question: How come matters economic are brought forth when it comes to women but when we are dealing with other issues, including wasting money on things like the Building Bridges Initiative, matters economic are never mentioned?

So, on this one, I say a big “No”. I urge this House not to support this Bill. I ask the women in this House to come out and say “No”. The men who have supported matters gender, please, do not board this bus that has been boarded by one Hon. Sankok. We say a big “No”.

**Hon. Deputy Speaker:** Okay. Now you have said it. Let us hear Hon. Wangaya Aseka, Member for Khwisero.

**Hon. Christopher Wangaya** (Khwisero, ANC): Thank you, Hon. Deputy Speaker, for this opportunity. I rise to support this.

*(Loud consultations)*

We should also know that, apart from women, we have other groups that are also of interest. We have the youth and people living with disability. Reducing this discussion to women may cause us to deviate from the core objectives of this amendment. I support this Bill, one, because it improves the coordination of activities within the interest groups. As I look at it, it brings all these groups under one roof and one coordination. Matters of coordination....

*(Loud consultations)*

**Hon. Deputy Speaker:** Order. Members, please, give Hon. Aseka time to contribute.

**Hon. Christopher Wangaya** (Khwisero, ANC): Thank you for that protection, Hon. Deputy Speaker.

This Bill improves the aspects of coordination within these interest groups. Two, it increases the efficiency within these groups. Matters to do with the youth will be handled; matters to do with women will be handled; matters to do with the children will be handled, and matters to do with people living with disability will be handled under one roof.

Lastly, it reduces unnecessary expenditures. One, the number of commissioners manning these commissions will be reduced. Two, money meant for recurrent expenditure and other overheads will be saved and then, maybe, diverted to addressing many core issues that require financial attention.

With those few remarks, I support.

**Hon. Deputy Speaker:** Hon. Fatuma Gedi.

**Hon. (Ms.) Fatuma Gedi** (Wajir CWR, PDR): Hon. Deputy Speaker, let me take this opportunity to thank you.

*(Hon. David ole Sankok spoke behind Hon. (Ms.) Fatuma Gedi)*

Hon. Deputy Speaker, you need to protect me from the Chair of the CIOC. He is trying to sweet-talk me not to oppose but, from the outset, I want to speak as the chair for the 47 County Women Representatives.

I wish to oppose the Bill. The reasons are: we have as women, through the NGEC, gained a lot. We have gained a lot in terms of sensitisation or sensitising women into participating in leadership and also sensitising women on their rights. When you look at the Bill, the Chair has a point at some point. But, again, you have to be very sensitive to the reality. Which stakeholders did the Chair consult when this Bill was being prepared? The stakeholders are many. Where was public participation for this Bill done? I included and as the Chair of the 47 CWRs, nobody has approached me or even gone to the counties to seek information.

Hon. Deputy Speaker, please protect me from Hon. Sankok. I have been listening to him.

**Hon. Deputy Speaker:** Hon. Sankok, it even seems that the Bill is your baby. Is it? So, you really want to give an opportunity to colleagues to debate nicely. Give them time. From where you are sitting, whenever you make any direct comment, in my thinking, it interferes with the thought process of Hon. Fatuma Gedi. So, please allow her to contribute. We have a few more Members who will contribute and then you will make your decision one way or the other.

Proceed, Hon. Gedi.

**Hon. (Ms.) Fatuma Gedi (Wajir CWR, PDR):** There is no commission which is superior to another. There is a gender that has suffered and continues to suffer injustice. There is a gender that up to today has not achieved what they ought to achieve. We have a society which is so unfair to women. If you empower women, you have empowered society. What the National Gender and Equality Commission has done to Kenyan women today is to sensitise them on their rights. And women have many rights: right to property, right to education, political rights and right of inheritance. We have had a lot of challenges. Women ought to have privacy of information. When you try to bring together two commissions that do not address the same issues, I feel we are taking back the gains of women. Look at the proposed name—Kenya Human Rights Commission—there is no mention of gender. It is so unfair even from the proposed name. We feel you are killing or belittling the gender commission and taking it under the human rights commission. That way, we are killing the hopes, aspirations and efforts of the gender commission towards Kenyan women. I urge the Committee to go back to the drawing board and be sensitive to women, and not only to women but to the Kenyan people. Women are mothers, sisters and wives. They contribute tax. They are 50 per cent of the population of this country. You cannot ignore such a population.

My humble plea to the Chair is to go back to the drawing board. If we have a problem with the Commission, you can bring a report based on performance. Look at how the human rights commission has performed. To me, they have turned into activists. When they want to please certain quarters, they comment on issues. When it is about ordinary Kenyans, they close their eyes. We have had a lot of killings, gender-based violence cases and injustices. We have even had police officers killing ordinary Kenyans. The human rights commission ought to stand with Kenyans. Instead, they have decided to become politicians and activists for certain political parties. Those are the issues that we need to address. In terms of performance, can we look at what the gender commission has achieved since it was formed *vis-à-vis* what the human rights commission has achieved? Let us not just come up with a Bill to merge two commissions that perform two distinct roles. I feel we are not fair to Kenyans and to women. Where are we going? The only hope we have to raise our issues with confidence and privacy is the gender commission. In 2022 we are talking about empowering women by having many women in politics as governors and elected



senators. We are looking at how to achieve the one-third gender principle. Merging the gender commission with the human rights commission is like taking back our gains and demoralising women who want to participate in politics.

As I conclude, I want to urge the House and those who believe in women leadership and those who fought for the one-third gender rule that this is not where we want to go. This is not where we want to take our daughters. This is not where we want to go as a country. We are demoralising Kenyans. Kindly let us go back to the drawing board and be sensitive to reality.

I thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Hon. Nyikal.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Deputy Speaker. First of all, let me congratulate the Committee for doing a good job. I have never had to differ with Hon. Kioni, but on this I differ.

*(Applause)*

I therefore rise to oppose this Bill. I do so because I was the secretary of the Cabinet committee that looked at Article 59(4) that provides that you can actually split the human rights commission into two or more commissions. What the Cabinet committee decided to do was to create three commissions: the Kenya National Commission on Human Rights, the Commission on Administrative Justice and the National Gender and Equality Commission.

What has motivated this move by the Committee, which I can understand, is that they have looked at it as a gender equality commission rather than as a gender and equality commission. If you do that, then it reduces the essence of the commission to gender issues and leaves out matters of equality. Maybe what would have happened was to find out how to enhance the equality element, which is a little bit beyond gender. I would have left this commission as the gender commission and take away the equality aspect to the human rights commission and emphasise the equality element. Why do I say that? It is because if the objective of this Bill is to abolish this commission and move its functions to the human rights commission, the bigger loss is to do with gender issues. In terminology, you will never hear it again. What that means is that we are equating gender issues with human rights and equality issues. That is not true. It is broader than that.

I think we may start by defining gender. Gender is basically a social construct in society as to the roles of the different sexes in relation to what we assign to them. This is something that changes constantly with the society. There are professions that were initially thought were for females or males. That is changing. In homes, there were roles for women and roles for men. This is completely changing, particularly with advanced technology. If you say that there are other special groups like children, when there are issues to be addressed and it is a female child, you meet totally different problems.

If you then look at opportunities, for a long time, this social contract of what sexes do has obstructed the growth of women. Right now, many people see gender basically as something to do with women but it is not true. We have a big problem in the society today which is affecting males and we are not addressing it which this Commission should address. This is the issue of femicide; the thing of many women being killed. This is because we did not balance the boy-child and girl-child issue and we need to address that today. If you look at mobilisation of people even in small businesses, you will see a very clear distinction between men and women. Even if you look at distribution of jobs in offices, you see a clear distinction. These are the gender issues that need to

be addressed. With the new Constitution, there has been a little loss to the gender issues, particularly, if you relate gender specifically to women.

Any issues like gender mainstreaming, by looking at the Budget, how does the Budget affect issues that relate to women as members of the society? This is including provision of water for example, and dealing with women in rural areas who have to go around looking for water. These are much broader issues than just men and women. To that extent, my idea is that this is leading to further loss. When we were mainstreaming gender issues, we were asking: even in ministries, how do you streamline education so that the issues of gender are catered for? Unfortunately, it is mainly women but very soon it will become men as well. Even in the legal field, when people talk of support of a spouse during divorce, people certainly think that it is only women who should be supported. Issues are changing and we may need to find out how men should be supported during a divorce if they were not equally empowered? In my view, if we go this way I think we will lose out on the gender issues. This has been a very emotive issue even in Parliament but mainly because it has been looked at to a large extent as a women's issue. There are countries...

**Hon. Vincent Tuwei** (Mosop, JP): on a point of order. Hon. Deputy Speaker, I find that the House is not well constituted. My eyes are clear. Do we have enough quorum to have the House in session?

**Hon. Deputy Speaker:** Once you raise that kind of an intervention, my hands are tied. Never mind the fact that you just walked in, Hon. Tuwei. However, I will ascertain whether we have the requisite numbers required. If we do not, the Standing Orders are clear.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Do I finish?

**Hon. Deputy Speaker:** You will not finish, Hon. Nyikal, because there is a matter that has been raised. So, we must dispense with that. We do not seem to have the requisite number and I therefore, order the bell to be rung for 10 minutes.

**Hon. Deputy Speaker:** Hon. Members, the Standing Orders are very clear.

*(The Quorum Bell was rung)*

*(Hon. David ole Sankok made his way to the door)*

Hon. Sankok, when a Quorum Bell has been rung, you do not leave. Members, we should be clear with that.

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

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

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Order, Hon. Members. It is quite evident that we may not be able to achieve the requisite quorum. The bell has rung for 10 minutes. Hon. Nyikal, you will have three minutes when debate resumes.

## ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Members, the time being 6.03 p.m., this House stands adjourned until Wednesday, 10<sup>th</sup> November 2021, at 9.30 a.m.

The House rose at 6.03 p.m.