

REPUBLIC OF KENYA

MANDERA COUNTY ASSEMBLY

THE HANSARD

Tuesday, 2nd March, 2021

*The House met in the Assembly Chambers
County Assembly Buildings at 2:33 pm*

[The Speaker (Hon. M. A. Khalif) in the Chair]

PRAYER

MOTION

ADOPTION OF THE REPORT OF THE COMMITTEE ON LEGAL AND JUSTICE AFFAIRS ON THE CONSTITUTIONAL (AMENDMENT) BILL 2020

Hon. Mohamed Ibrahim (Guticha): Thank you, Mr. Speaker. I beg to move the following Motion; -

THAT this County Assembly notes the report of the Committee on Legal and Justice Affairs on its consideration of the Constitution of Kenya (Amendment) Bill, 2020 laid on the Table of the County Assembly on Wednesday, 17th February, 2021 and, pursuant to the provision of Article 257 (6) of the Constitution of Kenya, approves the Constitution of Kenya (Amendment) Bill, 2020.

The Legal and Justice Affairs Committee is one of the select Committees constituted by this County Assembly and draws its mandates from Mandera County Standing Order No. 196.

Mandera County Assembly Standing Order 196 mandates the Committee and it states that; -

1. There shall be a select committee to be known as the Justice and Legal Affairs Committee;
2. The Committee shall consist of a chairperson, and not more than six other Members;
3. The committee shall consider all matters related to human rights and Civic education;
 - (a) Study and review all county legislation referred to it;
 - (b) Make reports and recommendations to the County Assembly as often as possible, including recommendation of proposed legislation
 - (c) Identification and involvement of relevant partners and all stakeholders in the legislative process

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(d) Building capacity of County Assembly, citizens and stakeholders for an enhanced development conscious law reform process that guarantees service delivery.

Mr. Speaker, the following are the Legal and Justice Affairs Committee Members as constituted by this County Assembly; -

- | | |
|-----------------------------------|---------------|
| 1. Hon. Mohamed Ibrahim Yussuf | Chairperson |
| 2. Hon. Abass Abdille Mohamed | V/chairperson |
| 3. Hon. Abdiaziz Dakat Maalim | Member |
| 4. Hon. Umulkher Kassim | Member |
| 5. Hon. Ahmed Gabnan Ali | Member |
| 6. Hon. Shaban Hassan Hillow | Member |
| 7. Hon. Meymuna Sheikh Abdishakur | Member |

The committee wishes to thank the Offices of the Honorable Speaker and the Clerk for facilitation and technical assistance offered.

The committee further wishes to thank all the Stakeholders who participated in the public participation forums and offered their views orally.

It is now my pleasant duty and pleasure on behalf of Legal and Justice Affairs Committee to present to the County Assembly the report of Legal and Justice Affairs Committee on the Constitution of Kenya (Amendment) Bill, 2020 for adoption.

Pursuant to provision of Standing Order No. 196 (3) (b), we, the Members of Legal and Justice Affairs Committee do hereby adopt this report on the Constitution of Kenya (Amendment) Bill, 2020 by affixing our signatures on today Friday 26th February, 2021.

Hon. Speaker, pursuant to Article 257 (5) of the Constitution of Kenya 2010, on 26th January, 2021, the Office of the Honorable Speaker of the Mandera County Assembly received a copy of the Constitution (Amendment) Bill 2020 from the Independent Electoral and Boundaries Commission for consideration by the County Assembly of Mandera in accordance with the law.

The Assembly will be required as per Article 257 (6) of the Constitution of Kenya, 2010, to submit its decision on the Draft Bill, jointly to the Hon. Speakers of the National Assembly and the Senate.

On 17th February, 2021 the Honorable Speaker committed the Constitution (Amendment) Bill, 2020 to the Committee on Legal and Justice Affairs for consideration and report to the County Assembly.

The Speaker further directed the committee to adhere to the provisions of Article 196 (1) of the Constitution of Kenya, 2010 as read together with the County Government Act No. 17 of 2012 and Mandera County Assembly Standing Order No. 123 (3) that emphasizes on the importance of public involvement in such processes.

On Thursday 18th February, 2021, and in line with the Speaker's directive, the committee placed the advertisement in the Standard newspaper inviting the Members of the Public to present their views on the Bill during public participation as per schedule below;

Date	Location	Venue	Time
25/02/2020	Mandera town	Mandera Peace Hall	9.00 am

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The public were also given the opportunity to present written Memoranda to the Office of the Clerk Mandera County Assembly, P.O. Box 408-70300 Mandera or email to clerk@manderaassembly.go.ke on or before Thursday 25th February 2021 at noon. Copies were provided at the public participation fora. Similarly, copies of the bill could be downloaded from website www.manderaassembly.go.ke (copy annexed)

Starting from page 7 of the report that consists of the Amendment Bill, Clauses and Articles that the Bill intends to amend. It also contains the proposed Bill which almost all the Members have. Mr. Speaker, with your leave, I want to go to page 20 on the public views on the draft bill.

The Speaker (Hon. M. A. Khalif): Proceed.

Hon. Mohamed Ibrahim (Guticha): Hon. Speaker, as envisaged in Article 196 (1) (b) of the Constitution of Kenya, 2010, Section 91 of the County Government Act No 17 of 2012 and Mandera County Assembly Standing Order No 123(3), public participation was held on Thursday 25th February 2021 at 9.00 am at Granada Hotel and Peace Hall, and the following members and groups attended and gave their oral submission as evidenced by the attendance sheet annexed; General members of the public; Representatives of elders'; Representatives of Civil Societies; Representatives of persons with disabilities; Representatives of Maendeleo ya Wanawake; Representatives of youth, minorities and marginalized groups; Kenya national union of teachers and Representatives of Members of the press.

During the public hearing, the Members of the Public gave their views as follows;

1. The members of the public lauded the increase in Counties' allocations from 15% to 35% of the total revenue collected, which will spur economic growth at the grass root.
2. The Building Bridges Initiative Bill is very much welcome in Mandera County since it comes with additional one Constituency that will resolve disputes arising from clan constituency dominance.
3. Some participants stated that Female gender do not have the resources to campaign for elective posts. Therefore, nomination without running for elective posts is better option. In addition, in the Somali culture it is difficult for men to vote for women in elective posts thus killing the dream of qualified women in leadership. However, others felt that interested individuals should contest for elective posts for them to get nomination as this will reward those who merit it without fear or favor.
4. The public noted that the County Assembly has delayed the passing of the Constitutional Bill while the promoters of the bill did not carry out proper sensitization in the County as no copy of the report was brought for public use.
5. The youth opined that the Youth Commission in the Constitutional Amendment Bill, 2020, is a bright idea that if implemented will solve the problems of the youths in this Country.
6. The Constitutional Amendment bill 2020 will save Mandera County from losing money as per the proposed County allocation formula.
7. That, The Constitution of Kenya 2010 remains one of the best of its kind, therefore it is too early to amend it.
8. The Constitutional amendment Bill is personalized and there is little stakeholders' engagement at the grass root level.

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The Committee having made presentations, considered the public views and presentations, on the **Constitution of Kenya (Amendment) Bill, 2020** observed that;

1. The Bill proposes to expand the executive which will solve the perennial conflict associated with the winner take all thus it is a solution for perennial election related violence and inculcates inclusivity.
2. The addition of one constituency to Mandera County is good and will resolve disputes arising from clan constituency dominance and provide lasting solution while enhancing inclusivity and greater representation.
3. A number of Ministers will earn parliamentary salaries so cabinet will be less expensive.
4. The Ward Development Fund will spur development at grass root level.
5. Since a large portion of the Kenyan's population are youth, the creation of youth commission as proposed in the Bill will address the challenges of the Youth and bring opportunities as well as proper representation.
6. All the existing 290 Constituencies will be saved, including the protected seats because they have become key for representation of sparsely populated areas.
7. The prime minister will continue to earn his/her salary as Member of Parliament with no additional salary for the prime ministerial role.
8. Increase of County Allocation from the current 15% to 35% will strengthen devolution, spur growth at the lowest level and enhance development.
9. The proposal to anchor the aspiration of a new economic model based on value creation, provides equitable opportunities for all the people, promotes industrialization and supports small and micro enterprises. Includes promotion of agriculture, pastoralism and blue economy. Thus the nomadic communities have an opportunity to sale their livestock at better price than before
10. The Bill proposes to amend Article 96 so as to enhance the oversight role of the Senate on matters relating to all county revenues and their expenditures and enhance accountability of counties in matters of public finance and enhance service delivery to the people as opposed to currently where the Senate is mandated with oversight role on the national revenue allocated to the County Governments. This proposal will improve own source revenue and curb corruption at the devolved units.

Having analyzed the contents of the Constitution of Kenya (Amendment) Bill, 2020, and made observations, conducted public participation in compliance with the laws guiding it; considered the views and presentations by the public, the Legal and Justice Affairs Committee recommends that Mandera County Assembly approves the Constitution of Kenya (Amendment) Bill, 2020.

Mr. Speaker, there are rumors that Mandera County has delayed the passage of this Bill. I want to dispel the rumors surrounding the BBI Bill in Mandera County. I want to categorically state that this Bill was received by Mandera County Assembly on 1st February 2021 in accordance with Article 257(c). According to the Calendar of this County Assembly, we have commenced the 5th Session on 9th February 2021.

As per the Standing Order 154 (1) (d) which requires the County Assembly to form House Business Committee in every Session, the House Business Committee was approved by the Assembly on 16th February 2021. A day later, the House Business Committee slotted the

business before the House on 17th February 2021 as Paper Laid through the Communication from the Speaker.

As per Article 196 and section 87 of the County Government Act, Mandera County Assembly Standing Order No. 123(3) obligates the County Assembly to conduct Public Participation. In pursuit of that mandate, immediately on 18th we had committee meeting and put 7 days' notice for public participation. There were guidelines provided for the passage of this Bill. The guidelines given by SOCCAT and as per Article 259 of Kenya Constitution, a case involving the Republic vs County Assembly of Kirinyaga, ex parte Kinda Muriuki, the Court ruled that the reasonable days for Public Participation notice is seven (7) days. Article 259 (5) of the Kenya Constitution, states that; -

“In calculating the time of two events for any purpose under this Constitution, if the time is expressed-

(a) as days, the day on which the first event occurs shall be excluded, and the day by which the last event may occur shall be included”.

This means that the public participation was done within the confines of the law. The Committee had only one day for reporting, in the light of Article 257(5) which requires the County Assembly to consider such draft within three (3) months. We have only consumed 30 days, and the 90 days will elapse around 30th April 2021. This means that the County Assembly has close to two months to dispense this BBI. We have used only 30 days from the day it was received. The narrative that the County Assembly has delayed receipt of this Bill is absolutely out of context.

Having demystified the genesis, I beg to move the Motion and I request Honorable Abass Abdille to second.

Thank you.

Hon. Abass Abdille: Seconded

The Speaker (Hon. M. A. Khalif): Before I propose, for the purpose of record, I want to correct you on page 26 where you are referring to County Government Act No. 17 with reference to public participation, it should read County Government Act No. 87 of 2012. That is the correction. So, I propose.

(Question proposed)

PROCEDURAL MOTION

LIMITATION OF DEBATE

The Speaker (Hon. M. A. Khalif): Yes, honorable Kulow.

Hon. Kulow Alio (Rhamu): Thank you, Mr. Speaker. I rise to move a Procedural Motion as per Standing Order No. 96 (1) that each Hon. Member to take ten minutes to debate the report. Hon. Majority Leader and Minority Leader to take 15 minutes to contribute to the report.

Mr. Speaker, the Standing Order allows honorable members to contribute to a Motion for a maximum of 20 minutes and above. The Majority Leader and Minority Leader are normally allowed to contribute to the debate for 60 minutes.

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Looking at the magnitude of the Motion before us, if you are going to allow the honorable members to debate as per that standing order, then I am assure that we are going to leave this chamber late in the night.

Therefore, I beg honorable member for El-wak south to second.

Thank you.

The Speaker (Hon. M. A. Khalif): Use the microphone.

Hon Abdinoor Disow (El-wak South): Thank you, Mr. Speaker. I rise to second the Procedural Motion before the House. I wish to give some reasons as to why I second. As clearly put by honorable Kulow member representing Rhamu, the business before this House today is very vital and it requires each and every member's contribution which may not be practical. As per the Standing Order each Member is allowed to contribute for 20 minutes and that might make us leave the chamber late.

With those few remarks, I second the Procedural Motion.

(Question proposed)

Hon. Robow Mohamed (Lagsure): Thank you, Mr. Speaker. I stand to support the Proposed Motion because everybody in this House may request time to contribute to this amendment Bill. The mover has reduced the time from twenty (20) minutes to ten (10) minutes. This is half of what is provided in the Standing Order.

I, therefore, request you to put the question.

The Speaker (Hon. M. A. Khalif): Yes, honorable Abdi of Malkamari.

Hon. Abdi Hassan (Malkamari): Thank you, Mr. Speaker. I echo what the honorable member for Lagsure said. I support the Procedural Motion raised by honorable member for Rhamu. Mr. Speaker, we are about 48 honorable members; three-quarter of us are present in this House. The time that we could have used to debate will be too much because of the weight of the matter. I request other honorable members to support for you put the question.

(Question put and agreed to)

The Speaker (Hon. M. A. Khalif): So, we continue with the debate on the amendment Bill. Hon. Yakub!

Hon. Yakub Hassan (Derkhale): Thank you, Mr. Speaker. What is in front of us is Building Bridges Initiative Amendment Bill. As said by the Member representing Guticha ward that there are rumors that Mandera County Assembly is delaying this Bill. Mr. Speaker, that is not true. This is a House of rules and procedures and public participation must be done, if not maybe we will be taken to court by activist. Some of the counties have gone ahead to take the BBI and discuss and pass it without taking it for public participation.

Secondly, I have issues with observation made by the honorable committee for Legal and Justice Affairs. Observation No 2 where they said that there is clan constituency dominance that will be abolished by BBI is not true. It is not the fact and I think it is erroneously put there because the language used is not legislatively friendly. There is nothing like clan constituency dominance in Mandera County. That is just point of correction.

Mr. Speaker, going forward, I stand to support the BBI amendment Bill. Anybody who opposes BBI is an enemy of Mandera County. The reason is in the northern counties it is only

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Mandera County which has benefited from this BBI; we have got one constituency. You are very much aware that the late chairman of BBI honorable Yussuf Haji who prepared the BBI and the amendment Bill hails from Garissa County and his own county did not benefit. For that, we must thank God that the only constituency in northern Kenya went to Mandera County. I am not aware of anybody who is opposing but trying to talk about people opposing BBI in public participation is not good for us.

Secondly, raising or pushing our revenue allocation from 15% to 35% shareable revenue allocation to Mandera County can do a lot. From the inception of devolution in 2013 you must be aware of the changes which have taken place in Mandera County. The number of paved roads we have in Mandera town, environmentally and even economically it has changed because of the 15% devolved fund. The moment we take that to 35% then we will benefit a lot and the only problem we have is that our leaders in the national assembly are not working like us in the devolved units because the 85% of the national revenue is in Nairobi and our national leaders are not fighting for it. They are not making progress to get the remaining 85% from the national government. So pushing the 15% to 35% means a lot to us.

Mr. Speaker, a part from the additional constituency we have also ward fund. It is only the members of the county assemblies who do not have a specific fund managed by political elite. You know very well the governor has his own fund which he manages over 12 to 13 billion which accumulates to over 50 billion for the five financial years. Hon. Members representing consistencies have millions of fund as National Government Consistency Development Fund and even the women representatives have such funds, senators to some extent have such funds. County wards have now been guaranteed a ward fund which they can manage in conjunction with their electorates to bring development. Then why don't we support BBI? We have to support BBI because of development.

Mr. Speaker, the other issue is that the two-third gender rule is also solved.

The Speaker (Hon. M. A. Khalif): You have three minutes to summarize.

Hon. Yakub Hassan (Derkhale): Mr. Speaker, I will finish within the three minutes. The issue of gender equality, the political parties can just pick anybody from anywhere specifically female gender without looking at the education status, without looking at the experience, without looking at the age and at the end of it all, the political parties end up dumping individuals, I am not abusing anyone, who cannot perform in the Assemblies. By making the two-third gender rule and by making it a must that they should go for competitive elections, I think the issue of two-third gender rule is solved. Those who can go for elections and look for votes and get the right votes will find themselves in the Assembly but not those chosen by those who are in Nairobi.

Lastly, since some of us want to go to the higher offices like Senate, the Senate has been empowered. Not all of us will be in this Assembly come 2022. Some of us will push ourselves to Parliamentary seat or the Senate which is now empowered. Initially, they are just looking at the revenue allocation and the amount of money the county will get but now in the BBI, the Senate has powers to oversight the County Government and even see locally collected revenue collections.

The other one, we are tired of going and pleading to the Executives to take projects to our areas. In the BBI amendment Bill, it is a guarantee that half of the CECs will come from the Members of the Assembly. Take an example of Hon. Yakub who is a Member of County

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Assembly for Derkhale ward and who is also the CEC for water. The perennial water shortages, water trucking, all these will be solved.

The Speaker (Hon. M. A. Khalif): Thank you. Your time is up.

Hon. Yakub Hassan (Derkhale): With that, I support the report. Thank you.

The Speaker (Hon. M. A. Khalif): Hon. Shankaron!

Hon. Shankaron Sheikh Ibrahim (Nominated): Thank you, Mr. Speaker for looking at gender rule. First of all, let me congratulate the committee and our secretariat for preparing a very good document on the Constitution (Amendment) Bill 2020.

Article 82 of the amendment Bill talks about gender equality. I hope everyone has his or her copy. It talks about political parties entrenching the two-third gender rule in the party nominations. That means in the party nomination, I used to work in the political parties when I see Mandera leaders coming to the party, I always see men and one woman coming for women representative but now I am sure there will be women MPs who are coming there and take that seat too as it is a requirement.

Secondly, Article, 89 delimitation of electoral unit, Article 89, talks about increase of Parliamentary seat from the current 290 to 360 Members. That means in Mandera County we have one new Constituency with MP. We are very happy about it and we appreciate the BBI considering that Mandera is a large county.

Article 97, Members of the National Assembly, there are special seats that will be reserved for four persons; two women and two men that will represent persons with disability two women and a man to represent Youth and such special seat shall ensure that not more than two-third of the member of National Assembly should be of the same gender. Personally, I come under category two that of a woman and that of a youth. May be sooner or later I will go to that parliament.

Article 98, now that we have women representative who are not doing their work, we will have two women in the Senate who will now oversight matters of the County Assembly. So, this BBI is putting women ahead and we appreciate everything that comes with it. So, I don't think if any woman can reject this amendment Bill.

Let me move ahead and talk about the Youth Commission that is going to be formed after the passage of this Bill. As a youth of this country my plight and everything that is required from me is going to be heard in that commission that is going to be formed. No youth can go to any cabinet office or any other office to ask for their plight to be heard. We will have all that being tackled under the commission and we appreciate that. Me as a women nominated in the County Assembly, I know many of our people are telling us that we have been nominated on a silver plate. I am very proud that we are going to vie for this seat so that no one will come and tell me that I got this seat out of nowhere. We all want to vie and prove that we can lead this county too.

Mr. Speaker, lastly, in the amendment Bill, it says that 35% is the revenue that is going to come to counties. Our county is getting 10 Billion and the BBI is telling us that we will have 16 Billion which will enrich the county. Right now devolution has enriched us. We have a lot of development. We have a lot of things to appreciate and that will increase if this BBI passes.

We will also have Ward Development Fund. If in the next general election everyone goes to election and vie for these seats, the promises that we will make to our electorates will be fulfilled because we will not be coming here and requesting the Governor to do this and that.

I stand to support this document.

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Thank you, so much.

Hon. Bashir Ibrahim (Kiliwehiri): Thank you, Mr. Speaker. I stand to support the amendment Bill 2020. I first take this opportunity to congratulate the committee for the good work they have done and the good report they have written.

Briefly, I will go to the clauses which have made me support this Amendment Bill 2020. Clause No. 22, which talks of expansion of the Executives where we are going to have a Prime Minister, two deputy Prime Ministers and Cabinets. The Cabinets also come from the Members of Parliament and Members of County Assemblies. In 2019 census, our community, the Somalis, was the fourth largest in terms of population. So, it might be possible in expansion of these cabinets we might have a deputy Prime Minister or a Prime Minister which might come as a result of this Amendment Bill.

Another clause which has made me support is Article 203 which talks about equitable revenue share. Ours is moved from 15% to 35%. Mandera County is not among the ten losing counties. We are among the gaining counties and we are going to move from 10 Billion to 16 Billion.

Clause 54, Article 107 on Ward Development Fund, right now as Members of the County Assembly, we go to the Executive talking about what we are to do for our wards. During our campaign we went round telling people that we will do for them A, B, C, D which sometimes we will not be able to do but with the Ward Development Fund managed by the ward representatives, I think we will do what we will promise them.

Another amazing clause is No. 15, Article 99 on qualification of Members of Parliament. As Hon. Member of a ward, you are entitled, without resigning like civil servants, to go and contest as a Member of Parliament while others must resign six month earlier. You only go there and contest as a Member of Parliament if you have an interest.

Article 13, on a Membership of National Assembly, have been increased from 290 to 360 Members. Mandera is one of the counties which have received one slot for the representation of a Member of National Assembly while the other counties in North Eastern Province have not received. So, Mandera County is one of the luckiest in terms of national representation by getting one more slot.

With this few Articles that I have gone through, I stand to support the report.

Thank you.

Hon. Bishar Maalim Abdullahi (Takaba): Thank you, Mr. Speaker for giving me this opportunity to contribute to the Motion. First and foremost, I want to thank and congratulate the Justice and Legal Affairs Committee for coming up with a very good report. This Motion has been subjected to public participation. From the observation, we want to support what our voters have said. We welcome the idea. One of the greatest benefit from this document as Mandera County is the additional seat which has been anchored in the amendment bill. With another seat we can have adequate representation of our people as of the population census of 2019.

In the same Bill, it is protecting the existing constituencies because there has been threat that Mandera might lose 2 seats and that assurance that we will not be losing has been guaranteed in the Second Schedule. We welcome the amendment bill because of that factor.

One of the greatest benefits of the bill is about the Ward Development Fund. It has gone in history that Members of County Assemblies used to lack independent fund. When we go to our Wards, there are small things which we want to do. Since we do not have independent fund,

autonomous fund like this one, then it would have been very hard to meet our vision and mission and the pledges that we have made during the campaign period. I think that is deliberate attempt to empower the MCA's and the local communities on the ground

One of the greatest things the Bill has captured is the word 'pastoralism'; it is a big thing for Northern Kenya as pastoralist community with the biggest land mass in Kenya. And because of that these pastoralists have been considered with other factors like the Blue Economy and Agriculture. Our main economy is livestock keeping and that one has been anchored in the Amendment Bill.

The Article that increased our fund from 15%-35% will prosper the economy of this county; we have seen what 15% has done within the 7 years in the past. For now, if that will be extended to another 35% then we shall have cities. Kutulo will become a city, Takaba will become a city, Arabia, Lafey, Rhamu and El-wak will become a city and we shall have nine (9) or eleven (11) cities within a span of few years.

I want to support this Amendment Bill because it has captured the independence of the DPP because it has been enhanced in terms of independence and autonomy. The powers of prosecutions will be very independent instead of seeking powers from other quarters. I think this office has been insulated and it can be able to bite very well and prosecute anybody.

More importantly is the equalization fund; it was coming to an end. And they have raised the time frame from 20 years to 30 years. We will be the greatest beneficiary. There has been a deliberate attempt to delay the release of this fund for quite a period of time. And within a period of 10 years to come because we have been given 10 more years, I think this one will strengthen the County Budget alongside what it used to receive.

One of the important factors is about the governance. A candidate for a Governor can now propose an opposite gender as the Deputy Governor. If a man is a governor, then a lady can be a Deputy Governor. This one will also deal with the issue of gender parity.

I want to revisit the issue Honorable Yakub Hassan said. If the Members of the County Assemblies in Clause 46 of the Amendment Bill, are now incorporated into the County Executive then I think that one will address so many problems because when we have quite number of CEC's coming from the Members of the County Assemblies, most of our problems will be addressed within the quarters of the precincts of the Assembly. That one is a very good score for us to address community problems within our limits.

The other thing is the importance of Clause 53 which proposes an amendment to Clause 207 dealing with the revenue fund for County Government to provide an Act of Parliament to establish County Assembly Fund. That one is a very important thing because it is now anchored in the Constitution that we shall be independent as an Assembly and do our calendar and businesses at will without seeking for referral to any other institution.

Clause No. 16, for the first time proposed Offices of the Leader of Official Opposition in this country. This is a very good thing with its adequate funding and doing check and balances within this country. It will really give the government a toll order for it to consider that there are no extremes. I think this Clause has given direction and it is very important for us in terms of governance.

The final thing I want to mention is about the role of the Senate in Clause 12. This Clause is trying to enhance the powers of not only the oversight role over the County Revenue and expenditures but it will address and propose how to manage our own resources, address the

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borrowings because there are no provisions for the Senate to involve in the borrowing of the County Government. Now that these new things have come up then there is an enhanced oversight role by the Senate.

Finally, there are a lot of Commissions in this Country. Clause 69 has proposed an amendment to Article 250 where it can be able to reduce the number of the members of the Commissions. The numbers are not well articulated in the Articles of the Constitutions but they can be reduced from 9 to 7. This one is meant to have lean commissions so that we can be able to reduce its recurrent expenditures and in that way we have a lot of savings.

I take this opportunity to support the Motion before the House.

Thank you.

The Speaker (Hon. M. A. Khalif): Hon. Hindia Hussein!

Hon. Hindia Hussein (Nominated): Thank you, Mr. Speaker. I rise to support the Constitution of Kenya (Amendment) Bill. I urge the members that it is no longer Building Bridges Initiatives (BBI) but it is the Constitution of Kenya (Amendment) Bill. I support it because in Kenya after every election, we have skirmishes and clan clashes. At the national level, the Leader of the Opposition has been catered for where he has good number of representatives in the National Assembly and in the Senate. If he or she will be in that place, then the skirmishes will reduce because he or she is no longer in the cold.

Secondly, as a Woman Leader of this Country, the promulgation of the Constitution 2010 has favored us and we got two third gender Rule and that is why most of us are here today. And the Amendment Bill 2020 is still favoring us because we will go for election and then when you become first runner or second runner then we will be representing people in this Assembly. The other thing is that in the Somali culture usually they do not elect women instead they pick men; and most of the Members seated here are picked by the elders to put them in this seat and not because of their competence but because of biasness.

Thirdly, by the end of few years, the community where we come from will see our powers and we will be here as the majority; landslide is coming soon.

I am supporting the Amendment Bill 2020 because as a resident of Mandera County, I have an additional constituency. I think everybody will fix themselves somewhere so that we won't crowd in certain Ward or Constituency.

The other thing is revenue allocation. I am from a marginalized County called Mandera. Eight years down the line, the 15% has done wonders for us; what about the 35%? May be 10 to 20 years to come Mandera will be another city.

The other thing is about ward fund. The elected members are going round begging from the executive but when these funds are there and them being members of the executive, it will touch the lives of every individual in the respective constituencies.

The other thing is about youth and disable. Youth and disable have also been catered for the same as it was in the Constitution of Kenya 2010 that they won't vie for any seat but everything of theirs will be in order under the law.

Mr. Speaker, with those few remarks, I stand to support.

Thank you.

Hon. Fatuma Kasai (Nominated): Thank you, Mr. Speaker. I am honorable Fatuma nominated member.

The Speaker (Hon. M. A. Khalif): Proceed please because of time

Hon. Fatuma Kasai (Nominated): Mr. Speaker, I stand to support the Bill because of the following reasons. The Bill protects the nominated members from some of the intimidation and discrimination we are facing. Mr. Speaker, the Bill also encourages women leadership because it gives us the opportunity to contest and come here to represent people.

My third point is that we benefited from this Bill because we have gotten one constituency which will solve clan dispute.

Increase of county allocation from 15% to 35% will spur growth and enhance development since this 15% have done much development, 35% will do wonders.

With those few remarks, I stand to support the Bill.

The Speaker (Hon. M. A. Khalif): Hon. Robow! We will alternate. I am just following. Everybody will get an opportunity.

Hon. Robow Mohamed (Lagsure): Thank you, Mr. Speaker. I rise to support the report of the Committee on Legal and Justice Affairs. I want also to clarify some information that has been reported in the media by our media personnel, amending a constitution or making a constitution is not an event; it is a process.

Mr. Speaker, under our Constitution, Article 1 clearly states that sovereign power of the constitution belongs to its elected representatives. Secondly, the same constitution grants the leaders to exercise that power directly or indirectly. The constitution under Article 196 (1) (a) & (b) and section 87 (b) of the County Government Act talks about people participation in anything that touches on their lives. One of the issues is assembly, accessing of information and the process of formulating and implementing laws. Mr. Speaker, what we are dealing with is a law that will have impact on generations to come.

Mr. Speaker, amending a Constitution through a popular initiative under article 257 (6), is a process and the media reported that Mandera county assembly has taken time because of some issues that we have visited the office of the deputy president. We have 90 days according to the Constitution. Within the 90 days we must be able to conclude our approval or rejection to both Houses. It is less than a month since the proposal was tabled. Passing or rejecting of the amendment bill by this county assembly does not have any relationship with 2022 politics the way it has been reported.

Mr. Speaker, I had some reservations before and I wanted to oppose the BBI report but what changed me is that if Article 203 is amended and more resources devolved to our counties that is the only hope that we have in Mandera because all those positions like the prime minister, the president and the deputies are set aside for big communities. The only hope in this Constitutional (Amendment) Bill, if amended, we can only have resources that would be added. I do not know through the grace of God we may have those positions but for me I have a reservation on that.

Mr. Speaker, although there are goodies in this Constitution I also have a reservation. The reason why a Constitution is amended is to cure gaps because there is a lacuna in our Constitution. Article 107 (a) is amended to include the Office of the Official Opposition. If the Constitution is to cure lacuna or to correct what is in the Constitution the same should have been replicated in the county government whereby we have the Office of Official Opposition so that the person who contested for the governorship, the runners up should be given an opportunity in assembly to become the leader of opposition.

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Mr. Speaker, the other issue why I supported as already said by the members before me Article 99 (2) (a) has been amended where any political leader who wants to contest for other elective position before it was only the members of parliament but now the members of the county assemblies have been added but still since all of us are state officers they should have also generalized the governors, the MP's and the speakers to be in the same category. This is why I am saying if you want to correct a lacuna then you should not have left some gaps.

Mr. Speaker, America which is the largest democracy has amended its constitution 27 times. Therefore, in Kenya this is the second time we are making an amendment to our Constitution. The issue of additional constituency is something that we must be proud of. The reason why I am saying this is that the problem that we are facing especially our counties in the northern part of Kenya is because of the resources or political representation. In that regard, if that one constituency is added whether it goes to Kutulo, or whether it goes to Mandera north or Mandera east then a political solution has been achieved.

Finally, Mr. Speaker I want to say this if we are saying that we want to cure a gap in a Constitution, today the Senate sits every three years to determine the revenue sharing formulae. In my opinion, if the proponents of the Constitution were very keen, adding 35% or anchoring 35% in the constitution is a better thing but there should be a clause in the constitution where after every 5 subsequent years of election a certain percentage must be added to the counties through the revenue sharing. Mr. Speaker, this issue means after every ten years we may change our Constitution but if that is anchored in the constitution then there is no need to amend the constitution. A president is elected and then he wants to change the constitution because of A or B.

Mr. Speaker, in that regard I stand to support the amendment Bill.

The Speaker (Hon. M. A. Khalif): Hon. Abdi of Malkamari.

Hon. Abdi Hassan (Malkamari): Thank you, Mr. Speaker. Allow me to thank the Committee on Legal and Justice Affairs.

The Speaker (Hon. M. A. Khalif): Order Members!

Hon. Abdi Hassan (Malkamari): Allow me to thank the Committee on Legal and Justice Affairs because they presented a good report. The Constitution (Amendment) Bill 2020 has been necessitated by the need of the society. Constitutional change is initiated through popular initiative. Before I penetrate through to my point, allow me to say few words on the timeline and guideline on how the process has been initiated and ended today.

Mr. Speaker, the receipt of the Bill was done by the IBC on 26th January and to this Assembly it was done on 7th February. Public participation was done on 25th February and today 2nd March the Committee has presented its report. If you add all this it is only fourteen days meaning the siting of the Assembly is four days in a week. So, I do not see why it should be seen that there was delay. We are within the timeline.

If I directly go to the Bill, the Bill originated from the views of the citizens to express the Bill of right, National ethos, responsibilities of citizens, it is on Corruption, productivity, shared prosperity, devolution and divisive politics. The objective of the Bill is to amend all these avenues so that every citizen and every sector of the government will be within the consent of the Bill. The Amendment Bill 2020 is a sort of a mirror for the 47 counties. If you see yourself within a mirror you see the object meaning for our county it has so many benefits for us like addition of Constituency and the 35% addition of the revenue.

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So, with all those few remarks, I support the Bill.

The Speaker (Hon. M. A. Khalif): Honorable Kulow of Rhamu.

Hon. Kulow Alio (Rhamu): Thank you, Mr. Speaker. I stand to support the Motion. When I made that conscious decision of supporting this Amendment Bill, I did it on my own volition, I was not coerced, I was not intimidated by anybody and no 'Baba' has read the document for me and that I am not pleasing any master within or outside this county. I read this document, the 74 Articles in this Amendment Bill, and made an informed decision of supporting it. Before I read the 74 Articles, I had a different heart of opposing the Bill but I made a different decision within the last 48 hours of reading the document.

As Mandera County we are blessed because we are the only county in the North Eastern Kenya that has a cabinet minister at the national government. We are the only county in the Northern Kenya that has got CAS responsible for education sector. Again we are the only county with EALA Member of Parliament. This has not come by accident, it has come by design. We have been subjected to marginalization for many years but if I reflect and see what devolution has done for the people of Mandera County, it is numerous and I cannot be able to enumerate.

I support the amendment Bill because of the extra Constituency. What does an extra constituency mean for the people of Mandera County? If every Member of Parliament has got 150 Million allocation per year that translates to 750 Million for the people of Mandera County within a span of five years. That is not small money.

The other benefit that has come with Constituency is that there is going to be creation of five wards with five elected Members of County Assembly and a number of nominated MCAs who will come to this House come 2022 In Shaa Allah. What does that mean? Each elected MCA, will enjoy what is called Ward Development Fund which is anchored in this Amendment Bill and if it is going to see the light of the day, then we stand to benefit out of that.

The other benefit that will come with the extra constituency is that currently an MP employs around 30 people to his office. So, that means an extra 30 people will be employed, men or women of this county due to that extra constituency. The other advantage that will come with this Amendment Bill is that we are going to have an extra seat for women Senator that also comes with extra cash for this county.

One other thing why I support is that we had the first generation of the Commission on Revenue Allocation formula, we had the second generation formula and currently there is the third generation formula. We are not and I repeat we are not among the eight counties affected by this third generation formula. Therefore, there is a saying in my mother tongue because some things are better said in mother tongue and I quote 'Bube yo isin gadufte namikamu ill ufi qabataa edan'. Meaning when wind blows everybody will close his or her eyes. I will not close honorable Yakub's eyes, I will close mine. Therefore, if we are not affected then we have no reason as to why we reject this particular Bill.

The other thing I am about to say is this---

The Speaker (Hon. M. A. Khalif): Hon. Kulow, you have one minute to summarize because you are the Member who moved the Procedural Motion.

Hon. Kulow Alio (Rhamu): The law is actually two sides of the sword. It is now catching up with me. I want to say this, the only problem that I have is the equalization fund. It should have actually proposed, instead of the 0.5%, it should have actually increased that percentage instead of increasing the number of years from ten to twenty years.

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Secondly, the number of persons with disability should have been increased from the current four to eight and above.

The Speaker (Hon. M. A. Khalif): Thank you.

Hon. Kulow Alio (Rhamu): Thank you, Mr. Speaker. I support the Amendment Bill.

The Speaker (Hon. M. A. Khalif): Hon. Abass!

Hon. Abass Abdille (Nominated): Thank you, Mr. Speaker. On onset I stand to support the report which I am a Member of that committee, a vice chair. Before I lay my points, I want to make a clarification that there are people who are peddling lies that even if Mandera County does not pass, it will be inconsequential. I want to tell them that our vote is consequential because we are representing more than one Million people in Mandera County. In other way whether we vote yes or no, our vote is representing one million people. When we were doing public participation, we encountered a lot of narratives. People are not well versed with the document. That is one of the gap that we need to note. Many of the people have the notion that if this BBI is passed Mandera County will lose more than 6 Billion. I can clarify as a Member of that committee that Mandera County at 35% will not be losing even a cent; we will gain 6 Billion. Currently we are at 10 Billion and we will be at 17 Billion.

(Applause)

The problem and the issue people have is in Article 203 which talks about per capita. We are not in the 8 Counties that are losing. Why I came to like this document is that the year 2020 when there was pull and push in the Senate on matters revenue allocation at county level where county service delivery has been stopped, the Controller of Budget did not have the authority to disbursement 50% of the revenue to the counties. Currently, with this document the Controller of Budget has been authorized through the Amendment that they can allow 50% withdrawal and disbursement to counties which is a great achievement. We did not have that.

Many people have talked about gaining the Constituency. 2019 census has badly hit Mandera County; we were to lose two Constituencies; one being Lafey and Mandera West. With BBI, those Constituencies have been safeguarded. We are even gaining one more. That is a milestone achievement.

There is a Clause introduced in the Constitution which is 206 and many Members have talked about is the legalization of the CDF. Currently, CDF is just a document that is passed in Parliament. If this document sails through then it is a legal document and it is part of the Constitution, and Mandera will be gaining more than 7 Million as CDF Kitty.

I only have two worries in this document; one is that the Governor may consider a person of the opposite gender. ‘May’ is my biggest worry. I want the female gender to be part of that but ‘May consider’ is creating a lacuna.

Secondly, the County Executive Committee may come from the County Assembly; it is ‘may’ again; a plus and a minus. If they can correct that the better.

The Speaker (Hon. M. A. Khalif): They cannot correct; there is no option.

Hon. Abass Abdille (Nominated): With that, I stand to support the Motion.

The Speaker (Hon. M. A. Khalif): Hon. Saad Sheikh Ahmed of Fino.

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Hon. Saad Sheikh Ahmed (Fino): Thank you, Mr. Speaker. As usual, I do not like joining chorus. Contributing to the Constitution (Amendment) Bill 2020, I would like to go my way which is opposing the Motion.

(Applause)

I have my own reasons. While I find some blessings in the document which is that Mandera County shall be getting an extra Constituency, I find it as a pulp. But what matters more is what we are going to lose. I had a Member saying that Mandera County will get 6 Billion extra and it is true. But the extra 6 Billion is still our right. If you have been checking around and you have been reading, the CRA formula is already out; and we are losing 2 Billion and it is clear. There is no negotiation about that. As Honorable Members we should question ourselves. I do not need information.

Hon. Kulow Alio (Rhamu): Point of information to the House. Mr. Speaker, I would like the Honorable Member for Fino to clarify to this House and convince us how we are going to lose 2 Billion? Let him convince us; we are not convinced.

The Speaker (Hon. M. A. Khalif): Proceed.

Hon. Saad Sheikh Ahmed (Fino): Thank you, Mr. Speaker. God has given me the gift of the gab; I will not stammer. What I know is that I am privy to the CRA formula that is under review right now. What I want to inform the Honorable Members is that the fact remains that 35% may or may not come. I will not be like those people who will say that 15% is already a problem. I will ask, will the 35% come with an increment or with the transfer of more functions? We should ask ourselves that. 35% will come with the functions that we have now, it is ok. But when it comes with functions tantamount to the strength of the 35%, what are we there to celebrate for?

I will go to next which I should have begun with. The BBI is what led to this Constitutional (Amendment) Bill to address matters and looking at the challenges that this country is facing. Among the numerous challenges, prime among them is the presidency. The Presidency was a challenge in the fact that it is the centre of power and key to polarize elections. I expected the document to address the presidency by reducing its power so that it lacks essence of being a coveted position. This will actually raise that behavior in Kenyans that they did not clamor for it because as it is now all power is vested with the presidency. Once it is vested with Presidency, everybody who is interested in the presidency will do whatever it takes including all vices and ills to get it. That is not enough.

If the person who misses to clinch the Presidency would have had something else to settle for it would have been better. But now this document mentions the Prime Minister. We had a Prime Minister sometimes back. I respect the Former Prime Minister and I respect the Presidency. The fact is that this document suggests a Prime Minister that is the same as the other time when 'Baba' used to complain that power is vested with the Presidency. He will not again leave complains. Can you promise me? You cannot. It is not a better position of compromise for the presidency in such a way that when someone does not get to the moon, he will agree to land on stars. Someone who misses the coveted position of Presidency with all powers will not settle for a Prime Minister. The Prime Minister is not a solution. The challenge is not solved.

The Speaker (Hon. M. A. Khalif): You have two minutes to summarize.

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Hon. Saad Sheikh Ahmed (Fino): My God! This Amendment Bill has brought some things that are very unnecessary which our beautiful Constitution has taken care of. For those of you who are friends to the Constitution, Article 203 mentions the fact that counties should get a minimum of 15%. What does that tell you? That definitely tells you that the national government can give the counties as long as they do not jay walk on the current allocation. They can as well give you everything. I see it as a duplication which is not necessary.

Thank you, Mr. Speaker.

The Speaker (Hon. M. A. Khalif): Hon. Ahmed Rashid of Gither. We will continue because we still have two hours to pray. Let us shorten.

Hon. Ahmed Rashid (Gither): Thank you, Mr. Speaker. I was worried because I was not catching your eyes despite my colleague here talking about my size. I think many people have already talked about the notion that there is mischief for Mandera County Assembly to delay the passage of this Amendment Bill. I think the Chairperson of the Committee on Legal and Justices Affairs rightly put it that as a House we have a number of days to implement passage of the same. But we have tried our level best.

The similitude of the people who are pushing this Assembly to Fast-track this and disregard the people who are coming late, I was just telling Honorable Kulow Alio and he was telling me that he was a marathoner before, when people run for marathon, people run in thousands but we do not say because we are interested with the first, second and third and you become number 30, the Marathon has ended and people leave the ground. Passing this Amendment Bill within the allowable time frame has its own contribution to the ultimate decision that is going to be made by this country to ensure that the Constitution is amended as per the Bill.

Secondly, I would like to echo what Honorable Yakub Hassan has mentioned here that—May his soul rest in Jannah—the Chair of the BBI taskforce. It is Honorable Yakub Hassan who mentioned the contribution of Sen. Yussuf Haji in ensuring that we have this Bill before this House. His colleagues have already echoed what he stands for. As Honorable Yakub Hassan has said, the Chair for BBI had all the reasons to include an extra constituency for his county. But because he was not there for his own constituency, we are given an opportunity to have an extra Constituency which is a very good thing to be emulated by everybody.

If I give reasons as to why I am supporting this Amendment Bill. I know I have limited time. One, on the issue of Citizenship on Clause 4—there is an insertion of Article 18 (a) on the responsibilities of a citizen. We know the Bills of right in Chapter 4 of the Constitution of Kenya that only mentions about the right of the citizens. We know very well rights come with responsibility. I am sure during the lifespan of the Constitution people must have seen that there is a very big gap because everybody is talking about his or her right. Do we have responsibilities? Because where your rights start, another person's right ends. There is that inclusion of Article 18 (a) that not only talks about positive virtues and bringing up responsible citizens but the Article talks about spirit of oneness, honesty, integrity, set out moral principles to be adhered to by every citizen including the duty to promote harmonious living with other citizens. To ensure anchoring of the right of people who were earlier neglected the parents, the elderly, and respect of the wellbeing of the family. You find that we have elderly people who are neglected, and you find that people who are supposed to be the duty bearer are taking

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responsibility because of such vacuum in law and they are not able to get decent life. That is going to ensure we have responsible citizens.

On the issue of propaganda that is used to inculcate fears to the citizen in objecting to this Amendment Bill that this county is going to lose or many other counties are going to lose, assuming for argument's sake that we are not even going for the 35% that this Bill is going to be used as equitable share of resources. The proposed CRA allocation to counties pegs the budget of Nairobi at 19.6%.

The Speaker (Hon. M. A. Khalif): You have two minutes to summarize.

Hon. Ahmed Rashid (Gither): 19.6 Billion. If you divide that amount by the total population of Nairobi County of 4 Million, then you find that per capita allocation is going to be around 4,357. Multiply that because it talks about ensuring the average amount of money catered per county with the highest allocation does not exceed three (3) times the average amount per person allocation to the county with the lowest allocation. If you multiply the lowest by three, you will find that the people who think that they are going to be disenfranchised by this, like Mandera County for example, we are going to get not less than 12 Billion and that is just the 15% we are talking about. But if the 35% is going to be used as a formula to devolve the resources then we will be standing highly to benefit as a county.

I stand to support.

Thank you.

The Speaker (Hon. M. A. Khalif): Hon. Nasra Noor!

Hon. Nasra Noor (Nominated): Thank you, Mr. Speaker. I want to apologize first because I got a very bad cold incase my voice will not be that audible. I want to thank the committee that has done this report. They have captured everything bit by bit but before coming into terms with this document; I had a different opinion. Personally, I wanted to reject it based on two big issues that I thought were actually not ok for this Bill to be passed by the people of Mandera.

Initially, when BBI narrative came into power, when the Constitution Amendment Bill was being worked on, we did not see that Constitutional Amendment but the BBI itself was working towards peace or the handshake narrative of President Uhuru Kenyatta and the former Prime Minister Raila Amolo Odinga. From what we can see in the national government instead of the BBI bringing peace and working towards uniting Kenya it actually did the opposite. The level of disunity that we are seeing happening in the national government including the name calling is not something that we need to emulate as a county.

Mr. Speaker, the second point was raised by Hon. Saad concerning the 35%. To my opinion, as he mentioned, the minimum that is allowed in the constitution is 15%. So, that means we had room to extend that 15% to 35% through bringing amendment or report because the constitution has that link opened for us; it was minimum and not the exact figure.

Mr. Speaker having read each and every point, I thought to myself that when we have more benefit as women, I am speaking as a woman now, when I saw most the clauses are opening more rooms for the women, I tried and contemplated the good side of the amendment of the Bill and the bad side. One, during the elections of 2017 I faced a lot of problems in getting nomination. With the coming of this amendment that will be a thing of the past since the election notification will be done way before the elections. The nominees have to go for election and the registrar of parties will not accept any names that have not fulfilled the requirements.

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Mr. Speaker, as a woman I have again seen another bonus which is the coming of a new Senator. We will have two Senators; one representing the women and one for the male.

Thirdly, we remember before the elections in 2017, our women national leaders had a fight with the national parliament on the two third gender rule. The Bill has never passed and has not reached where it is supposed to reach in the past years. We had different organizations which were fighting for the two third gender rule to come to light but today I can gladly say there is light at the end of the tunnel and it has finally being captured. This Bill was rejected a couple of times but now with the cry of all these national leaders they made it come to life that for every party nomination we will be having equal rights as ladies as well.

Mr. Speaker, another bonus is highlighted in that senate which I had already mentioned. The other thing is Ward Development Fund. As members of county Assembly our mandates are legislation, oversight and representation. Most the counties have had the problem of performing their oversight role. With this Bill, I have seen there is part that says members of county assemblies will have Ward Development Fund and this is a bonus that will give them their right so that they can perform their oversight role.

Mr. Speaker, it is with these new bonuses that I can now say I support the amendment Bill.

The Speaker (Hon. M. A. Khalif): Hon. Adan of Township Ward. Let us shorten in the interest of time.

Hon. Adan Maalim Abdullahi (Township): Thank you, Mr. Speaker. I was worried I was not able to catch your eyes. I just want to mention four areas because so many points that I had were mentioned by honourable members before me. I just want to mention 4 areas that enhance oversight as one of the important duty of a member of county assembly. One of them is the creation of the ward fund through the BBI. Mr. Speaker, in my language there is a saying that you cannot bite the same hands that feeds you. The way it is now is that the funding that we seek to get development in our wards is at the mercy of the executive. We do not have allocations of our own. We develop the CIDP for our wards and there is no money for that. You have to work closely with the Executive for you to realize those dreams. Therefore, I can say the oversight was not for the intended purpose and was not actually possible.

Secondly, the Ward Development Fund spurs development because according to what I read in BBI it is wholly about development. It enhances development in the rural areas in different parts of our country. Mr. Speaker, my concern here is that we were not able to oversight our colleagues in the Executive properly without having such a capacity at our level.

Thirdly, on the constitution of the CECs, if the BBI goes through it is going to be from among members of this House. One role is very particular to the executives, which is implementation and this is the same role that we are over sighting. Without credible information you cannot put proper oversight in place. Now that the MCAs will be part of the Executive, over sighting them is going to be very easy.

Mr. Speaker, the third item that will ease the oversight is clause 46 (b) of the Amendment Bill which amends article 179 (4) of the Constitution of Kenya to make governors and deputies be held answerable to the respective county assemblies. This will remove the big gap between the assembly and the executive. It will promote integration and friendliness and therefore over sighting is going to be a very easy task.

Mr. Speaker, the fourth item is the financial independence of the county assemblies which is one of the hurdles that makes members whose one of the important role is oversight not to be in a position to oversight our colleagues in the executive properly. If the BBI goes through the financial independence created is another plus for the oversight.

Mr. Speaker, lastly I just want to mention two items, one of them is that for those who believe that we lost to the third generation formula which is this one, I disagree because we are not losing one bob and we have made a lot of gains and my opinions are as follows. Currently our population after the KNBS mismanaged and manipulated our raw data, our figure reduced from 125756 by 158,000. After 10 years our population is said to be 867,547 people which if you divide by 10 billion and 2 billion that we get through the CRA you get 11,781.50. Mr. Speaker, as was said by my colleague from Gither through the BBI, article 203---

The Speaker (Hon. M. A. Khalif): You have two minutes to summarize.

Hon. Adan Maalim Abdullahi (Township): Mr. Speaker, Article 203 was amended to reduce the allocations to per capita and Nairobi was found to be the lowest at 4359 multiplied by three is 13,077. Currently we are given 11,781 Kshs per person and now through BBI we shall be given 13,077 Kshs per person. Therefore we are making a lot of gains and we are not losing one bob and that notion should not be there.

Mr. Speaker, the last point that I want to mention is about the 290 constituencies that were protected. We made two gains; we got one extra seat and we will be defending two of our old constituencies not to be scrapped. Therefore, I do not see the reason as to why the members of this county assembly should not unanimously support the Bill 100%.

I support.

The Speaker (Hon. M. A. Khalif): Leader of Minority Whip Hon. Gabnan.

Hon. Ahmed Gabnan (Waranqara): Thank you, Mr. Speaker. Today you forget the parliamentary practice that demands to give us priority as the leadership. But I still got the opportunity.

Mr. Speaker, I want to make few comments. Generally the constitutional amendment Bill 2020 before the assembly today is good. However, just like any other manmade things it has so many other short comings also. That leaves me in the catch 22 situation on whether to support it or leave it because it has all the benefits and many others as other honourable colleagues have mentioned. Increasing the lifespan of the equalization funds from 20 to 30 years is a very positive thing although the national government is holding that money which would have immensely contributed to the welfare of the people of this region. We are saying the fear that a vengeful governor sidelining development in your area is minimal and it is a positive thing. We have been fearing that two constituencies may be scrapped after the manipulation of the census data. That is also not there and many other things the document has.

I do not want to waste a lot time but the main shortcoming that this document has is estranging one-man-one-vote-one-shilling principle advocated for by the people from the popular region indirectly in the amendment. Chapter 12 of the Public Finance has been amended under clause 50. Among many amendments proposed, they are saying the average amount allocated to per person in a county with highest allocation should not exceed three times the average allocated to a person of a county that gets the lowest allocation. That implies that they want to give priority to population when sharing resources. This means in this county's current state the existing state of development in this country we know there are a lot of disparities when we

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know some regions in this county in every village there are road connection, well-built hospitals or dispensaries in every village, water connection to every household while our people walk for over ten kilometre to access water which is still not adequate. We know there are business people and traders doing business under one roof, they have modern market while our people mostly mothers do business under this scorching sun. Considering all that they are saying priority will be given to population and that in my opinion is not fair and not favouring this region.

If you say 35% increase it will not benefit us as required because if a county gets equal amount of allocation like Mandera the allocation will double with that 35% over 20 billion while yours will just increase by just a margin of around 2 billion which is very unfair having in mind all the challenges that we have. However, the one-man-one-shilling they are advocating for is giving me less worry because for years to come for those who will be a live I know one day one time we could be one of the populous region in this country because we are the society that practice polygamy. We do not do family planning. We are a society that does not restrict the number of children that they will have as long as God has blessed you. So, that itself will benefit us in the long run. That shortcoming will disadvantage us in the short run.

Mr. Speaker, that leaves me, because the benefits outweigh the negatives, to support the Bill as it is.

Thank you, very much Mr. Speaker.

The Speaker (Hon. M. A. Khalif): Leader of Minority Party.

Hon. Jimale Abdi Hassan (Guba): Thank you, Mr. Speaker. I rise to support the amendment Bill 2020. First, I would like to acknowledge the presence of the members of the public in the gallery, the executive members who are there. I have seen two of them walking out, the former MCA Feisal, the Chief of Staff and everybody. Having said that enough has been said we need to congratulate the Committee on Legal and Justice Affairs for taking their time and coming up with a report in a very short time. I know they have not done that singlehandedly. Your office and that of the clerk must have fast-tracked the process.

Mr. Speaker, there are a lot of rumours among the public that Mandera County Assembly have not yet decided. I want to put the record straight that as Mandera County Assembly we do not benchmark with any other county in our country to do our constitutional mandate. Despite the fact that we are in our timeline, we do our work as required in the Constitution of Kenya. So, if there are people or media reporting otherwise that is their own making and not for this county assembly.

Mr. Speaker, a lot has been said and I would like to appreciate the members who have spoken before me because all the points have been exhausted and there is no need of taking too much time just because I have not spoken. If the majority of the members are supporting the Bill I have to join them and congratulate them. Mr. Speaker, there is a proverb in my mother tongue which says 'what your age mates have done you must also do it happily' so if those counties that have not gained like the neighbouring counties have passed the Bill then who are we to oppose? We have benefited by getting additional constituency, we are forced to accept and support.

Mr. Speaker, members have already echoed that our existing constituencies have been safeguarded. In our society, I do not know why but our honourable ladies do not contest like men. I do not know whether it is because of fear. I do not know where the problem is but this time round they will have the liberty to contest so that those on the ballot will be given the opportunity to be nominated. I have a fear in that case that if a man and a woman go to the field

and contest you might see more ladies elected by the members of the public so that in future we will be having men nominated like the way we have women now in this House. It is not a wonder and that is something that is to be appreciated.

Mr. Speaker, the other thing is about Ward Development Fund. During election, political pressure is too much and if the governor elected at that time is not in your political party, you might suffer and the promises that you made during campaigns might be futile. So, the Ward Development Fund will cover that.

Mr. Speaker, if we get more revenue allocation, more people will be employed, there will be more development and we have to appreciate that. People who have never been to Mandera town before and those who are away for the last ten years will have something to say if they come here and see the development with only 15% allocation. If we get 35% then Mandera will be like Nairobi. The ward headquarters will be tarmacked and our children in the Wards will see tarmac road.

Mr. Speaker, I know I have 15 minutes more than the members but finally I want to say that members of this House have proven the rumours in town otherwise. I know some people will have something to report today which is opposite to their expectation.

I support.

Thank you, Mr. Speaker.

The Speaker (Hon. M. A. Khalif): Leader of Majority Party.

Hon. Abdi Adan (Neboi): Thank you, Mr. Speaker. I also want to take this opportunity to thank the committee for bringing such a good the report. Mr. Speaker, I do not want to say much. This report---

The Speaker (Hon. M. A. Khalif): We will be voting. Those who are going out, please come back.

Hon. Abdi Adan (Neboi): Mr. Speaker, I do not want to take much time now that the majority of the members have agreed to support the Bill. This amendment Bill that we are discussing is a law that we are making for posterity in our Wards and the decision that we take is going to affect our people. So, the time we take in making this decision, so long as it is in the stipulated time, I do not see why it should affect any person.

Secondly, we want to say that we do not follow the wave that is going on. According to what we are reading from the papers most of the assemblies have not done much engagement with the public. For us, this report has come to us and we need to engage our people. Tomorrow, we do not want history to judge us harshly as an assembly.

Mr. Speaker that said, my only contribution is that the amendment Bill came about through the handshake by the President and H.E the former Prime Minister. The major thing is bringing about peace in this country according to what we were told.

Mr. Speaker, adding on the positive side as said by the honourable members is about bringing peace. In this country we have been having post-election chaos after every election and if the amendment of the constitution is going to solve that then that is a major achievement that we should appreciate. When they formed a taskforce to go and carry views from the public, they came back with some nine (9) points among them is how to end ethnic division, inclusivity, how to solve polarized elections, how to deal with corruption, responsibility and rights and shared prosperity. Those are some of the basic needs that has been considered and later all those came together with this amendment to our constitution. We have engaged our people as a county and

the points that have been given in this report are due to the public engagement. If you read the report of the committee, it is 90% positive.

On the issue of constituency, for us we got one extra constituency in the North eastern region and most of the counties never got a constituency. The Ward Development Fund has been talked about by the members and I do not want to go back there. The only issue that I want to add is issue of per capita in Article 203 that was amended and that might affect us in future. When you cap the county revenue allocation and you put it in the constitution, we do not have the reason as to why we should have the Commission for Revenue Allocation. There are other factors apart from the population and per capita which must be considered so it has been already capped by this Article. Other factors might come up in future and we are making this Constitution for the generations to come. That is the only reservation that we have as a county and that is what we heard from our people.

With those few remarks, I request that we conclude this matter with your intervention.

Thank you.

The Speaker (Hon. M. A. Khalif): Hon. Adan of El-wak-North.

Hon. Adan Maalim Mohamed (El-wak-North): Thank you, Mr. Speaker. I am happy that lastly I have caught your eyes. Mr. Speaker, much has been said. I want to thank the effort of this committee headed by honourable member for Guticha. This is the second time that this House is handling an amendment Bill, the first one being the Punguza Mizigo Bill and this Constitution (Amendment) Bill 2020. I think the procedure used for the Punguza Mizigo also applies to this constitutional amendment Bill.

Mr. Speaker, the approval of this amendment Bill has been seen as a competition between counties and County Assemblies for that matter. That should not have been the case because this is a Constitution (Amendment) Bill that is being done ten years after the promulgation of the 2010 Constitution.

Mr. Speaker, there are issues that are beneficial to Mandera County as has been said by the members. I will not repeat that. The issue of constituency that is coming, the issue of 15% to 35% has already been said. Mr. Speaker, allow me to say something about the issue of divisive election that we witness after every five years. When in electioneering period we fear for our lives. We fear that something bad will happen to our population. That has been solved in this Constitution (Amendment) Bill 2020.

Mr. Speaker, you remember several election chairpersons have been removed from office. You remember how Chiloba was removed from office; you remember what happened to the famous Kivuitu; you remember what happened to the former IEBC chair who happens to come from northern Kenya, Issack Hassan. That same fate awaits Chibukati. He might also fall in the same trap. Even today, everybody is aware what is happening to him. Those issues have been solved in this constitutional amendment Bill. Article 87 and article 88 of this constitutional amendment Bill is solving that problem that is recurring every five years after the general election.

Mr. Speaker, the issue of devolution which has been promoted and encouraged in the BBI is well with us. Same for the issue of 35% increase in allocation and the Ward Development Fund. But there is one critical issue that has been discussed in this constitutional amendment Bill, 2020, the issue of privacy of persons living in Kenya. That issue is very important and personal data is very key. This issue---

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The Speaker (Hon. M. A. Khalif): You have one minute to summarize.

Hon. Adan Maalim Mohamed (El-wak North): I do not think that is my timing but anyway that happened to one of the honorable member. His personal data has been---

The Speaker (Hon. M. A. Khalif): You have doubts and I have been advised because I do not have the watch.

Hon. Adan Maalim Mohamed (El-wak North): That timing has been manipulated. I wanted to conclude my point. One Hon. Member coming from northern Kenya was alleged to be handling two citizenships. That issue has been followed up to the embassy and the embassy refused to give out some information; that is his personal data. That is very important and it is in this constitutional amendment Bill. If implemented it will help us solve those problems.

One more issue, Article 138 (8) (b) talks about the issue of removing a running mate. If a running mate of a president, not the deputy president, dies the election can still continue.

The Speaker (Hon. M. A. Khalif): Thank you. Hon. Member representing Shimbir Fatuma!

Hon. Abdullahi Siyad (Morothile): Thank you, Mr. Speaker.

The Speaker (Hon. M. A. Khalif): You are not the member for Shimbir Fatuma. You are coming from Morothile

Hon. Ibrahim Ali Wariyo (Shimbir Fatuma): Thank you, Mr. Speaker. I rise to support constitutional amendment Bill 2020 that is laid before the House today. Mr. Speaker, members are really waiting to speak and I do not think whether I will take ten minutes.

Mr. Speaker, when I listened from the two principles; his Excellency the president and the right honorable Raila, the former prime minister, when he was persuading the public for this amendment, they were saying this is a solution to winner-take-all. That should also concern us as the people of Mandera because Mandera is part of Kenya.

Mr. Speaker, this amendment Bill is implementable. How is it implementable? When trying to solve the problem of winner-take-all, they expanded the executive. The expanded executive comes with its own roles and it is meant for service delivery. After every 5 years there are conflicts in our country and we as the population and citizens of this country we should be concerned the way the two principles are concerned.

Mr. Speaker, this issue of 5% Ward Development Fund is generally meant to change the quality of life at the village level. It is a way of devolving fund to the village. Some people might oppose this idea and you have seen. Some people who have been persuaded to oppose the 2010 amendment when we know it contained devolution. The same people are trying to change our mind to oppose this increment we are seeing with our own eyes.

Some members said 35% will come with an extra burden. I want to correct that notion that the 35% that is devolved is only for devolved functions. So, there are no more other functions that have been added to the devolved functions that are already there. One of the members who opposed said this 35% will come with extra burden. I disagree. Some members are proudly saying that MCA's may be appointed as the executive. I do not really agree and I am not proud to be one of the persons to be appointed as executive. Reason being the aspect of separation of power will be lost. That aspect will be lost so is oversight.

Mr. Speaker, some people think that this will determine 2022 election. Let us separate these two businesses and persuade everyone to support this good initiative. So many points have been raised by members. The president of this nation cannot just stand up one day and come up

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with this amendment. People have been asked to support and we do not see any reason of opposing this idea. It is for the interest of this population.

I support.

Thank you.

The Speaker (Hon. M. A. Khalif): Honorable deputy speaker.

Hon. Farah Abdi (Libehia): Thank you, Mr. Speaker. Before I start contributing to the Motion on the floor of the House, allow me to congratulate the Legal and Justice Affairs Committee chaired by honorable Mohamed for doing this excellent work. They did public participation on Thursday and today we have the report.

Mr. Speaker, first I stand to support. Reason being this document is good for the people of this county and by extension the people of this nation. Among the many good things that is in this report, I want to mention very few things that has attracted my attention. The first one is retaining 290 constituencies. When Kenya National Bureau of Statistics released the census results we had a lot of fear of losing almost two sub counties but the BBI has retained the 290 constituencies and it has added for us another new constituency. I do not think if there is any reason to reject this amendment.

Yesterday morning I visited my ward and I attended a burial and after the burial I had an engagement with my electorates. I had an opportunity to sit with some elders and youth and they asked me about our position on this amendment Bill and their message was the solution of many problems that we have in this ward was in the BBI. If you go back to Mandera county assembly please support that BBI. If you look at it clearly honorable speaker the 35% that will come to our county 5% of it will go to the wards and of course there will be a committee at ward level and those committees will be coming from locations or sub locations and those are the people that will identify their challenges and they will be having their money in the Ward Development Fund account.

Mr. Speaker, the issue of Youth Commission is also very good because unlike honorable Yakub and honorable Ahmed Rashid I am privileged to be a youth the way honorable Shankaron said and we will have an opportunity to discuss our issues. Some of us may not be elected, we may not be members of this House but we will be having that hope of having a commission that will be discussing youth affairs. It is a very big relief to us as youth of this great nation.

Hon. Speaker, last but not the least we have been having the issue of divisive election. Every 5 years there will be a problem of conflict between the political parties, ethnic groups and regions but BBI is a solution to that problem. It has abolished the issue of winner-take-all. At the end of every election, we will be having two runners at the end. The loser will be having an opportunity to be in government. If we go back to 2017 and considering what happened in Mandera County, I think it was a very good lesson to us. But through this Bill I do not think if that will happen again. Even those who lost will have an opportunity to be in government.

Hon. Speaker, with all those few remarks, I support the amendment Bill.

Thank you.

The Speaker (Hon. M. A. Khalif): Honorable member for Morothile.

Hon. Abdullahi Yunis (Morothile): Mr. Speaker, I will very brief. I stand to support the Motion with only four reasons; the extra seat that we are getting; the 35% resource allocation from 15%; the Ward Development Fund and the expansion of the Executive to solve the Winner-take-all.

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I want to appeal to the proponents of BBI; the President and the Former Prime Minister to give that one extra Constituency of Mandera County to Mandera North which is the most tense and competitive elective seat at the moment.

Thank you.

The Speaker (Hon. M. A. Khalif): Hon. Abdinoor Diisow of El-wak South.

Hon. Abdinoor Diisow (El-wak South): Thank you, Mr. Speaker. I also rise to support the amendment Bill that is before the House. It is true that we all know the goodies that come with devolution. Today, the document before us is what strengthens devolution. All the points have been mentioned but there are only two which have not been mentioned since the start of the debate. We know devolution is a blessing but there is a thorn in the flesh that has derailed devolution and that is corruption. The Amendment Bill before us has addressed the issue of corruption. The amendment Bill will boost war on corruption by curbing, hearing and determination of graft related cases within 2 years. It is only that point that has made me support this document.

The second point that has not been mentioned since the start of the debate is that BBI empowers youth through the introduction of Youth Commission and Biashara Mashinani. Almost three quarter of the population of this country are youth and the Amendment Bill has considered the benefit of the youth.

With those two points, I stand to support.

The Speaker (Hon. M. A. Khalif): Chairman, Legal and Justice Affairs Committee.

Hon. Mohamed Ibrahim (Guticha): Thank you, Hon. Speaker. First, I would like to sincerely appreciate all those Members who have contributed and those who have not contributed because it is our Constitutional mandate under the Standing Order of this Assembly that under the representation clause of Constitution that we air the voices of our people in this county.

The Speaker (Hon. M. A. Khalif): Be very brief.

Hon. Mohamed Ibrahim (Guticha): Briefly within just one minute. I want to raise pertinent issues aired by people that are also seriously captured in our minute and recording of our public participation since this is the House that keeps records and on behalf of the people of Mandera there are concerns that people have raised.

Issues of insecurity, we request His Excellency the President of the Republic of Kenya to look into the issues of terror threats and the issue of the presence of Janan forces in Mandera town. If you go to the Media, one of the cries of the public is the presence of Janan forces in Mandera town and we request directly His Excellency the President of the Republic of Kenya to address that matter.

Honorable Speaker, our people also raised the issue of terror threat in the county. The issue of janan forces present in Mandera, the issue of biting drought and the issue of KNBS which manipulated the data of the people of Mandera. We would like to appeal to the two proponents of the BBI and the promoters of BBI to hear the voice of the people of Mandera.

The Speaker (Hon. M. A. Khalif): Thank you.

Hon. Mohamed Ibrahim (Guticha): Hon. Speaker, I request you to put the question.

The Speaker (Hon. M. A. Khalif): Thank you. Before I put the question, I want to comment on two things. One is what the Members have raised on the issue of Mandera County

Assembly delaying the process of disposing the Amendment Bill. Article 257 of the Constitution of Kenya talks about amendment by popular initiative. It states; -

(5) “If the Independent Electoral and Boundaries Commission is satisfied with the initiative that the initiative meets the requirement of this Article, the commission shall submit the draft to each County Assembly for consideration within 3 months after the date it was submitted by the commission”.

So, that Constitutional provision is very clear. We have three months to dispose of this document from 2nd of February. So, the issue of saying Mandera County Assembly has delayed is far-fetched.

Two, as Members clearly stated, this is a document that determines the future of this country and that affects the population of this country. It requires the input of the people that we are representing. The powers we have are delegated under Article 1 and we exercise that on behalf of the people of Kenya who have the supreme power. So, it is important and in line with Article 87 of the County Government (Amendment) Act that we must involve people and the purpose of public participation is clearly spelt out. So, the one week we gave to our people to bring in their input is not derailing or delaying. We do not want to do like others do just to please some quarters. We do our mandate which we swore to protect. Because when we were elected to our offices we swore that we will protect the Constitution of Kenya and all the relevant laws. So, the issue of saying Mandera will be left behind is not right. We are within the law and we were doing what we are mandated to do.

Having saying that, we will vote because this is an issue of national importance. We will not vote through acclamation. Each Member will declare the support or otherwise of the amendment. I am going to ask the sergeant-at-arm to ring the division bell for five minutes. I want to reduce it from the ten minutes because we are timeout. So, can we just have the bell rang for five minutes and then we go to the division and we will vote as per Standing Order No. 72 (5) because 72 (2) says you either say eyes or nay but we do not want to go that way. We want to vote under Standing Order No. 72(5) where each Member will be called upon by the clerk and each Member will say ‘I vote yes’ or ‘I vote no’ or ‘I abstain’. So, we have the three options. You stand up and say you vote yes or say you vote no or you can also abstain. So, the names will be called by the clerk immediately we are done with the five minutes and make sure that those who are outside should come in because we are going to close the door.

(The division bell was rang)

DIVISION

ROLL CALL VOTING

(Question that the County Assembly adopts the report of the Committee on Legal and Justice Affairs on its consideration of the Constitution of Kenya (Amendment) Bill, 2020 put and Hon. Members proceeded to vote)

AYES: Hon. Hussein Adan Haji (Takaba South); Hon. Bishar Maalim Abdullahi (Takaba); Hon. Robow Mohamed Hassan (Lagsure); Hon. Ahmed Rashid Mohamed (Gither);

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Hon. Yakub Hassan Emoi (Derkhale); Hon. Jimale Abdi Hassan (Guba); Hon. Abdi Hassan Ali (Malkamari); Hon. Bashir Ibrahim Alio (Kiliwehiri); Hon. Mohamed Ibrahim Yussuf (Guticha); Hon. Abdullahi Yunis Guliye (Morothile); Hon. Kulow Alio Guyow (Rhamu); Hon. Mohamed Rashid Ali Haji (Kutulo); Hon. Abdinur Diisow Teno (El-wak South); Hon. Adan Maalim Mohamed (El-wak North); Hon. Ibrahim Ali Wariyo (Shimpir Fatuma); Hon. Abdiaziz Dakat Maalim (Arabia); Hon. Adan Maalim Abdullahi (Township); Hon. Abdi Adan Ali (Neboi); Hon. Abdinoor Dakane Rafat (Khalalio); Hon. Farah Abdi Abdinoor (Libehia); Hon. Abdirashid Maalim Osman (Sala); Hon. Abdullahi Siyad Adan (Lafey); Hon. Yussuf Maalim Dakane (Alungu Gof); Hon. Fatuma Issack Osman (Nominated); Hon. Halima Golo (Nominated); Hon. Zamzam Abdullahi Ali (Nominated); Hon. Fatuma Omar Kasai (Nominated); Hon. Hindia Hussein Ibrahim (Nominated); Hon. Nasra Hussein Adawa (Nominated); Hon. Shankaron Sheikh Ibrahim (Nominated); Hon. Rahma Ibrahim Issak (Nominated); Hon. Nasra Noor Mohamed (Nominated); Hon. Sahara Mohamed Ali (Nominated); and Hon. Abass Abdille Mohamed (Nominated).

ABSENTIONS: Hon. Halima Billow Omar

The Speaker (Hon. M. A. Khalif): Hon. Members, pursuant to Article 257 (6) of Constitution of Kenya and in making decision on the Constitution of Kenya (Amendment) Bill 2020, the result of the vote is as follows; -

AYES: 34

NOES: NIL

ABSENTIONS: 1

ABSENT: 13

The AYES have it. So the decision has been made and the Assembly has approved the Amendment Bill 2020.

(Question carried by 34 votes to Nil)

ADJOURNMENT

The Speaker (Hon. M. A. Khalif): The House stands adjourned to tomorrow 3rd March, 2021 at 9 am.

The House rose at 1718 HRS