

KERICHO COUNTY ASSEMBLY

THE HANSARD

Second Assembly

Fifth Session

Wednesday 24th February, 2021

(The House met at 9.30 a.m.)

[Speaker (Hon. Dominic Rono) in the Chair]

PRAYERS

The Speaker (Hon. Dominic Rono): Let's proceed!

NOTICES OF MOTION

The Speaker (Hon. Dominic Rono): Chair Justice and Legal Committee!

Hon. Edith Kaptich: (Chairperson Justice and Legal Affairs Committee): Thank you the Honorable Speaker for giving me this opportunity. I would like to give a notice of motion That this House approves the report on Assembly Committee on Justice and Legal affairs on the Constitution of Kenya amendment Bill 2020. Thank you.

**MOTION BY CHAIRPERSON JUSTICE AND LEGAL
AFFAIRS COMMITTEE**

The Speaker (Hon. Dominic Rono): Chairperson Justice and Legal Affairs Committee!

Hon. Edith Kaptich: (Chairperson Justice and Legal Affairs Committee): Thank you once again Honorable Speaker for giving me this opportunity to move the motion. I will urge the Honorable members to go to page ...

Hon. Paul Chirchir: Point of Order!

The Speaker (Hon. Dominic Rono): What is the point of order in reading the report?

Hon. Paul Chirchir: I rise in a point of order from you Mr. Speaker. Is she tabling the report or she is giving a report?

The Speaker (Hon. Dominic Rono): Please proceed the Honorable Chairperson!

Hon. Edith Kaptich: (Chairperson Justice and Legal Affairs Committee): Thank you very much Mr. Speaker I think I will be fast.

The Committee on Justice and Legal Affairs Committee is established pursuant to the Kericho County Assembly's Standing Order 205 and Schedule 2 which states that it shall investigate, inquire into, and report on all matters and operations with regards to: all matters related to constitutional affairs, the administration of law and justice, including the elections, ethics, integrity and anti-corruption and human rights, and administrative justice.

The Committee also derives its mandate from the mentioned statutory documents.

1.2 Membership of the Committee

The Committee on Justice and Legal Affairs was constituted on October, 2017 and the membership of the Committee is as follows:-

- | | |
|--------------------------|------------------|
| 1. Hon. Edith Kaptich | Chairperson |
| 2. Hon. Erick Koskei | Vice-Chairperson |
| 3. Hon. David Mitei | Member |
| 4. Hon. Alfred Cheruiyot | Member |
| 5. Hon. Ann Tum | - Member |

- 6. Hon. Hezborn Tonui - Member
- 7. Hon. Humphrey Kirui - Member
- 8. Hon. Jackline Langat - Member
- 9. Hon. Bernard Mutai - Member

2.0 Report on the Constitution of Kenya (Amendment) Bill, 2020.

The Constitution of Kenya (Amendment) Bill, 2020 was committed to the Committee on Justice and Legal Affairs on 26th January 2021 for deliberation and consideration. The Bill was subjected to public participation held on 23rd February, 2021 in the entire Sub - Counties of Kericho County.

The Bill seeks to amend the Constitution of Kenya pursuant to the Popular Initiative under Article 257 of the Constitution of Kenya, 2010.

3.0 Committee Observations

The Committee having considered the views of the public observed as follows;

THAT the Bill was a special Bill as the promoters did not provide an avenue for amendments to its provisions as proposed by the members of the public during public participation fora.

The Committee notes that even though there were some reservations by members of the public regarding some provisions of the Constitution of Kenya (Amendment) Bill, 2020, most of its provisions are to the benefit of the people.

4.0 Committee Recommendations

The Committee recommends that the House approves the Constitution of Kenya (amendment) Bill, 2020.

5.0 Acknowledgement

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Assembly for the necessary support extended to it in the execution of its mandate.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Standing Order 205 to present the report on The Constitution of Kenya (Amendment) Bill, 2020 for consideration by this Honorable House

Mr. Speaker, I invite Honorable Ann Tum to second

Hon. Ann Tum: Thank you Mr. Speaker for giving me this opportunity to second the report on amendment Bill. I second it because the amendment Bill will allow the common mwananchi to benefit because more resources will go to common mwananchi. Since 2017 this House has been talking about the ward fund and by passing this Bill, it will allow the Honorable members to get the ward fund, thank you, I second

(Question proposed)

The Speaker (Hon. Dominic Rono): Honorable Bernard Mutai!

Hon. Bernard Mutai: Thank you very much Mr. Speaker for giving me this opportunity so that I can represent the people of Kipchimchim who voted for me to represent them in this Honorable House. I stand to oppose this motion with the following reasons the Bill proposes to give the ward development fund which is around 5%. If at all we can do some mathematics let's take for example that the money which will be coming to the county government is around 12 million times the 5% if at all we are going to share that money it will come around maybe 8 million. When we compare with the current money which are coming to our wards it's around 30 million and above so in other words this money will just be very little for our wards to develop. Another thing is the proposed 35% of the money which will be coming to the county government if the

Kenyan government could not attain the 15% which was giving us in this government now the current government how are we going to attain 35% if we could not get 15 % because currently we are getting around 11%. This thing is also burdening common *mwanaanchi* why I am saying so is because of addition of constituencies and the creation of the prime minister's office will be burdening the common *mwanaanchi* because taxes will be increased so that they can get this money to pay these people. I oppose this Bill because I know the people of Kipchichim will be burdened so much for the country to get the money to pay those people. Another thing is that we can see developed countries like America and other developed countries when it comes to representation, they have got very few members maybe in the parliament or maybe the Senate as compared to the Kenyan government which we can do now for example creation of these constituencies we are going to get around 360 constituencies and also we shall add maybe nomination so if all other people will be nominated we are going to get around 640 to 650 Honorable members. Who will pay these people? Otherwise I oppose this motion in totality because am representing the people of Kipchichim who sent me to this House to represent them and pertaining each and every development in our county. Thank you very much Mr. Speaker sir I oppose this motion.

The Speaker (Hon. Dominic Rono): Thank you. Honorable Paul Chirchir!

Hon. Paul Chirchir: Thank you very much Mr. Speaker. I rise to oppose this amendment Bill because of the following reasons; one the constitution of Kenya is very clear when it says all sovereign power belongs to the people of Kenya and the people of Kenya can express their sovereignty directly or indirectly through their democratically elected leaders. I am an elected Member of County Assembly representing the people of Kapsoit directly and I am here because of a process that was democratic. Yesterday we did our public participation in Ainamoi sub-county where Kapsoit ward is one of them and they opposed this amendment Bill. That is why I am here to oppose or to represent their interests. This Bill will create more constituencies and does not address the two third gender rule, so we are talking about over representation where Kenyan citizens will be overtaxed to be able to raise resources to pay for new constituencies.

Number two, I oppose this amendment Bill because institutions like the judiciary must be independent, we have the legislature which is independent arm of government, we have the executive which has to be independent and of course the Judiciary. So by introducing the Ombudsman that means the independence of Judiciary has been interfered with.

Number three the Kenyan debt as we speak right now stands at 1 trillion. With the approval of this Bill, if at all it will be approved which I oppose, that means the Kenyan government will be paying 1 Billion and yet we are collecting 1.7 trillion. So out of the 1.7 trillion remove 1 Billion you remain with 1.6 trillion remove 600 billion you remain with 1 trillion, 100 Billion cannot fund the national government. I oppose this thing because it is going to burden the Kenyan citizens more than ever.

Number four, telling us that they will increase county allocation to 35% is a fallacy. They have been telling us that money follows functions and it has been a story the counties are struggling with. We are behaving like counties are an extension or a branch of the national government so this 35% is a fallacy it is not anywhere. Trying to tell us that there will be about 5% going to the ward as ward development fund is also a fallacy. So I urge the people of Kenya, I urge the County Assembly of Kericho to stand firm and make sure that they oppose this amendment Bill as the chief hustler or as the representative of the hustlers in Kericho we oppose this amendment and I want to tell the members of the County Assembly of Kericho that history will judge you harshly and I am going to tell you that if this thing if at all they push it through our votes and it passes I am going to mobilize the people of Kericho county when it gets to referendum we will oppose it and I want to be on record that I oppose this Bill and I urge the people of Kericho County...

The Speaker (Dominic Rono): Order! Order Honorable Member!

Hon. Paul Chirchir: ... all the members any member I am going to list all the people who will vote no! I oppose! Thank you.

(Loud consultations)

The Speaker (Dominic Rono): Just one second. The Honorable Paul Chirchir that was disorderly and you are out of order please escort him out.

(Loud consultations)

The Speaker (Dominic Rono): Honorable members let us debate with decorum everybody will have their say and you will also have your vote to take.

The Speaker (Hon. Dominic Rono): Just one second, the Honorable Paul Chirchir that was disorderly and you are out of order; please escort him out. Just, Honorable member let's debate with decorum. Everybody will have their say and you will have your vote to take. So the Honorable Emily Kerich;

Hon. Emily Kerich: Thank you very much Mr. Speaker Sir for giving me this opportunity this morning to support the report on the BBI, the constitutional amendment Bill 2020. I want to say I support this Bill because one, this will pave way for more development in our country. Since devolution, we have seen some benefits of some devolved units; I want to say the less the amounts of funds to the counties have shown at least improvements not like the other which used to depend on the national funding. This 35% coming to our counties at least shows some impact in the development in our county. Secondly I want to say this Bill will enable us as women to at least to get our positions as in to show up at least some leadership skills even if it is not through nomination, I know we will be elected leaders so that we show up our way that at least in this country there are women who can stand and defend the rights of people. I really support and I want to thank the committee on Justice and Legal Affairs for approving the report. Thank you very much.

The Speaker (Hon. Dominic Rono): The Honorable Leader of Majority;

Hon. Hezron Ngetich (Leader of Majority): Thank you Honorable Speaker for this opportunity so that I can support this amendment of the Bill and I support the amendment because am the representative of the people and yesterday we went to public participation and we called up on

all the members of Kipkelion West sub county. The members who attended the public participation were drawn from all the wards; Kunyak ward, Chilchila Ward, Kamasian Ward and Kipkelion Ward and we took them through this document word by word, page by page. After deliberating on it, we gave them an opportunity to raise questions and when we subjected them to voting, out of over two hundred people who were present, over one hundred and seventy people voted for this amendment only ten people opposed and two had not made the decision Mr. Speaker and I want to echo what the people of Kipkelion West said that we as people of Kipkelion west we have been marginalized for so long...

Hon. Cheruiyot Bett: Point of order!

The Speaker (Hon. Dominic Rono): On what Standing Order?

Hon. Cheruiyot Bett: The numbers that the Honorable member is giving us does not tally!

(Loud consultation)

Hon. Hezron Ngetich (Leader of Majority): I will not bother myself to answer that Mr. Speaker because it was in public.

The Speaker (Hon. Dominic Rono): Please proceed!

Hon. Hezron Ngetich: Mr. Speaker the reason why the people of Kipkelion West support this constitutional amendment is because we have been marginalized for so long since the inception of devolution, we have started feeling the impact of the government. When you go our areas, we have opened roads and we have water and with this amendment, devolution is strengthened. One of the ways is through ward development fund. These Honorable members have gone round all the County Assemblies in Kenya benchmarking on how they can imitate the ward development fund and we have been in record, we have gone up to Elgeyo Marakwet and even Meru but we have not succeeded because we have not laid good structures. So ward development fund will be applied and it will strengthen the devolution especially on the elected members. We have been envied by the members of the National Assembly because they have National Government

Constituency Development Fund (NG –CDF) now we have been given an opportunity to run Ward Development Fund, we should be the first people to support this amendment.

Secondly, County Assemblies have been running up and down seeking for autonomy. Here we are relying on the Executive to finance us, if we are not in good terms with the Executive or the governor like right now, we will be suffering not getting salary but on this amendment of the constitution, County Assemblies have been given autonomy to run their own funds. So we should be the first people to be supporting this amendment of the constitution. Again Mr. Speaker the introduction of the parliamentary system of government, the presidential system of government is not good for this country especially the developing country but parliamentary system of government is good for developing countries. We have tested the parliamentary system of government before where the ministers sit in the parliament but on presidential system there is executive and the legislative and where this system has failed is that the people who are running and custodians of the money are the people who are not truly elected by the people. So like our case now the CECs are appointees of the government, we have been following them up and down because they don't feel where the shoe pinches, they don't know when the *Wananchi* talk about development but on this parliamentary system. This is an opportunity whereby the members of the cabinet will be drawn from the members of the County Assembly whereby if Honorable Cheruiyot Bett for example, I know if you will be appointed to be the minister for education, we will be tasking him right away here and telling him we want bursary unlike the case now whereby we are following somebody who is not elected by the people. He doesn't know the urgency of the matter, so the parliamentary system of government is a good system of government in a developing country like this, so Honorable Cheruiyot you should be in the forefront because you are preparing yourself to go to the national assembly in 2027. You should therefore be practicing here and you should be supporting this amendment of the constitution. Mr. Speaker on the additional constituencies and wards, I have been lamenting here all the time saying that Chilchila is the biggest ward in the entire county and it needs to be subdivided because here we have not actualized the equitable equalization fund so here we share resources based on the number of wards but when we do that we are disadvantaged unlike a ward

represented by Honorable Bernard Mutai, Kipchimchim which is barely a sub-location and me I have six locations. So when we share resources here, he gets resources which are equal to mine. So with this amendment of the constitution, there will be additional constituencies and additional wards. So I hope Chilchila ward will be a beneficiary and it will be sub-divided and will get an additional ward whereby when we will be dividing the resources we will get an equal share with other wards. I am almost finishing and on the strengthening of the Senate, this amendment of the constitution seeks to strengthen the Senate and we know Senate is the guardian of devolution so when it has been promoted to upper House and given more powers, they will be having an opportunity to oversight, legislate and make laws on behalf of the counties without any prejudice. So when Senate has been strengthened, devolution will be strengthened and in addition, every county shall hold election of two Senators, one man and one woman that will solve the issue of two third gender rule which has been a problem in this country, and on that case again this amendment opposes the delegate vote and took powers to one vote one member that is the more reason the great people of Kipkelion west are supporting this amendment of the constitution. We want to do away with the notion that it is expensive, if this thing is expensive; it is not expensive to Kericho people alone but to the entire country. So we are supporting and we want to say I want to rally Honorable members let support this thing and especially the great people of Bureti. You should be in the forefront because you are the beneficiaries of an additional constituency and ward which you have been crying here all the time saying in Bureti we have been marginalized because we are more than the resources. You should be in forefront right now supporting this amendment of constitution because you will be given more. Otherwise I don't want to say more than that I want to give opportunity to other Honorable members especially from Kipkelion West so that they tell you what the people of Kipkelion west said otherwise we support and God bless you Thank you.

The Speaker (Hon. Dominic Rono): Thank you very much the Honorable leader of majority, in terms of time management;

(Loud consultation)

The Speaker (Hon. Dominic Rono): Order the Honorable Nancy Kimetto, you are out of order you cannot be talking to me. You can't be talking to me or talking at me, I was saying in terms of time management can we allow each member to speak for three minutes so that all of us can speak that is what I wanted to say. Honorable Nancy Kimetto that is it was uncalled for. The Honorable Collins Biegon;

Hon. Collins Biegon: Thank you Mr. Speaker. I think I will not take too much time of the House; I am just wandering why Majority Leader is using too many words to explain himself because we had already gotten his position and I don't think he needed to belabor the point. So I think my contribution will be this, I don't know why members are pretending that we would want to discuss this matter for too long, because already we have almost thirty and above counties almost forty counties who have already passed this Bill. I don't know why some members would want to pretend here, we are in politics and this is a political process where there is no number two in politics this vote today that we are going to cast here is inconsequential. This Bill has already passed in the County Assemblies some people would want to use this No vote to just popularize themselves because probably politically they have problems. So let us not pretend and discuss a matter that whose direction is evident. My people of Kapkugurwet voted for me because I was the most reasonable person at that point and they made me come to this House to represent them. As at yesterday my vote was No because my people were telling me to vote No but the country has already shown direction. Only Baringo County have voted No, already the Bill has passed so let us not waste time, just use few words to say what you want to say but let us not pretend because I am a reasonable person, the people of Kapkugurwet knew when they sent me here so we will not lie to our people that we are saying No just because we are saying No, this Bill is going to the national Assembly and if our MPs there are going to reject it, it will still come back to the people. When that time comes and it comes back to the referendum we are behind William Samoei Arap Rutto for presidency. Let us not mix issues of 2022 with this matter. Already the County Assemblies and even our neighbors here Bomet passed this Bill yesterday when it comes to the referendum we are going to pick the direction and lead our people in that direction but let us not lie to ourselves here and become unreasonable and

want to come and say No here because we have a populace kind of movement, let us just discuss this Bill reasonably and the country has set the direction and Kericho will not be left behind. Thank you Honorable Speaker.

The Speaker (Hon. Dominic Rono): Thank you. Hon. Eric Bett!

Hon. Eric Bett: Thank you Mr. Speaker for giving me this chance to contribute on this Bill. Yesterday I was in Ainamoi polytechnic on public participation. We went through the document with the people of Ainamoi Sub County and having gone through the document, the participants informed me that the document had good things and at the same time it had issues to be addressed. So in summary what they told us is that the BBI document before us is like a delicious meal that has been well cooked with spices, a lot of spices smelling nice but at the point of serving a little poison and given to the people of Kericho and Kenyans at large for them to eat. So they told me that this BBI document needed review and therefore I rise to say no to the BBI document before us today this morning. Mr. Speaker I want to highlight just two issues why personally at my level I do not support the amendment Bill.

The Speaker (Hon. Dominic Rono): The Honorable Eric Bett please stick to three minutes.

Hon. Eric Bett: Fine Mr. Speaker, first and foremost I have a grandmother by the name Tabelgaa at home while discussing with her this document she told me she want more money come to the county, she would want more money but not at the burden and so she told me that anything that is going to add more money to the counties she will support but at no extra cost in terms of expenses.

The Speaker (Hon. Dominic Rono): Thank you Hon. Eric Bett your three minutes is over, the Hon. Philip Rono.

Hon. Philip Rono: Thank you very much Mr. Speaker.

The Speaker (Hon. Dominic Rono): Order Honorable members.

Hon. Philip Rono: Mr. Speaker it is good to remind ourselves that actually we are the beneficiaries actually of 2010 Constitution of which majority of us including me had opposed the same, but we are now the key beneficiaries of the same. The Bill that is before us today is the amendment of the same constitution that we are actually the beneficiaries despite the fact that we had rejected it. So it is good to note that sometimes you might be negating something that you are going to benefit out of it. Mr. Speaker on this amendment Bill of BBI we have some good component in it, if I go through it very fast we see the insertion of 237 (A), I'm still a youth and this one touches me positively because we have so many people languishing there. Youths of this country are not actually recognized and they are not getting their equal share.

On the insertion of ward development fund, you remember in 2010, we used to say that if this devolved functions will work, it is going to be very expensive to the citizen of this country but as we talk today I'm in a position to even drive a Toyota Vitz home because of the good roads and because of the success of devolution. We have this 35% allocation.

The Speaker (Hon. Dominic Rono): Order Hon. Philip Rono three minutes are over thank you.

Hon. Philip Rono: So I support Mr. Speaker.

The Speaker (Hon. Dominic Rono): The Hon. Alfred Cheruiyot!

Hon. Alfred Cheruiyot: Thank very Mr. Speaker for giving me this opportunity just to come here totally to oppose and reject the amendment Bill, I want to be very clear enough because the electorates of Chepseon ward sent me. We were in Londiani for public participation, number one God being my witness we were with Hon. Sammy Rono, 95% send us to kindly go and say no to this document. I'm not ready to lie before God, because of the following reasons number one...

The Speaker (Hon. Dominic Rono): Order! Order! Order! Honorable members Order! The Hon. Alfred Cheruiyot you spent your time speaking about everything else except putting your point across your three minutes is over. The Hon. Cheruiyot Bett!

Hon. Cheruiyot Bett: Thank you very much Mr. Speaker, it is now 3:15 my three minutes will end at 6:18. Otherwise Mr. Speaker I stand here because the people of Ainamoi did send me and mark you, they have send me for two terms. Yesterday we had a public participation I was privileged because we held the public participation at Ainamoi polytechnic where the polytechnic is domiciled in my ward and the people of Ainamoi out of 200 people who attended the public participation...

Hon. Haron Rotich: Point of Order!

The Speaker (Hon. Dominic Rono): What is your point of order?

Hon. Haron Rotich: The Member is out of order, look at the way he is dressed, he is in rubber shoes!

The Speaker (Hon. Dominic Rono): Serjeant at arms please confirm!

(Serjeant at arms confirms the attire)

(Honorable Member is escorted out)

The Speaker (Hon. Dominic Rono): Hon. Cheruiyot Bett, just step out and dress properly. Hon. Nancy Kimeto!

Hon. Nancy Kimeto: Thank you very much Hon. Speaker for giving me this chance

The Speaker (Hon. Dominic Rono): Order Honorable members! Let's listen to Hon. Nancy Kimeto. Order!

Hon. Nancy Kimeto: Thank you very much for giving me this chance also to contribute. I know we are not going to amend anything but yesterday we went for public participation in the sub county of Bureti and the Bureitians sent us to oppose and they had some reservations that *Wanjiku* is still hungry and if we pass this, we will continue making her suffer. Recently we added 8 shillings in our fuels on top of Ksh. 100 it's now Ksh.118 now. So they are seeing that

they are being overburdened than being assisted. Being a woman I feel for Wanjiku so I oppose in totality.

The Speaker (Hon. Dominic Rono): Thank you, the Honorable just one second; I had a list here, the Honorable Hezborn Tonui!

Hon. Hezborn Tonui: Thank you very much Mr. Speaker for giving me this chance to rise on behalf of the people of Cheplanget ward to oppose the BBI document yesterday we had public participation at the County hall and being a pastor I wouldn't lie to the people of Bureti Sub County after deliberating on the document. They all voted no so I have come here to represent them that the public participation ...

The Speaker (Hon. Dominic Rono): The Honorable Hillary Bett, Order! The Honorable Hezborn Tonui proceed!

Hon. Hezborn Tanui: Mr. Speaker being a pastor those who attended the public participation were more than 50. Those who voted for no were thirty two and those who voted yes were 16. So Mr. Speaker my mind is serving me very well

The Speaker (Hon. Dominic Rono): Order Hon. Hezborn Tonui 32 plus 16?

Hon. Hezborn Tonui: 48 so they were 48 because there were those who were undecided Mr. Speaker in voting I want to put my record clear that those who voted for no were thirty two and those who voted for yes were sixteen and there were four who were undecided. They were more than fifty. I did my maths so I am represent the great people of Cheplanget even the position of woman rep has been wiped from this document so I am born of a woman and I am opposing the motion in totality.

The Speaker (Hon. Dominic Rono): The Honorable Deputy Speaker!

Hon. Josphat Rutto: Thank you very much Mr. Speaker for giving me this opportunity. I want to utilize my three minutes and before my time runs out, I represent the people of Soin and we

did public participation yesterday and they have sent me this morning to give them their views. We did the public participation for almost six hours with the people of Soin and Soliat who rejected the amendment of the Bill because they were seeing this issue of the appointment of cabinet secretaries to be done by the president without the vetting of the Assembly. They were saying that if they will be doing like this the president may take his own people without considering other people because its good when the parliament vet them see the regional balance and all those things which are to be considered. There was this issue also of one man one shillings when it comes to my area it is not so populated so it could be 1km, 1shilling so that my people could benefit also. On the issue of nomination, the party decides on who to nominate especially the second highest person who maybe has gotten the vote. If it will be taken like that with the population, remember that Soin is not that densely populated like Bureti which will be taking most of the nominated seats. We shall therefore be disadvantaged in Soin and that's why I reject the motion thank you Mr. Speaker.

The Speaker (Hon. Dominic Rono): Thank you. Your three minutes are over so Honorable members I now wish to put the question but the Honorable Edith you may want to respond before I put the question?

Hon. Edith Kaptich: Thank you the Honorable Speaker and the leadership of the whole House for giving me this opportunity so that I can reply. I want to take this opportunity to thank all the members for having contributed to this Bill thank you Mr. Speaker.

(Question put and agreed to)

(Adjournment)

The Speaker (Hon. Dominic Rono): Thank you, the House is adjourned until 2.30 pm this afternoon.

(The House rose at 10:30am)