



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT

NATIONAL ASSEMBLY

THE HANSARD

VOL. II NO. 2

THE HANSARD

Wednesday, 15th February 2023

The House met at 9.30 a.m.

*[The Deputy Speaker (Hon. Gladys Boss)
in the Chair]*

PRAYERS

PAPERS

Hon. Deputy Speaker: Proceed on behalf of the Leader of the Majority Party.

Hon. Owen Baya (Kilifi North, UDA): Thank you very much, Hon. Deputy Speaker. I beg to lay the following Papers on the Table of the House:

1. The 2023 Budget Policy Statement from the National Treasury and Economic Planning.
2. The Medium-Term Debt Management Strategy 2023 from the National Treasury and Economic Planning.
3. The Report of the Auditor-General on the National Government Constituencies Development Fund (NG-CDF) for Rarieda Constituency for the year ended 30th June 2019.
4. The Report of the Auditor-General and the financial statements of the National Government Constituencies (NG-CDF) Board for the year ended 30th June 2021 and the certificates therein.
5. The reports of the Auditor-General and financial statements on the National Government Constituencies Development Fund (NG-CDF) in respect of the following constituencies for the year ended 30th June 2021 and the certificates therein:
 - (a) Ruiru
 - (b) Embakasi East
 - (c) Kirinyaga Central
 - (d) Mathare
 - (e) Kibra
 - (f) Kigumo
 - (g) Kandara
 - (h) Juja
 - (i) Molo
 - (j) Dagoretti North
 - (k) Ruaraka
 - (l) Thika Town
 - (m) Gatundu South
 - (n) Kajiado South
 - (o) Kibwezi West
 - (p) Gatanga
 - (q) Kipipiri
 - (r) Nakuru Town
 - (s) Kangema

- (t) Mwingi Central
 - (u) Gichugu
 - (v) Mwea
 - (w) Mathira
 - (x) Kiharu
 - (y) Laikipia North
 - (z) Mathioya.
6. Reports of the Auditor-General and the financial statements in respect of the following institutions for the year ended 30th June 2021 and the certificates therein:
- (a) Kenya National Trading Corporation
 - (b) Kenya Industrial Estates
 - (c) Mount Elgon Lodge Limited
 - (d) Nyeri National Polytechnic
 - (e) Privatisation Commission
 - (f) Government Clearing Agency Fund
 - (g) Kenya Tourism Board
 - (h) Kenya Water Towers Agency
 - (i) National Environment Management Authority
 - (j) Tourism Research Institute
 - (k) Bomas of Kenya Limited
 - (l) Tourism Promotion Fund
 - (m) Kenya Forestry Research Institute
 - (n) Nairobi Technical Training Institute
 - (o) Kenya Ports Authority
 - (p) South Nyanza Sugar Company Limited

Thank you, Hon. Deputy Speaker.

NOTICE OF MOTION

Hon. Deputy Speaker: Hon. Thuddeus Nzambia.

(Hon. Thuddeus Nzambia was not in the Chamber)

Okay. The Member is not present. We can move to the next Order.

QUESTIONS AND STATEMENTS

Hon. Deputy Speaker: The next Statement is also by Eng. Hon. Nzambia. We can move to the next Order. He is not present.

PROCEDURAL MOTIONS

Hon. Deputy Speaker: Hon. Owen Baya, on behalf of the Leader of the Majority Party.

LIMITATION OF DEBATE ON BILLS SPONSORED BY PARTIES OR COMMITTEES

Hon. Owen Baya (Kilifi North, UDA): Thank you very much, Hon. Deputy Speaker. I beg to move the following Motion:

THAT, pursuant to the provisions of Standing Order 97(1), this House orders that each speech in a debate on Bills sponsored by a Committee, the Leader of the Majority Party, or the Leader of the Minority Party be limited as follows: a maximum of forty-five (45) minutes for the Mover in moving and fifteen minutes (15) in replying; a maximum of thirty (30) minutes for the Chairperson of the relevant Committee (if the Bill is not sponsored by the relevant Committee); a maximum of ten (10) minutes for any other Member speaking, except the Leader of the Majority Party and the Leader of the Minority Party who shall be limited to a maximum of fifteen minutes (15) each (if the Bill is not sponsored by either of them); and that priority in speaking be accorded to the Leader of the Majority Party, the Leader of the Minority Party, and the Chairperson of the relevant Departmental Committee, in that order.

Hon. Deputy Speaker, this being a Procedural Motion, I think we will just go through the Motions as given so that we set the pace for this Session. I request the Deputy Whip of the Majority Party to second.

Hon. Naomi Waqo (Marsabit County, UDA): Hon. Deputy Speaker, I second. Thank you.

Hon. Deputy Speaker: Based on the mood of the House, I will propose the Question.

(Question proposed)

(Question put and agreed to)

LIMITATION OF DEBATE ON INDIVIDUAL MEMBERS' BILLS

Hon. Owen Baya (Kilifi North, UDA): Thank you, Hon. Deputy Speaker. I beg to move the following Motion:

THAT, pursuant to the provisions of Standing Order 97(1), this House orders that each speech in a debate on Bills not sponsored by a Committee, the Leader of the Majority Party, or the Leader of the Minority Party be limited as follows: a maximum of three hours and thirty minutes with not more than thirty (30) minutes for the Mover in moving and ten (10) minutes in replying; a maximum of thirty (30) minutes for the Chairperson of the relevant Committee; a maximum of ten (10) minutes for any other Member speaking, except the Leader of the Majority Party and the Leader of the Minority Party, who shall be limited to a maximum of fifteen minutes (15) each; and that priority in speaking be accorded to the Leader of the Majority Party, the Leader of the Minority Party, and the Chairperson of the relevant Departmental Committee, in that order.

Hon. Deputy Speaker, this is still a Procedural Motion that limits debates on individual Member's Bills on Wednesdays. I ask Hon. Wangwe to second.

Hon. Emmanuel Wangwe (Navakholo, ODM): Thank you, Hon. Deputy Speaker. I second.

Hon. Deputy Speaker: I will now propose the Question.

(Question proposed)

Hon. Deputy Speaker: Do you want me to put the Question?

Hon. Members: Yes.

Hon. Deputy Speaker: It is the mood of the House.

(Question put and agreed to)

LIMITATION OF DEBATE ON MOTIONS

Hon. Deputy Speaker: Deputy Leader of the Majority Party.

Hon. Owen Baya (Kilifi North, UDA): Thank you very much, Hon. Deputy Speaker. I beg to move the following Motion:

THAT, pursuant to the provisions of Standing Order 97(1), this House orders that each speech in a debate on any Motion, including a Special Motion be limited in the following manner: a maximum of three hours with not more than twenty (20) minutes for the Mover; ten (10) minutes for each other Member speaking, except the Leader of the Majority Party and the Leader of the Minority Party, who shall be limited to a maximum of fifteen (15) minutes each; ten (10) minutes before the expiry of the time, the Mover shall be called upon to reply; and that priority in speaking be accorded to the Leader of the Majority Party, the Leader of the Minority Party and the Chairperson of the relevant Departmental Committee, in that order.

Hon. Deputy Speaker, this is a Procedural Motion that limits debates on Motions. I think we are almost done with the initial debates by Members and we are now moving into business. This Procedural Motion limits time and I would like to request Hon. Malulu Injendi to second. He always thinks I call him the other way but I now know the name.

Hon Malulu Injendi (Malava, ANC): Thank you, Hon. Deputy Speaker. I rise to second.

Hon. Deputy Speaker: Is it the mood of the House that I propose the Question?

Hon. Members: Yes.

(Question proposed)

(Question put and agreed to)

LIMITATION OF DEBATE ON REPORTS OF AUDIT COMMITTEES

Hon. Owen Baya (Kilifi North, UDA): Thank you very much, Hon. Deputy Speaker. I beg to move the following Motion:

THAT, pursuant to the provisions of Standing Order 97(1), this House orders that each speech in debate on Reports of Audit Committees be limited as follows: a maximum of sixty (60) minutes for the Mover in moving and thirty (30) minutes in replying; a maximum of ten (10) minutes for any other Member speaking, except the Leader of the Majority Party and the Leader of the Minority Party, who shall be limited to a maximum of fifteen (15) minutes each; and that priority be accorded to the Leader of the Majority Party and the Leader of the Minority Party, in that order.

Hon. Deputy Speaker, this Procedural Motion is about Reports of Audit Committees and they are important to this House. Therefore, we are allocating about one hour to the Mover to move and also allow Members to debate.

I wish to ask Hon. Rebecca Tonkei to second this Motion.

Hon. Rebecca Tonkei (Narok County, UDA): Thank you, Hon. Deputy Speaker. I second.

(Question proposed)

Hon. Deputy Speaker: I take it that it is the mood of the House that I proceed to put the Question.

(Question put and agreed to)

LIMITATION OF DEBATE ON OTHER COMMITTEE REPORTS

Hon. Owen Baya (Kilifi North, UDA): Thank you very much, Hon. Deputy Speaker. I beg to move the following Motion:

THAT, pursuant to the provisions of Standing Order 97(1), this House orders that each speech in a debate on Other Committee Reports, including a Report of a Joint Committee of the Houses of Parliament or any other Report submitted to the House for which limitation of time has not been specified, shall be limited as follows: a maximum of two-and-a-half hours, with not more than twenty (20) minutes for the Mover in moving; five (5) minutes for any other Member speaking, including the Leader of the Majority Party, the Leader of the Minority Party, and the Chairperson of the relevant Committee (if the Committee Report is not moved by the Chairperson of the relevant Committee); and that ten (10) minutes before the expiry of the time, the Mover shall be called upon to reply; and further that priority in speaking shall be accorded to the Leader of the Majority Party and the Leader of the Minority Party, in that order.

Hon. Deputy Speaker, we have constituted committees and they are now up and running. We expect that the committees will soon start tabling reports in this House. As they do so, we should give Members an opportunity to debate. We, therefore, propose a limitation of debate on other Committee reports.

I would like to request Hon. Lilian Siyoi to second.

Hon Lilian Siyoi (Trans Nzoia, UDA): Thank you, Hon. Deputy Speaker. I second.

(Question proposed)

Hon. Members: Put the Question.

Hon. Deputy Speaker: I can see the mood of the House is that the Question be put.

(Question put and agreed to)

LIMITATION OF DEBATE ON PRESIDENT'S ADDRESS

Hon. Deputy Speaker: Hon Baya.

Hon. Owen Baya (Kilifi North, UDA): Thank you, Hon. Deputy Speaker. I beg to move the following Motion:

THAT, noting that Standing Order 24(6) provides that debate on a Motion on the Address by the President shall be limited to not more than four sitting days, and pursuant to the provisions of Standing Order 97(1), this House orders that debate on a Motion on the Address by H.E. the President under Article 132(1)(a) of the Constitution shall be limited as follows: A maximum of thirty (30) minutes for the Mover in moving, twenty (20) minutes for the Leader of the Minority Party, and ten (10) minutes each to the Chairperson of the Departmental Committee on Justice and Legal Affairs to speak on the report submitted under Article 132(1)(c)(i) of the Constitution relating to the realisation of the national

values; the Chairperson of the Departmental Committee on Defence, Intelligence and Foreign Relations to speak on the report submitted under Article 132(1)(c)(iii) of the Constitution relating to the progress made in fulfilling the international obligations of the Republic; and the Chairperson of the Departmental Committee on Administration and Internal Affairs to speak on the report submitted under Article 240(7) of the Constitution relating to the state of security in the country; five (5) minutes for any other Member speaking; and that ten (10) minutes before the expiry of the time, the Mover shall be called upon to reply.

Hon. Deputy Speaker, it is constitutional that the President addresses this Assembly in the State of the Nation Address and lays on the Table of this House several reports, including the Report on the realisation of the national values, the Report on the progress made in fulfilling the international obligations of the Republic, and the state of security in the country.

The President lays those papers and the chairpersons of the relevant departmental committees will have an opportunity to speak to them. Members too will have five minutes each to speak on the reports. This is an important tradition of this Parliament as provided in the Constitution. Therefore, as Parliament, we provide that debate takes place and the time limitations be as we have suggested. I would like to request the Member for Mandera, Hon. Suleka to second this Motion.

Hon. Deputy Speaker: Hon. Suleka.

Hon. Suleka Harun (Nominated, UDM): Hon. Deputy Speaker, I second.

(Question proposed)

(Question put and agreed to)

Hon. Deputy Speaker: Hon. Engineer Thuddeus Nzambia, Member for Kilome, I will indulge you. Since you were not present when we started earlier, and because we do not have too much business right now, I am going to indulge you. Hopefully, that will not happen going forward. Where is Engineer Nzambia? You may proceed.

NOTICE OF MOTION

TIMELY AND CONTINUOUS REGISTRATION OF ELDERLY PERSONS UNDER THE OPCT PROGRAMME

Hon. Thuddeus Nzambia (Kilome, WDM): Hon. Deputy Speaker, I beg to give notice of the following important Motion that touches on all the 290 constituencies in our country:

THAT, aware that Article 57 of the Constitution outlines the measures to be taken to ensure the rights of elderly persons; noting that the elderly persons, particularly from vulnerable backgrounds who are in dire need across the country require financial support for their sustainability in regards to their health and wellbeing; recognising that the Older Persons Cash Transfer (OPCT) Programme was launched in 2007 with the purpose of facilitation of a monthly cash transfer to the disadvantaged and vulnerable elderly persons from identified deserving households who are 65 years and above across the country; concerned that registration of persons of 65 years and above was last conducted in 2016; cognizant of the fact that there are many elderly persons who have since attained the age of 65 years and are yet to be registered under the Older Persons Cash Transfer (OPCT) programme; further concerned that the programme has in the recent past undergone unprecedented encounters in regard to new entries,

technical mode of fund transfer development, digital registration of elder persons, inadequate monitoring, and irregular receipts of funds, this House resolves that the national Government through the Ministry of Labour and Social Protection undertakes continuous and timely registration of elderly persons under the Older Persons Cash Transfer Programme.

Hon. Deputy Speaker: Thank you. We can move to the next order.

BILLS

First Readings

THE LAND (AMENDMENT) BILL
(National Assembly Bill No. 40 2022)

THE PENSIONS (AMENDMENT) BILL
(National Assembly Bill No. 44 2022)

*(The Bills were read a First Time
and committed to relevant Committees)*

MOTION

GENERAL DEBATE ON PROPOSALS TO AMEND
THE CONSTITUTION AND STANDING ORDERS

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Deputy Speaker. I beg to move the following Motion:

THAT, noting the contents of the memorandum submitted to Parliament by His Excellency the President asking Parliament to consider initiating amendments to the Constitution; acknowledging that actualisation of the proposals which relate to, inter alia, the composition of Parliament as provided for in Articles 97 and 98 of the Constitution in order to attain the two-thirds gender principle, the creation of the Office of Leader of Official Opposition in Parliament and the inclusion of various funds in the Constitution would necessitate amendments to the Constitution, while the restructuring of parliamentary oversight to allow Cabinet Secretaries to appear before the Houses of Parliament to respond to questions by Members would require the amendment of Standing Orders; further acknowledging that the Speaker, vide a notification issued on 9th December 2022, referred the matters raised in the memorandum to the Departmental Committee on Justice and Legal Affairs with regard to proposals relating to implementation of the two-thirds gender principle and the establishment of the Office of the Leader of Official Opposition, the Joint Parliamentary Ad Hoc Committee with regard to proposals to amend the Constitution to entrench the Constituency Development Fund, Senate Oversight Fund and National Government Affirmative Action Fund, and the Procedure and House Rules Committee with regard to proposals to amend the Standing Orders to strengthen parliamentary oversight of the Executive, so as to facilitate public participation pursuant to Article 118 of the Constitution; now therefore, pursuant to the provisions of Articles 1(2) and 95(2) of the Constitution, this House notes,

considers and makes general comments on the proposals contained in the Memorandum by His Excellency the President.

Hon. Deputy Speaker, Members will recall that, indeed, as indicated in the Motion published in the Order Paper, the Speaker relayed the memorandum from His Excellency the President on 9th December 2022.

Hon. Deputy Speaker: Hon. Nyikal, what is your point of order?

Hon. (Dr) James Nyikal (Seme, ODM): Thank you, Hon. Deputy Speaker. I take this opportunity to welcome back my colleagues after a long recess. I was not here yesterday.

My point of order is: this is an extremely important Motion. Maybe I should have raised this point of order even on the previous orders. This is a Wednesday morning sitting which is solely meant for Members' Bills. Is it in order to debate this Motion on a Wednesday morning when we should be discussing Members' Bills? Two, what does it mean for the future when we say 'note, consider and make general comments' on such an important Motion? I would be most grateful if you would give guidance on those two issues.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Nyikal, you may have brought up an important issue, but the House Business Committee (HBC) sat and resolved that the Motion be moved today. Hon. Members, let us approve the Motion.

What is it, nominated Member, Hon. Mbadi?

Hon. John Mbadi (Nominated, ODM): Hon. Deputy Speaker, with all due respect, I would like to point out that if any Motion from either the Majority Party or Minority Party has to be transacted on a Wednesday morning, leave of the House must be sought and granted. It cannot be done by the HBC. That is beyond their limit.

(Applause)

It would have been very easy for the Leader of the Majority Party to first move a Motion to exempt the Motion by the Majority Party or Minority Party from the rules. We have to set precedence, Hon. Deputy Speaker, with all due respect.

Hon. Deputy Speaker: Leader of the Majority Party, you are so advised. I will give you the indulgence to seek leave of the House.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Deputy Speaker. I take this opportunity to thank Hon. Nyikal. We are a House of procedures and precedence. It is, indeed, true that with respect to any Motion other than those sponsored by individual Members, we ought to seek leave of the House. My apologies for that oversight and the Clerk's Office should take note. A procedural Motion should have been in the Order Paper.

Therefore, I beg to move a Procedural Motion to seek leave of the House to have the Motion listed in the Order Paper as Order No.16 debated this morning. Members are aware that the Notice of Motion by Hon. Nzambia, which should have been done under Order No. 5, is the only individual Members' Motion. This afternoon, there will be another Notice of Motion by Hon. Gathoni Wamuchomba, as approved by the HBC. In the absence of individual Members' Bills, it was the wisdom of the HBC that we allow debate on this Motion this morning. I, therefore, seek Members' indulgence and leave of the House to have the debate this morning.

I request the Member for Kwanza, the one and only Hon. Ferdinand Wanyonyi, to second.

Hon. Ferdinand Wanyonyi (Kwanza, FORD-K): Hon. Deputy Speaker, thank you very much. I do not see any...

Hon. Deputy Speaker: One moment. There is another point of order by Hon. Nyikal.

Hon. (Dr) James Nyikal (Seme, ODM): Even seeking leave of the House has a process. A Motion to seek leave to discuss this Motion should have been in today's Order Paper. We would discuss it and then proceed. You cannot come to the House when the Motion had not been discussed by the HBC and suddenly realise that you did not do the correct thing. You cannot do it without having discussed it in the HBC.

In my view, the most practical thing is to step this Motion down and bring a Motion seeking leave of the House this afternoon or tomorrow. To do it now would be rather pedestrian. This is an important Motion. We should not start on a faulty step.

Thank you, Hon. Deputy Speaker.

(Hon. Kimani Ichung'wah spoke off-record)

Hon. Deputy Speaker: Okay, I will give you a chance to respond to that.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Deputy Speaker, you know I have a lot of respect for Dr. Nyikal. He knows his famous definition of the word "Government". Therefore, I do not like to rattle the "Government" and Hon. Nyikal knows what I mean.

However, Hon. Nyikal is completely out of order because he does not sit in the House Business Committee. This matter was discussed and approved by the House Business Committee. I have just sought the indulgence of the House because it was an oversight by whoever prepared the Order Paper in the Office of the Clerk not to have included the Procedural Motion. The Procedural Motion is being considered with your approval because you just called me to move it in line with the point of order that he had raised. If Hon. Nyikal does not want to sit in the House, he is free to take leave but he should allow other Members who are in the House and who want to debate important issues on behalf of the nation to do so.

Hon. Deputy Speaker, I had moved the Motion, and asked the Member for Kwanza to second.

Hon. Deputy Speaker: Hon. Members, Standing Order 1 states:

"1. (1) In all cases where matters are not expressly provided for by these Standing Orders or by other Orders of the House, any procedural question shall be decided by the Speaker."

In this case, the Leader of the Majority Party has sought leave. I will ask for the approval of the House to grant him leave to proceed with this Procedural Motion. So, I will now propose the Question. It has already been proposed. Let him second.

Hon. Ferdinand Wanyonyi (Kwanza, FORD-K): Hon. Deputy Speaker, despite all this confusion, I take this opportunity to second the Motion because it is important that we talk about this matter so that we can move forward. I do not see anything wrong with this Motion. Therefore, I beg to second.

(Question put and agreed to)

You are out-numbered, Dr. Nyikal.

(Laughter)

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Deputy Speaker, I hope that our good friends, the new Members of Parliament, are learning from experienced legislators like Dr. Nyikal because there are many ways of skinning a cat. You could see that his sole intention was not to have this continue. It is only fair that we have put it to a vote.

The Memorandum by the President touches on a number of very pertinent issues, top among them being issues that we have already had general debate on. All we are asking this

morning is for Members to ventilate and have that general debate on the various proposals contained in that Memorandum. We already had a general debate in the first Session on some of the issues such as the National Government Affirmative Action Fund (NGAAF), the Senate Oversight Fund, and the National Government Constituencies Development Fund (NG-CDF). We seek to have the same general debate on the other proposals on the Two-Thirds Gender Rule, the creation of the Office of the Leader of Official Opposition, and the proposed amendment to our Standing Orders to have cabinet secretaries appear in the House to answer Questions, Statements and issues of concern to Kenyans.

Members will recall that in the 11th and 12th Parliaments, Hon. Aden Duale, as Leader of the Majority Party, brought Bills to amend the Constitution to actualise the Two-Thirds gender principle in the Constitution. All those attempts failed. In the 11th Parliament, Hon. Chepkonga, as the then Chair of the Departmental Committee on Justice and Legal Affairs, also made similar attempts. The Deputy Speaker herself, Gladys Boss Shollei, also attempted to amend the Constitution to actualise this principle in a Bill that she sponsored. There is also the current Bill that the Deputy Speaker has proposed in her capacity as a Member of Parliament. That Bill had been approved by the House Business Committee and I am advised that it was notified to the House Business Committee that the Speaker has agreed to allow debate because it will enrich some of the proposals that Hon. Shollei and any other Member would have on the issue of the two-thirds gender rule.

Over time, Members will appreciate that three or four attempts to actualise this rule has been a struggle. During the last attempt, we could not even raise the two-thirds majority to pass that particular amendment. Sadly, it took the former Chief Justice, Hon. Maraga, writing to the then President, Hon. Uhuru Kenyatta, to take action and dissolve the House because the House was said to be unconstitutional. That persists to date.

As currently constituted, we are yet to achieve the two-thirds gender rule. Therefore, it could also be said that this House is not constitutionally constituted. In his wisdom, the President in his Memorandum has sought to help the House think through some of the proposals - as Hon. Shollei has thought through her proposals - on how we can actualise this so that we constitute the House constitutionally in line with what was provided for in the Constitution of Kenya, 2010. No single gender shall make up more than two-thirds of the membership and that measures will be taken through legislation or amendments to the Constitution to actualise this rule for the gender that has fewer numbers.

If you read the President's Memorandum with the number of women legislators elected in this Parliament in mind, other than the 47 County Women Representatives which are affirmative seats, we have another 28 single-member constituency Members of Parliament, some of whom are seated here. I noted Hon. Wamuchomba and the Member for Moiben, who are representing single-member constituencies. Congratulations to these very good ladies who had to fight it out amongst many other aspirants who were seeking to lead constituencies and they made it.

We can only encourage our women to fight it out in elections for us to eventually have elected Members and not just nominated Members to this House, who will help us achieve the two-thirds gender rule. In the absence of that, we have no choice but to make amendments to the Constitution that will ensure that we achieve this rule. I hear the Member for Endebess mentioning the indomitable Member for Narok North, Hon. Agnes, who is also a single-member constituency Member of Parliament from the very difficult terrain of Narok North - a community that initially did not believe in the power and leadership of women. The people of Narok North, Kajiado, Moiben, Githunguri, Samburu West, Kitui South and Laikipia where Hon. Sarah Korere comes from are societies which are very patriarchal and never believed in the leadership of women, but today, they appreciate that women can also make very good leaders and that they are as good if not better than men leaders.

Hon. Deputy Speaker, it is up to this House to debate and see how we actualise this matter. Over time, maybe it is the male gender that will need affirmative action. You never know. If you look at our society today, the boy child is more endangered than the girl child. Therefore, those of us who sit in this House as men, we must know our days are numbered. We must, therefore, ensure that we make amendments to the Constitution that will protect not only our daughters, mothers, aunts and sisters but also protect ourselves and our sons because we are endangered. There is threat to the boy child today due to alcoholism, drug and substance abuse and general neglect by society. This country moved towards empowerment of the girl child 30 or 20 years ago. She is so empowered today. That is why we can confidently count many Members of Parliament, including those in Homa Bay County who are ladies who have been elected by people in their constituencies. Many ladies lead big corporations like East African Breweries. Many other big corporations in this country are under the leadership of very able women. Therefore, it is unfair that political units or establishments continue not to have ladies at the forefront of the leadership of our country. Therefore, I want to encourage Members. Let us not look at this two-thirds gender rule or principle as something that targets women. It targets both women and men. It is a gender principle but not women principle. Gender is not women but both genders. Fortunately, we do not have issues in this country that we see in the West of the transgender people. We are talking of the two genders only, that is, female or male.

There is also another provision. I do not need to belabour the question of the National Government Affirmative Action Fund (NGAAF), National Government Constituencies Development Fund (NG-CDF) and Senate Oversight Fund. We had a debate concerning these Funds. We know how sensitive NG-CDF, NGAAF and Senate Oversight Fund are. We know how sensitive it is to have funds for the Senate to oversee the billions, if not trillions, that are devolved to our county governments. I do not need to belabour that point.

There is also the question of the Cabinet Secretaries appearing in the House. I had an opportunity to listen to many of our friends who think or imagine that allowing Members of the Cabinet to appear in the House... I saw what the sub-committee of the Procedure and House Rules Committee proposed. There is no proposal for Cabinet Secretaries to come and sit or stand where we are privileged to have been elected by Kenyans. We stand in the Plenary here today or sit on our seats. There is a proposal to create provision for them to sit at the Bar. We admit the Cabinet Secretary for the National Treasury to table his revenue estimates every year in June. During the State of the Nation Address, we allow the President to come and address the House from the Bar where you sit. We will allow Cabinet Secretaries to come and answer questions, statements and issues that are of concern to Kenyans from the Bar here. I can see Hon. Kaluma is pointing at the other bar, but it is not the one. I mean the one in the Chamber. Therefore, from this Bar or the Civil Servants Row, Cabinet Secretaries can come and be accountable to Kenyans.

(Laughter)

The proposal by His Excellency the President, which I fully support and agree with, is to ensure that there is full accountability by his Government. Under normal circumstances, any President or member of the Executive would be very happy to run away from oversight and questions from the people's representatives. However, we have a President and Government that tells us that they are open to scrutiny. They want to run a transparent and accountable Government to Kenyans. They want to give us the opportunity to grill and put to account members of the Cabinet.

We have been in this House since 2013 after the enactment of Constitution 2010. Hon. John Mbadi and I were in this House under the old Constitution. We had the privilege to learn because we saw how effective the process of having Chairpersons of committees come before

Members in this House to answer questions is. Members recall the difficulty Chairpersons have undergone. You go and get a Statement from the Ministry and then you come and read it out here. Members have follow-up questions for answers that you cannot provide as a Chair of a Committee, unless you go back to the Ministry. We now have the opportunity to have the Cabinet Secretary in charge of Interior and National Administration come and stand before the House and tell Kenyans why people are being slaughtered in the North Rift by bandits and what he is doing. If there are follow-up questions, we will ask him. We will ask the Cabinet Secretary for Education questions on the roll-out of the Competency Based Curriculum (CBC) and Junior Secondary School.

The pertinent issues that Members have will be addressed before the House. The Cabinet Secretaries will not only address Members of Parliament or answer questions. I believe that Members of Parliament do not ask questions for themselves. They seek Statements on behalf of the people they represent. Therefore, in actualising that role of representation and oversight, I implore Members to support this proposal to amend our Standing Orders. I must commend the sub-committee of the Procedure and House Rules Committee that has been working on this proposal. I look forward to adoption of their Report by the Committee and subsequent approval by the House.

The other proposal by His Excellency the President is one of creating the Office of the Leader of Official Opposition. I listened to my brother and colleague, Hon. Opiyo Wandayi, in Mombasa, saying we should go back to Building Bridges Initiative (BBI). I know it excites Hon. Kaluma and Hon. John Mbadi to mention BBI which is dead and buried. They must socialise themselves to that.

(Members spoke off record)

That is why the President has been very fair to us, as a House. He has not sought to introduce or re-introduce BBI in any other form or even to coerce leaders to support any proposal that he has. He is not seeking to initiate constitutional amendments. He seeks to initiate this general debate for us to enable Kenyans to have that public discourse, so that at the end of the day, we have provisions in the Constitution and how we can amend it. One of the ways is the parliamentary process in this House. We cannot run away from that responsibility. We have a duty, responsibility, or mandate bestowed on us in the Constitution. Under the Constitution, we have powers to amend any section of the Constitution except those that will call for a referendum.

There are issues that His Excellency the President has sought that we debate as a House and we make a decision on what we think is the best. In my view, this general debate will inform Kenyans on what we, as a House, seek to do in terms of amending our Standing Orders or Constitution. We will also invite Kenyans to participate. Public participation is not only when we go out there to seek their views. The relevant committees will eventually do that. There are Members who are seated here who are receiving texts and WhatsApp messages from their constituents. We will have to think about what is the best for this country. One of the things is the creation of the Office of the Leader of Official Opposition. I know and I am aware that there are those Kenyans who imagine that it is another way of appeasing a particular person or leader. Let me state for the record that this provision or proposal is not to create a position either for the former Prime Minister, Hon. Raila Odinga, Hon. Kalonzo Musyoka, Hon. Martha Karua, Hon. Nyikal or Hon. John Mbadi. This is a position that we seek to create for posterity.

We did pass a constitution in 2010 that created the position of an Executive President and a Deputy President. The runners-up in any election are left out there. Although they are not left in the cold because they have a role to play, we want to institutionalise the Office of

the Leader of Opposition, to an extent that we have a system that can hold Government to account.

Hon. Deputy Speaker, I have seen our colleagues in the Minority Party at times struggle because the leadership that they look up to is not in this House, neither is it anywhere within the precincts of Parliament or around to offer guidance on how to effectively oversee and take Government to account. Therefore, this is an opportunity that the Minority Party will have meaningful leadership and an office that they can call up to for guidance and leadership. This is an opportunity for our Minority Party to hold Government to account and make sure it delivers on what it promised the people of Kenya, even as those of us in the Majority Party hold the Government to account as Members of Parliament. This is because we intend to, and we shall do this. If those of you in the Minority Party fail, those in the Majority Party will make sure that this Government delivers.

Hon. Deputy Speaker, I see Hon. John Mbadi laughing because he seems to doubt that we can hold Government to account. He knows what happened when they went to bed with the Government under the handshake regime. That is why I refer to the Government. I told him: "You are now in the Government, we are also in the Government, but we will do what you are failing to do."

Hon. Deputy Speaker, allow me two more minutes. I want to conclude by saying that indeed, many of our supporters... I know that those who support the Minority believe that this position maybe an appeasement to their leaders; it is not. Many of our supporters are opposed to this proposal, or have the feeling that this proposal is another sort of handshake. I want to disabuse this notion that this position is not being created to appease anybody. We are creating a position for posterity. We are creating a position that will make the governance of our country better. That will only enrich...

Hon. Deputy Speaker: Let us give him two minutes to finish please.

Hon. Kimani Ichung'wah (Kikuyu, UDA): I was saying that this proposal will enrich and deepen our democracy, and make the structures of the governance of our country only stronger. I know there are those who would want us to imagine that we need to go into a referendum and therefore the push to go back to Building Bridges Initiative (BBI) that was seeking to create positions for individuals. I have said that we must disabuse that notion even as we generally debate these proposals. That we are not seeking to create positions, because His Excellency the President and myself as we traversed this country promised the people of Kenya that His Excellency the President will run a government that seeks to create job opportunities and create wealth, not create positions for individuals. Therefore, this is not a position for an individual, it is a position for posterity that will deepen our democracy and that will ensure that the Government is held to account, run transparently and offer meaningful leadership to our brothers in the Minority Party. Who knows, tomorrow it could be Hon. John Mbadi taking that position of Leader of the Official Opposition. It could also be me or anyone in the Majority Party. It could even be the President today, you never know. We are therefore learning from what happens in other jurisdictions and where we faltered as we passed our Constitution of Kenya 2010.

With that, I beg to move and ask Hon. Members to debate soberly and consider all these matters for the benefit of the people of Kenya. Not for the benefit of any particular leader or anyone in Government, but for the benefit of our country, to deepen our democracy and to ensure that our country grows to the next level that we ought to be moving to.

I beg to move and ask all Members to support. Thank you.

Hon. Deputy Speaker: Who will second?

Hon. Kimani Ichung'wah (Kikuyu, UDA): Let me ask the Hon. Member for Ugenya, the one and only David Ochieng' who happens to also be the party leader of the Movement for Democracy and Growth (MDG). You never know, this could be the next President or next

Leader of the Official Opposition. Let me ask him to second. I pray that at one time he will be the first Member of Parliament from Ugenya to make it to the Office of the President of the Republic of Kenya when Hon. Nyikal will be the Leader of the Official Opposition.

(Laughter)

Hon. David Ochieng' (Ugenya, MDG): Amen to those prayers.

I beg to second and note that throughout the ages and within our own democracy, we have made so many strides through peaceful legal reforms and peaceful amendments to our laws. You can only change society by having a conversation and a dialogue and by agreeing every now and then, what law works for you and which one does not. I believe that the President's memorandum is made in that light. He recognises that Parliament has a big role to play in legal reform and that we need to have a conversation. So, instead of issuing an edict or doing what was called BBI that time, he involves Parliament early enough and tells us, "These are my thoughts on these matters, what do you think?" That is what he is telling us in this memorandum.

I want to thank our Deputy Speaker for allowing time for this conversation because we have come from far and our society has changed so much. In America for almost 100 years, women never voted. Our democracy started with everyone having the right to vote. I believe that through talking to each other and reforming laws, when necessary, we make our society better.

I want us to look at this memorandum from the President in that light. That we have been struggling with ensuring that women come to this House. Women who are here can tell you so. You are one of them. I have also heard stories from women who are running for seats. I run a party and I have heard people who want to talk to me about concerns that they have. So, a way must be found to ensure that as a country we make our women participate in politics meaningfully without being abused, insulted or bullied. Where the numbers fall short, a way must be found to ensure that the National Assembly and the Senate is a representative of the society. Our statistics show that women are more than men in this country, but in almost every leadership position, be it county assemblies, National Assembly and Senate, the numbers of women being elected are low.

I, therefore, agree with the President that a way must be found to ensure that 97 out of the 349 Members of Parliament are women. How do we do that? The courts have spoken severally that we were not legally constituted. We have sat here and agonised on how to get the best formula to ensure that women numbers are as per the law. What is being proposed is to get a formula that can tell us, if you already have 47 affirmative action seats considered and 26 women elected as Members of Parliament, what more numbers do we need to ensure that we have the 97? He is therefore proposing that we get a formula where through the political parties system, through an independent system and through dialogue in this Assembly, we are able to bring in 24 more women. In future, if the numbers fall short, we have a formula that is fool proof, whereby we know that if we elect 50 women, we will have to bring in 47 of them. If we only have 60 women, we will have to bring 37 of them. That is what is being proposed here and I agree with it absolutely. A way must be found, that if Kenyans cannot elect women, we must still get women on the table of discussion.

In this regard I want to request Members to look at this in a manner that promotes their daughters and mothers. We cannot promote William Ruto as president, he does not benefit from this. So, if we can get a way of doing this the right way, our country becomes a better country in terms of governance.

Hon. Deputy Speaker, when the late President Kibaki was alive, his opinion was that the best devolution would better work at the constituency level. I agree with him. If you go to

our constituencies today and look at the kind of money we spend on administering National Government Constituencies Development Fund (NG-CDF), it is less than 10 million. Compare that to how much the counties are using to employ staff for administration. It is 40 per cent and in some places 50 per cent.

If we entrenched NG-CDF and National Government Affirmative Action Fund (NGAAF); if we allowed Senate to have some resources to be able to go around to ensure that counties' money work, we will be better off. We need more money in the grassroots and not less. No one said and I do not believe that the only level of devolution should be the county governments. I want to ask the Government to clear the air that NG-CDF will never give way. The money we will receive should never be sent to the counties. It will always remain at the constituency level. The work of a Member of Parliament becomes easier not because he fiddles or puts his hand in the NG-CDF but because through it, schools have been built and children go to school.

Last week, and I have been doing this for the last 10 years - there has never been news in this country since I became the Member of Parliament of a child in Ugenya who scored good marks and has not gone to school. It is true for all constituencies that we use such a system to cater for everybody else that we need to.

If a child from Kwanza Constituency is called to Alliance High School, Hon. Wanyonyi is able to get money and send the kid to school. If a child from Seme Constituency is called to Mang'u High School and lives with his or her grandparents who probably are unable to pay school fees, they are able to sort the children throughout their school through the NG-CDF.

We have seen how counties handle bursaries. It results to nepotism, corruption, and all sort of things. The best fund that we have, the one that is close to the people and serves interests of the county with very little administration fees is the NG-CDF. Parliament and the people must support the President's word, NGAAF and the NG-CDF, and allow Senators have their own money to go around the country to help make the Government better.

If we did not have the opposition in this country today; and you know all presidents in the world who have good intentions, some of them, somehow become rogue. We have seen how this country has been run. Parties have leaders. Parties have people who speak for them. You cannot tell me today that the leaders of the Majority Party and Minority Party who sit here make their parties move. There are people out there who leave these parties and who after elections, lose their voices. What is being planned by this proposed amendment is to ensure that those who hold the highest positions in their parties, the WDM-K, ODM, Jubilee or whichever party, will still have their voices after elections. They do not lose their voices as Members of Parliament but by providing an office situation, the opposition is always the alternative Government. If we have an alternative Government that cannot be organised, have no office and cannot be traced, it then becomes difficult to organise. So, we want to be able to have a responsible opposition that can be held to account.

I believe that even the opposition must be held to account. We were all elected. We are all being supported by the taxpayers' money, and we must be able to know what they are doing and how they are doing it. You can only do so if you know where they are, if you fund them, and are able to know what they are doing to ensure they are doing their work rightly. Therefore, it does not matter whether the proposals were done through the BBI, Uhuru, Raila or whoever it is. What is right is right. It does not matter who says it. It is right to have a good opposition. It is good to have a country where critique is legalised and institutionalised. This proposal by the President proposes that we institutionalise the opposition and ensure we have a way of making those who go to elections and do not win at a national level operate in the public space.

I beseech Members here, let us not look at these things. I do not think we are going to be here forever. If you serve for two or three terms, you will feel tired and already want to go. Someone else will come in.

I would like to look at these proposals far away from the person who wrote this memorandum. I want to look at these proposals as a Member of Parliament who believes in a good country that is governed by law and look at them without having these hangers on who proposed what.

I have been in this Parliament for my third term and it has been difficult. We go and queue for two to three hours seeking for an opportunity to see a Cabinet Secretary, and there is no place to question them. Some Cabinet Secretaries have reached their terms without anyone knowing even their names in this Assembly because we do not know what they do, how they do what they do because there is no chance to question them. What is being proposed is not for them to come and sit on the Floor because they are not Members, but get a place for them where Members can question them publicly. Proposals are being made that we can do that in the Committees or cover the Committee sessions live but having Cabinet Secretaries come to this House at an allocated time and being questioned publicly will improve governance, make our work easier and make the work of the Committee Chairs easier.

We are not rolling back; we are making it better. We are improving our governance structures. Yes, you would ask why then we cannot go the whole hog and make the Cabinet Secretaries come to this House, a desirable position. We are trying to do with what we have. That before we change the Constitution and make Cabinet Secretaries come to this House, a way must be found. I, therefore, request Members to look at these proposals for what they are and not the person moving them. This is because any of us could still move these amendments and still make them law.

With those many words, I beg to second and ask Members to support.

Thank you.

Hon. Deputy Speaker: Hon. Members, before I proceed, I wish to recognise the presence of students from Kanyakine High School, Imenti South Constituency, Meru County.

(Applause)

Is it the mood of the House that I propose the Question?

Hon. Members: Yes.

(Question proposed)

Hon. Deputy Speaker: Can I put the Question?

Hon. Members: We debate first.

(Loud consultations)

Hon. Deputy Speaker: Member for Kangema, Hon. Peter Kihungi.

Hon. Peter Kihungi (Kangema, UDA): Thank you, Hon. Deputy Speaker. I stand to support the Motion.

The issue of constitutional change on a parliamentary move is critical. We need to separate the way the President has brought it from the way the BBI was brought because there is a difference. The way the BBI was brought is that the former President first of all, came up with a task force which first went to the public and started collecting views and thereafter, brought the views, that is when the BBI was brought to Parliament. However, here we have a different approach. The President under Article 132 of the Constitution is mandated to address Parliament and this was part of his Address. He then followed it up with a letter to the Hon. Speaker that read thus:

“Nevertheless, I hold the firm belief that as a President I can indeed and must engage authorised entities like Parliament. Accordingly, the purpose of this letter dear Hon. Speaker is to request the Parliament...”

Therefore, what the President has done is to request Parliament to consider his proposal. We can take it or do away with it but the things that the President has put are extremely critical to this country. One way is that we must make our Constitution as a Parliament. The President needs to be somebody who respects and honours the Constitution. For instance, the NG-CDF issue as the courts have put it, looks extremely unconstitutional. However, the mood of the whole nation is that they need the NG-CDF. As the President supports Members and the country to stand with the NG-CDF, he still finds that he is against the Constitution. Therefore, when we entrench it in the Constitution, we are just making sure we have powers to engage the Judiciary on being constitutional. Whenever the President is seeking that we allow the NG-CDF to continue even though there are issues that have been raised, he would be working against the oath that he took to stand by the Constitution.

[The Deputy Speaker (Hon. Gladys Boss) left the Chair]

[The Temporary Speaker (Hon. David Ochieng') took the Chair]

We have the issue of gender as it stands today, that there is a ruling that Parliament is unconstitutionally constituted without the two-thirds gender rule. When the President requests Parliament in his own wisdom on a formula that cannot be a burden to our nation, that formula can only be through an amendment so that it is constitutional and very easy. The President proposes that the gender rule should be tabulated on 290 constituencies whereby we only have to add about 24 women to become constitutional.

Therefore, Hon Temporary Speaker, as we consider this amendment, let it be supported constitutionally. We are fighting for the NG-CDF, but it is currently not constitutional. On the issue of the Leader of the Official Opposition, people believe that the person who garnered over six million votes, which is almost half of the total votes cast in the whole country deserves an office.

The Hon. Leader of the Minority Party cannot take the position of the Leader of the Official Opposition who was a presidential candidate and came second in the election. Therefore, my interpretation is that the President wants to bring the issue of constitutionality whereby you do not find the person who came second after the President trying to beg for a position. That person should have an official office and support anchored in the Constitution without having to beg for people's support. He needs to be supported by the Government.

On the issue of Cabinet Secretaries coming to Parliament; the CSs hide behind Committees. The Cabinet Secretary for Water for example only recognises Members of the Departmental Committee on Water, Sanitation and Irrigation. The Cabinet Secretary for Transport and Infrastructure honours and respects the relevant Committee Members who are 15. The rest 290 Members of Parliament are dealt with after the Committee Members. Therefore, when there is an issue in Kangema, where a road has been left and nothing is going on and you visit his office, he just communicates with the Committee Members and feels he is safe. But if he came here on the Floor of the House, I could freely question him.

Therefore, the issue of the Cabinet Secretaries coming to Floor is not a small issue that can be managed by a Departmental Committee. There are areas as MPs that we must question them on behalf of our constituents. Hon. Temporary Speaker, I wish we looked at this amendment as if it is not about the party and the presidency but as an issue of constitutionalism whereby we will make necessary changes so that we even question the Judiciary itself. This is because, they are telling us to be constitutional but how are they constituted themselves?

Hon Temporary Speaker, I support the Motion and I wish all the Members would support. Thank you.

The Temporary Speaker (Hon. David Ochieng’): Thank you so much. This one goes to Hon. Gitonga Murugara of Tharaka.

Hon. George Murugara (Tharaka, UDA): Thank you very much, Hon Deputy Speaker. Allow me also to voice my support for this Motion which is pursuant to the memorandum we received from His Excellency the President making certain recommendations. First and foremost, it is important we clear the air because there is anxiety and fears that the President may actually be initiating some reforms or amendments similar to the BBI which was rejected. It is important to point out that there is distinction between the BBI and the memorandum we have received, in that the BBI clearly was an initiative of the President and the Executive. The gazette notices that initiated the process were signed by His Excellency the President then, while he went ahead to constitute the committee that came up with the proposed constitutional amendment.

As far as this is concerned, what the President has done is make recommendations in his two capacities: the first one being the President of the Republic of Kenya, where he is entitled to do so on behalf of the people of Kenya who elected him. Secondly, as a citizen where he has a right to do so by making proposals to this House to consider parliamentary or popular initiative; whatever it is that has to be considered. The memorandum talks about four issues: the first one being the two-thirds gender rule, which is very important because of the constitutional Article which exists that if this House does not enact laws relating to the two-thirds gender rule, then it stands dissolved. It is important to remind the House that the former Chief Justice, David Maraga actually made the advisory that the 12th Parliament had to be dissolved because it had failed to comply with that constitutional provision. Fortunately, it was not dissolved but that is the furthest it went. It remains law in this country and if we do not follow what the Constitution says, there is that risk.

The second one relates to the NG-CDF, NGAAF and the Senate Oversight Fund. We have already debated extensively regarding this, the importance of those funds and why they should actually be entrenched in the Constitution. The third one relates to the Office of the Leader of the Official Opposition. This is where there are jitters as to whether we are creating an office for somebody. There are arguments that this House cannot amend the Constitution to comply with that proposal. One reason being given is that our country follows what is known as the presidential system of Government while in areas/countries where we have the official opposition leader, the system of Government is parliamentary as found in Australia, United Kingdom, Canada and such other commonwealth countries.

I do not personally agree and I will be persuading my Committee, the Departmental Committee on Justice and Legal Affairs to see it from a different perspective. That even if we do have a presidential system, there are bits and pieces that marry our system with the parliamentary system. It is those bits and pieces that we are going to exploit and use to bring in this office.

The importance of the office cannot be over-emphasised, the reason being that the person who comes second after a general election is a very important person. This is for posterity. It does not have the last elections in mind. That person has a lot to contribute when it comes to checks and balances of the Government. It is also important to know where to find this person. For example now, two of these issues have been referred to my Departmental Committee on Justice and Legal Affairs. We would want to hear from the Leader of the Official Opposition exactly what his views are. But as we speak today, we do not know where to find him and we do not want to go to rallies to find him. If we go to Capitol Hill where he used to be the last time, possibly, it will be said that we are going for *mwosho mmoja*. So, where do we find him and where do we take his views from? Do we meet him in one of the committee rooms

in Parliament? That is dishonourable. From now henceforth, we should consider according that office the respect it deserves so that the occupier, who is going to be anyone ranging from the Members of Parliament who are here and others who will be elected in the future, can actually sit in that office, be consulted on all matters that may come into deliberations in this House and in this country.

Two of the matters are committed to the Departmental Committee on Justice and Legal Affairs and I confirm we will move expeditiously to determine them so that this Committee has a solution. I know for sure we have to do public participation, we have to go round the country as Members of Parliament and that Committee obtaining views from Kenyans and hear what we are dealing with as proposals. Kenyans can actually reject these proposals *in toto*. If that happens, it will be for the good of the country; it is the will of the people.

If Kenyans agree that Parliament should consider, then we will move to the next level to determine whether these are parliamentary initiative amendments or they are a popular initiative which means we have to go to a referendum and we would require a referendum law to actually guide us. We do not have one at the moment, but we should be looking into having an Act of Parliament on referendum because we have said it before in the 12th Parliament, that we do not know how to operate or how to actualise a referendum without law. The Supreme Court has also pointed out to us regarding this.

Finally, we have the other recommendation made by the President, which is that Cabinet Secretaries come to the House to answer questions. Again, there are jitters and anxiety that we are bringing strangers into the House, that we are also contravening the law and that this is not a parliamentary system where Cabinet Secretaries are Members of Parliament and can sit in the House and deal with matters relating to the Executive.

Our position, as I said, is that it is marrying the two because when we brought the 2010 Constitution, we allowed two strangers expressly to come into the House, address the House and whatever they propose is acted on by the House. The first stranger who comes in is His Excellency the President. He actually has that mandate from the Constitution. He comes over here to make the State of the Nation Address and we debate that Address thereafter and we actualise some of the views he gives to us in form of laws, regulations and motions.

The second person who comes over here is the Cabinet Secretary in charge of Finance. Again this is given by the Constitution. He comes over here and gives us the Budget Estimates after Parliament has looked at them as we are doing now. Right from the Supplementary Budget to the Budget Policy Statement which has just been tabled and eventually the Parliamentary Estimates. This has been provided for by the Constitution. Nothing stops us, as a House with our handmaidens and the Standing Orders, as I heard Hon. James Nyikal saying. Standing Orders are handmaidens of this House. They are not cast in stone. That is why at all times, we have what is called the saving provision of the Standing Orders, which gives the Speaker the power to rule on anything that is not provided for, that is Standing Order No.1.

But in this particular case, we have Standing Orders which we can amend and after the amendment for sure what is going to happen is we are able to allow Cabinet Secretaries to come here and answer questions. We are able to interrogate them and we are also able to ensure they do not get away with escapist answers, which is what we get from Chairpersons of Committees when they read Statements and answers to Questions which they know nothing about.

So, this is a very important Motion and I would urge the House that we debate it soberly. They are proposals and they are not cast in stone. The decision lies with the House and Kenyans.

With those remarks, I support the Motion.

[The Temporary Speaker

(Hon. David Ochieng) left the Chair]

*[The Deputy Speaker
(Hon. Gladys Boss) took the Chair]*

Hon. Deputy Speaker: Thank you, Sir George. Hon. John Mbadi, Emeritus, nominated Member by ODM.

Hon. John Mbadi (Nominated, ODM): Thank you Hon. Deputy Speaker. I want to thank you for giving me this opportunity to contribute to this Motion. This is just a general Motion. I know we will be dealing with the specifics. Whereas I do not have a problem with the substance of the Memorandum by the President to Parliament, the four key issues are issues that have been debated, talked about largely and widely in this country. The issue of the Leader of the Official Opposition and where that position should sit has been debated largely.

On the issue of funding, I cannot over-emphasise and I know there is a process that is in place that will ensure that we anchor and constitutionalise them in a way that those who have been doubting the constitutionality... I do not agree with the position of the Member of Parliament for Kangema that the NG-CDF is unconstitutional. It is not but there are people who are trying to portray it as unconstitutional and we want to seal those loopholes. I have no problem with that. I do not have a problem with answering questions before people's representatives. I also do not have a problem at all, with the gender principle because we embedded it in the Constitution and we need to actualise it.

But I have a problem with two things, Hon. Deputy Speaker. Number one is the process and the procedure and number two is the principles and honesty in politics in this country. So, I will begin with number one issue, on the process and the procedure. Whereas, my colleagues across the aisle are really struggling to separate and distinguish how different it is between the Memorandum from President William Ruto and the process that was started by the former President Uhuru Kenyatta, I do not see any difference. In fact, if you ask me, the initiative by retired President Uhuru Kenyatta had more people participation than this that is now being generated by William Ruto. Why do I say so? At least for President Uhuru Kenyatta, he started a process with the people. He created a task force which went to the people. This one is a president who is writing directly to Parliament. There is no consultation, we do not even know who he spoke to, and whether he spoke to people who visited him at State House, I do not know. This one is a direct initiative by the President. I just want to caution Members of Parliament and the people of Kenya that it is not right and I want to repeat it, it is not right to encourage the President to initiate constitutional amendments. This country has enjoyed democracy fairly, compared to our counterparts across the region. This country, probably with Ghana stand out as countries that are promising in terms of democracy. We should not allow any indication of an individual rolling back those gains and there is a possibility that one can test waters. Do not allow the President to start testing waters by writing to Parliament for constitutional amendments. Tomorrow, and with the gerrymandering that I have already started seeing and the games being played around with the Members of the Opposition now being invited at will, and the Jubilee Party almost gone to the other side with MDG, United Democratic Movement Party (UDM) gone and many individual MPs including those of my party under threat of being raided, I foresee a possibility of a president once emboldened who can recommend far reaching amendments to the Constitution which may even take us to a life presidency. That is my fear.

Number two, Hon. Deputy Speaker, look at the issues that have been raised in the memorandum. We raised most of these issues in the BBI. The BBI recommended that the person who comes in second in a presidential election should be made a Member of Parliament to be in this House to participate and lead his troops from the Floor of the House.

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Look at the issue of Cabinet Secretaries. We recommended that they should come from Parliament. We even said those who came from outside would be made *ex-officio* Members of Parliament, as the Attorney-General used to be. On the issue of the two-thirds gender principle, this was captured very well in detail and exhaustively in the BBI. I can say in a nutshell that when we proposed this to the people of Kenya, we were called names.

I remember Kenya Kwanza and its leadership called us selfish and people interested in grabbing power and extending existence in office of certain unnamed individuals but the target was Uhuru Kenyatta. That we were people who were looking for space for those who should be retiring. That was the word then. We were told we did not focus on the needs of the people of Kenya who were suffering and amendments to the Constitution were not a priority. I do not know whether the people of Kenya are enjoying or if the cost of living is low. Yet when I observe, we are suffering more than last year. Food is unaffordable and there is a drought situation in the country.

How I wish President William Ruto stuck to the language and script he used while he campaigned, that he would make Kenyans have bearable lives. Instead of writing a memorandum to us on issues we can deal with, we can sit down as a country and agree we go the route of constitutional amendment to introduce the Office of the Leader of the Official Opposition and Cabinet Secretaries to become Members of Parliament, instead of passing through the backdoor and escape routes looking for a way to bring strangers in the House.

I heard Hon. Murugara say that we allowed some two strangers. The President is not a stranger. Look at the presidential systems across the world, the President is part of a legislative process of the country. That is why he is the last one to assent to Bills. He cannot be a stranger. Another issue which has been brought is the Cabinet Secretary for the National Treasury. This is not a constitutional provision. In the Constitution he is only allowed to make pronouncements. He can make them from Uhuru Park or Kenyatta International Convention Centre (KICC). We are the ones who decided to make provisions in the Standing Orders to allow him to come here. In my view, this is unconstitutional but we are living with it. By the way, those pronouncements add no value. We are only living well with our neighbours in the East African Community (EAC).

Hon. Deputy Speaker, I want to wind up by saying very strongly that there is dishonesty in this country. Dr. William Ruto is my friend, how I wish he went back to his campaign pledges because our people are suffering. I want to take his position when he was campaigning, that amendments to the Constitution are not a priority for this country. The priority is the cost of living. Do not overtax our people and stop snooping on our phones. If I send money to my mother, that is not her income but a transfer of resources. He should consult people who have extensive and wide knowledge in financial management.

The issue of taxation should be left to the Kenya Revenue Authority (KRA). The President can never be a tax collection agent. We have competent people in KRA. If the Kenyatta family is not paying taxes, they must pay but let KRA follow them. Anyone who is not paying taxes should pay but allow KRA to follow them. Let us not weaponize KRA. You are the ones who told us that President Uhuru Kenyatta was weaponizing state institutions. You are doing exactly that by weaponizing KRA. You have already made the Judiciary impotent. We are moving in a very dangerous direction. That is why I am reluctant to accept this idea of all of us running to the President that we want to support his Government. He has enough Members of Parliament to support his Government. We must be here to provide checks and balances to the Executive.

(Hon. Kimani Ichung'wah spoke off-record)

I can hear the Leader of the Majority Party saying they want more but they have bad intentions. They want to make bad laws in this country without absolute numbers. I am still very comfortable where I am. Hon. Kimani Ichung'wah said I may be the Leader of the Official Opposition. I want to become the President of this country and not the Leader of the Official Opposition. I do not want to become the Leader of the Official Opposition because I was the Leader of the Minority Party and it was enough for me. I want to move up and become the President of the Republic of Kenya.

Thank you, Hon. Deputy Speaker. With those many remarks, I oppose the Motion.

Hon. Deputy Speaker: The Member for Kisii County, Hon. Donya Dorice.

Hon. Dorice Donya (Kisii County, WDM): Thank you Hon. Deputy Speaker. As we go through this debate, I want to agree with some Members in terms of gender. Women are transformational role models. This is because of the challenges they face and they will always want to leave a good mark. Women are always in the frontline talking about issues to do with gender, gender-based violence and creation of job opportunities. They will always stand firm and ensure they are allocated their portion.

As we go through the constitutional amendment discussion, we must consider areas meant to improve the lives of our people. The changes we make should be based on issues that promote better living standards for Kenyans such as poverty eradication and not betterment of individuals. Amendments to the Constitution should be those that make *mwananchi* happy and not the leaders.

I come from Kisii County where we have Female Genital Mutilation (FGM) issues which our male counterparts rarely speak about. So, as we consider the gender balance issue, I am sure most women seated in this House will understand the gender-based violence, girl-child issues and issuance of sanitary pads. This aligns well with women more than our male counterparts. This is very paramount in terms of the constitutional changes on gender and even the allocation of NGAAF. When we make these amendments to the Constitution and they are not challenged, women will focus and ensure there is enough for everybody. As it is now, we are competing with the male Members of Parliament in terms of bursaries and other small activities that happen on the ground.

I support the Motion but differ a little bit on bringing the Cabinet Secretaries on the Floor of the House for questioning, since that can be taken care of by the committees.

Thank you very much, Hon. Deputy Speaker.

Hon. Deputy Speaker: The Member for Kibwezi West, Hon. Eckomas Mutuse.

Hon. Mwengi Mutuse (Kibwezi West, MCCP): Thank you, Hon. Deputy Speaker. I stand to contribute to the Motion on the Memorandum by His Excellency the President which came to the House proposing several constitutional amendments. Regarding the matter of the NG-CDF, the House is aware we debated this extensively and formed a joint committee with the Senate.

The President's memorandum can only be seen to add credibility to the proposal by Hon. Gichimu and the Member for Matungulu that was debated in a similar manner before this House. I want to urge Hon. Members to let this matter be dealt with by the joint committee of this Assembly and the Senate so that we make progress and there is harmony between the President's proposal and the one this House initiated before his memorandum.

On the issue of two-thirds gender rule, all of us agree that we have a history where women were not participating in our governance institutions as much as they should. We also know that the contribution of women in the development of our economy and in building our families cannot be gainsaid. We also know that we have been at a constitutional crisis, so to speak. None other than retired Chief Justice Maraga advised the country that this House, the 12th Parliament and even this 13th Parliament, are unconstitutional regarding the two-thirds gender principle. There is urgency in considering the proposals by the President so that we see

how we can make this House, the Senate and the county assemblies compliant. I know county assemblies are compliant constitutionally.

Alongside the NG-CDF and NG-AAF, the President is proposing the Senate Oversight Fund. Wisdom is that the Constitution has not just created the House of Senate. The Constitution has created the National Assembly and the Senate as Parliament. Our proposal would be to rename the Senate Oversight Fund as Parliamentary Oversight Fund so that even Members of the National Assembly and those who oversee counties, like the Women Representatives, can be facilitated in their oversight duties in their constituencies.

The elephant in the room is the creation of the Office of the Leader of Official Opposition. There are two technical challenges that have come forth by those who are opposed to the proposal by the President. Firstly, they have argued that in 2010, we as a country chose a presidential system of government. Within it, it is alien to have the position of the Leader of Official Opposition. As a student of law, I know that the law is a phenomenon of the society. Students of sociological jurisprudence know that the law follows society. We also know that the troops in the Opposition, the six to eight million people who voted for the Opposition have their leadership. The reality is that that leadership does not have a forum to air their views. In living with the reality of our society, it is important to create a forum for the Opposition to air their views.

Secondly, the lack of a forum by the Opposition to air their views continues to weaken it from an election to another. In terms of building and strengthening our democracy, there is a lot of wisdom in creating the Office of the Leader of Opposition as an institution, not as an office for an individual—an institution that speaks for Kenyans who vote for the Opposition. Leaders elected at different levels, may they be Members of County Assemblies or Members of Parliament, will have a constitutional and institutional mechanism to canvass their issues. That is so that, when they come before this House, those issues are canvassed by the membership of the Opposition.

I therefore propose that, as we debate, we also look at the reality of our society. That is so that we do not imprison ourselves in constitutional technicalities and ignore the reality of our society. The person who sits in this House as the Leader of the Minority Party may not be the person who controls the rank and file of the Opposition. The rank and file of the Opposition is controlled and has its leadership outside this House. Partly why that leadership will find expression in political rallies is because they do not have an official forum where they can air their views. I persuade Members that we craft our Constitution to live with the realities of our society as opposed to imprisoning ourselves to technicalities.

The other technicality raised—I am happy Hon. John Mbadi spoke before us—is that the President, pursuant to the judgement of the Supreme Court on the BBI all the way from the High Court through to the Court of Appeal, is that the President cannot initiate a constitutional amendment. We need to distinguish two issues here. Firstly, there are two routes to amending a Constitution. There is a parliamentary route and there is popular initiative route. My careful reading of the BBI judgement is that the President is barred from initiating a popular initiative because that route, as rightly found by the Supreme Court, is the preserve of *Wanjiku*.

Secondly, even further is that, my reading of the Presidential Memorandum is that it is not in itself an initiative to amend the Constitution. It is a proposal to this House. Members would realise that for the three arms of Government, it is Parliament through the National Assembly that is given constitutional power to legislate. For the arms of Government to speak to each other, the President is asking the arm mandated by the Constitution to debate. He is not telling us that this is a legislative proposal or a Bill. It has not come to this House as a Bill to amend the Constitution. It has come as a view by a citizen of the republic who is also the President. That citizen has a right to propose. This House has a right to debate. I suppose that is why we are doing a general debate to agree or disagree. At the time we agree, we shall have

mechanisms to progress this further then we can now decide whether some issues require popular initiative and others a parliamentary initiative. At a personal level and having looked at them, I am persuaded that most of the matters proposed by the President can be canvassed through a parliamentary initiative.

As we debate, I urge this House to look at the reality of our country, national interests and legislation. It is not only for posterity but also for uniting this country. Many of us are talking about the cost of living and the economy. However, we also know that the economy cannot grow in isolation. The economy requires stability and every Kenyan to feel that they are part of this society so that they contribute optimally. To do that, there is every sense for those Kenyans who vote those in the Opposition not just the leadership of the Opposition. We lose it when we say we are creating a position for an individual. We are creating a position for the millions of Kenyans who voted for the Opposition to canvass their issues and exercise their sovereign rights of being in the Opposition.

I beg to support and urge the Members of this House to find it necessary not to imprison themselves in technicalities but to craft a constitution based on the realities that affect our country as Kenya. Thank you and I beg to support.

Hon. Deputy Speaker: Hon. Members, even if you have 10 minutes and you can do it in five minutes, I will ask that you do not repeat yourselves. Be sensitive and give other Members an opportunity to contribute to this very important Procedural Motion.

I now call upon Hon. Leah Sankaire, Member for Kajiado County.

Hon. Leah Sankaire (Kajiado County, UDA): Thank you very much, Hon. Deputy Speaker. I rise to contribute to the Memorandum to this House by His Excellency the President through the Speaker.

When you look at the issues raised in this memorandum, like the implementation of the two-thirds gender rule, it is true that this is a debate that has been evaded for so many years. We can no longer bury our heads in the sand like the proverbial ostrich. We really need to come out and address this issue. As indicated here, the last Parliament was not constitutionally constituted due to lack of the required number of women in this House. It is the same thing today. We need to address it. By the introduction of the affirmative action seat, we have seen the voice of women rising tremendously in Parliament. We have also seen women Members of National Assembly address the issues of women effectively. My contribution would be that since the affirmative action seat for women is coming to an end, we can retain it as it has encouraged so many women to transit to single Member constituencies. We have also seen women rise from the position of the County Woman Representative to even Governors. Further, we have seen tremendous shift as women continue to take positions of power because they were given a place in Parliament through this affirmative action seat. This has actually encouraged and made them more comfortable in vying for these positions that were occupied by men for a very long time.

We have seen women doing tremendously well through this position. Therefore, as we continue to encourage more women to vie for other positions and to go for the single constituency seats so that we can increase the number in Parliament, the seat of the County Woman Representative can also be retained.

We can see that the girl-child has really risen but in the recent past, the boy-child has been left out. This is because of the affirmative action that we have introduced and with time, girls have grown and known their space. They have taken their space in leadership and education. Therefore, as we continue to look for ways to increase the number of women in this House, we can continue with the affirmative action positions that we currently have. These positions encourage women. Eventually, when we achieve the numbers that we need in Parliament, these positions can always be scrapped. We can then continue fighting for the same positions as men and I am confident that we will get there with time. I know that Rome was

not built in a day and it is obvious that we are not yet there but we will get there. It is public knowledge that very few women could previously stand in Parliament and speak but as you can see, the numbers are increasing by the day. We are getting there slowly and I know that with the help of this seat that we currently have, the numbers will increase.

I would like to speak to the second issue in the memorandum touching on the NG-CDF, Senate Oversight Fund and NGAAF. We know what happened recently and I do not think that the current and future Members would want to go through that again. I believe we are all in agreement that these funds should be anchored in the Constitution so that it is a constitutional obligation as opposed to us wasting a lot of time lobbying for them. We know what the country is going through. We have drought in all the parts of the country. You saw how long it took us to address the issue of bursaries and this is simply because the funds are not anchored in the Constitution. I believe we are all in agreement that it is about time we anchored them in the Constitution so that no Parliament will have to go through what we went through the other day.

On the position of the Leader of the Official Opposition, this is something that we can also work on. In the previous governments, we have seen the Leader of the Opposition having handshake with the President thus bringing a lot of confusion in the running of Parliament. In my view, it is good that their position is defined once and for all. I am saying this knowing that any person can be a Leader of the Opposition at any given time. Therefore, it is good that their position, responsibility and power is defined. This is necessary so that we do not see any more handshakes that bring a lot of confusion to an extent that people do not know what side they belong to. You do not know whether you support the Government or you are against it. We must create this balance. It is good that we create this position and give it the power and resources that it deserves so that they can actually oversee Government. I believe the work of the Opposition is to oversee Government. When you have an active Opposition overseeing the Government, then everything will go well.

On parliamentary oversight on the Executive, it is good that we have our Cabinet Secretaries come to Parliament so that we can ask questions. I believe the reason we had a lot of confusion on disbursement of our allocations recently is because we were receiving information from a third party. The Leader of the Majority Party was being sent to deliver information but because we did not have a one on one talk with the Cabinet Secretary in charge, it was hard for us to know our position and to get to know where we were. In my view, when the Cabinet Secretaries come to Parliament and answer questions, we will have accountability. We can then hold them accountable because they would be on record that they spoke this and made promises making it easy for us to follow up on undertakings made.

Hon. Deputy Speaker, with that contribution, I thank you.

Hon. Deputy Speaker: I now call upon the Member for Tinderet Constituency, Hon. Melly.

Hon. Julius Melly (Tinderet, UDA): Thank you, Hon. Deputy Speaker. I rise to support this Memorandum from the President. It is a very progressive one and therefore, I have a lot to say about it. I will specifically say that Kenya being a very progressive democracy in Africa, actually gave itself the 2010 Constitution which among many other things is actually to ensure that the country is managed and run well. Further, citizens' participation in the management of the affairs of this country is paramount. Through this Constitution, we are able to have separation of powers. We have independent institutions and commissions which are supposed to work for the good of the citizens of this republic who are actually the owners of the powers and institutions that have been created by this Constitution.

However, the Constitution has certain challenges. As it was seen during the campaigns leading to the promulgation of the 2010 Constitution, there were certain groups or stakeholders who had certain misgivings. Most of them reached a conclusion and majority of Kenyans

decided that we could have the Constitution as it were then and then do amendments in future. There have been attempts that this Constitution be amended severally through the infamous BBI, a number of citizens' initiatives and even through individual initiatives by members of public like the *Punguza Mzigo* Initiative. The President's Memorandum is quite insightful and important. It is for this House to look into it without a political bias. It is worth noting that the issues that the President has brought forward affect all of us.

Let me just go through them in brief. One of it is actually the issue that concerns everyone. The issue of the NG-CDF. Every Member in this House knows that the NG-CDF is dear to them, the citizens and every constituent in this country because its impact is more felt than even the devolved county government functions. The NG-CDF has done immense work in construction of schools, clinics, dispensaries, provision of water, building of police stations and security prior to the 2010 Constitution. Parliament should entrench it so that it is not under attack from civil societies, busy bodies and those individuals who would want to bring it to an end. Members who served here before the NG-CDF was introduced in 2002 by the third Government of Kenya under President Mwai Kibaki, know the difference which was there before and after. In the 1970s and 1980s, our schools were built through *harambees* where chiefs, assistant chiefs and administrators took cows by force from citizens to construct classrooms. However, with the advent of NG-CDF, we have seen hundreds and thousands of students who have had scholarships and bursaries and who would otherwise have not gone to school. I think it is in the wisdom of the President that we entrench the NG-CDF in the Constitution so that it can live beyond the lives of these Members. It can even take 100 years to come.

It is the wisdom of the President that we entrench the NG-CDF in the Constitution, so that it lives beyond the lives of the Members and even take 100 years to come. I urge the Members to adopt this Memorandum on that basis.

Hon. Deputy Speaker, we also know that the implementation of the gender rule has been a thorn in the flesh of this House. In the wisdom of our former Chief Justice, Mr. Maraga, he asked the former fourth President to dissolve the House because it was unconstitutional. The former Leader of Majority Party, Hon. Aden Duale, attempted several times to bring the issue of the gender rule, but it failed. By proposing to this House that it sits down through its wisdom, mechanisms and institutions to ensure that we entrench the two-thirds gender rule does not mean that it is only women. This time, it is women who are not able to meet the rule. Noting the development of the girl-child in the society, I know very well that in the next 10, 15 or 20 years, the gender which will be disadvantaged in this House will be male. So, it is important that we entrench this knowing very well that it will reach a time when the shoe will be on the other side. I have seen it in Rwanda where the majority of the Members of Parliament are now women. We really need to pass this Memorandum noting that women who come here are our daughters, mothers and sisters who are part and parcel of the society and we do not need to look at it in any other form.

We also have the issue of the position of the leader of opposition. In the 2010 Constitution, whereas the presidential candidates are not allowed to vie for parliamentary seats, it has come to the realisation of all of us that party leaders lead their members from outside this House. They also lead members from unofficial quarters. It is important that every opposition leader has his office and is able to rally troops from official quarters where everyone knows, both in Government and outside the country, that it is a government-in-waiting. We need not allow them to just be running their offices from the streets and pre-occupying themselves in areas which would otherwise be catered for by the Constitution. Every Member who is here knows that it is possible for any side to be in the Government or opposition in future. The President is not advising for the formation of this particular office but for posterity. It is not for individuals or a certain group, but for Kenyans. The Government of today is possible to be in

the opposition tomorrow and vice versa. Members, as we debate this, let us look at it with sober eyes and open minds knowing that we are legislating for the future; for Kenyans and not for individuals.

Finally, we have parliamentary oversight on the Executive. On the role we do even in our constituencies, I have seen young men critiquing majority of us in WhatsApp groups and through vernacular radio stations. Some of these critiques build you as a leader. It promotes your ability to work and represent them well. The same thing happens in the Executive. The fact that we critique Government officers, more so cabinet secretaries and functionaries, does not mean that we want them to fail. We want them to succeed and ensure that the policies and programmes that are initiated by the Kenya Kwanza administration succeed. If we go to bed with them and not critique them, the electorate will bundle the Government out of office. I want to thank the President for being very wise in knowing that it is very important to have a powerful Parliament that is able to critique it and make sure that it performs well.

Hon. Deputy Speaker, I support. Thank you.

Hon. Deputy Speaker: The Member for Westlands, Hon. Timothy Wanyonyi.

Hon. Tim Wanyonyi (Westlands, ODM): Thank you, Hon. Deputy Speaker. I wish to contribute on this Motion. It is good that this Motion has come back to this House after the attempt by the Building Bridges Initiative (BBI) to do almost similar amendments that are being proposed here. The only mistake in the BBI was that there was an exclusive element in that initiative. Some quotas of the population felt excluded from the process and that is why it was opposed and defeated at the Supreme Court.

The proposal by the President is good and far reaching. We look at how we want to create the position of the leader of opposition. When Kenyans elected to give themselves the Constitution of 2010, they wanted to have a presidential system of Government. In the presidential setup, we do not have this position of leader of opposition. Therefore, what we are trying to create is a hybrid of presidential and parliamentary system because the leader of opposition is brought in. That also brings in another angle that the official leader of opposition must be a Member of Parliament. At the moment, the leaders of opposition are outside this House. In the presidential system, once the person who has won is confirmed as the President, there is no position for official opposition. Parliament and other institutions will provide oversight. Having looked at this, it is good that Kenyans start looking at this issue properly. The Constitution is ripe for audit. We can now look at the areas that are not working so that we can enrich them by providing amendments. Creating the position of leader of opposition, for example, is a good thing in that the leader will provide that leadership in the oversight proposal.

The other thing is the proposal to bring cabinet secretaries to come and answer Questions on the Floor of the House by amending our Standing Orders. I do not feel comfortable with this proposal. The best way on this would have been a proposal to appoint cabinet secretaries from the House, then we have others from outside and the rest could also become ex-officio Members of Parliament where they can come and answer Questions. Therefore, on that initiative, I still find it a bit uncomfortable and the way the cabinet secretaries are established today should remain where they are. They can answer Questions through committees because they are set up to provide oversight over the Executive, and Parliament can still do it. We have done it since 2010 in the past two Parliaments. We have been overseeing the Executive and it can still be done with the current establishment. Cabinet secretaries can still appear before committees. I believe that is still a very good idea and we can entrench that.

The entrenchment of the NG-CDF, the National Government Affirmative Action Fund (NGAAF) and the Oversight Fund for the Senate in the Constitution is a noble idea so that these funds are also protected from the people who just wake up one day and take it to court to oppose it. I am sure of what the NG-CDF has done in the past. I came to Parliament when the NG-CDF was in existence and I am very sure the Members of Parliament who served before

the NG-CDF had many challenges serving the people. Through the NG-CDF, a lot of the burden has been taken away from the parents and the people. The Fund is building schools, paying school fees for children who are not able to raise fees and financing many other developments that have far-reaching impact in the society.

If county governments want more money, Parliament has the power and authority to allocate more funds to them. But it is not right to take away what is already in existence and has had huge impact in the society. Some people argue that the Fund is in breach of the devolution law. We need to devolve more funds even to the ward level. We need to have a ward fund so that MCAs can also have some money. That way, money will reach the lowest level of society. This is something we need to support.

Some of the issues raised in the Memorandum by the President need a conversation amongst Kenyans so that we can look at them carefully. We are amending the Constitution, which is the prime law of the land, and so, we should not make mistakes. The Constitution is safeguarded because the Independence Constitution was abused so much by the people who were in power then. The current Constitution was made in such a way that it is very difficult to be amended. Some of these initiatives are good, but others need a lot of interactions between citizens and ourselves. The amendments we bring should be good enough to enrich the Constitution. As I said, it is now time to do a thorough audit of the Constitution and see areas that are not working and improve on them.

Hon. Deputy Speaker, thank you for giving me a chance to contribute on this matter.

Hon. Deputy Speaker: Hon. Richard Yegon, Member for Bomet East.

Hon. Richard Yegon (Bomet East, UDA): Thank you, Hon. Deputy Speaker, for giving me this opportunity to contribute to the Memorandum from the President. The issue of cabinet secretaries coming to Parliament is something that is long overdue. But I have a different opinion. We know that we do not have enough funds and the Executive has said so. We could provide that cabinet secretaries are appointed from among Members in the House. This will help in reducing the wage bill. Members of Parliament are always in the House, and so, they can be subjected to Questions when they are cabinet secretaries.

*[The Deputy Speaker
(Hon. Gladys Boss) left the Chair]*

*[The Temporary Speaker
(Hon David Ochieng') took the Chair]*

Hon Temporary Speaker, entrenching the NG-CDF in the Constitution is going to help us greatly and we will avoid all these hullabaloo. At the moment, we are getting money in bits and we are being taken to court. Entrenching the Fund in the Constitution will go a long way in ensuring that we do not have a lot of problems.

Last but not least is the issue of creating the office of the leader of official opposition. The reason we are facing the quagmire of the Government not having funds is because members of the opposition moved to work with the Government of the day in the last regime thus endangering institutions by not subjecting them to scrutiny. Creating the office of the leader of official opposition is the right thing to do, so that the Government is checked by the opposition. This will make us not to lose revenue and not have a scenario where the incoming government says there is no money in government coffers.

Hon. Deputy Speaker, thank you very much. That is my take. I support.

The Temporary Speaker (Hon. David Ochieng'): Thank you so much. Hon. Amollo Otiende.

Hon. (Dr) Otiende Amollo (Rarieda, ODM): Thank you, Hon. Temporary Speaker. This is an important subject and I honestly wish there were more Members in the House, including on our own side. In the absence of the Leader of the Minority Party, let me take that role.

The Temporary Speaker (Hon. David Ochieng’): Hon. Amollo, be careful about taking people’s positions.

Hon. (Dr) Otiende Amollo (Rarieda, ODM): As you know, as a lawyer, I am holding brief, very briefly.

Let me issue two cautionary statements. First, of the four issues that have been raised in the President’s Memorandum, three would expressly require a referendum. Only one, the one relating to the NG-CDF and the Senate Oversight Fund, would not require a referendum under Article 255(3). The composition of Parliament in terms of gender, admitting cabinet secretaries on the Floor of the House and introducing a leader of official opposition are issues that touch on the sovereignty of the people, structure and system of government and functions and composition of Parliament. They would expressly require a referendum. As we discuss this Memorandum, we need to bear that in mind clearly. It is not an easy path.

The second caution is that as Members of Parliament, it is good to look at the interests of many people. Of paramount importance is the interests of citizens, our own voters, who are the beneficiaries of these funds. I would like to make it clear. A Member said that the NG-CDF is unconstitutional. That is not true. The NG-CDF is constitutional. There is no court anywhere, so far, that has found the NG-CDF Act, 2015, unconstitutional. What we are doing is to entrench the Fund in the Constitution, so that we cater for much more. Our sisters who represent counties have the NGAAF, but it is not properly anchored. We want to include it and the Senate Oversight Fund and call them oversight funds. That is why we are amending the Constitution. Let it not be supposed that we are amending the Constitution because we think the NG-CDF is unconstitutional. We will be shooting ourselves in the leg.

For our own purposes, I urge Members that we need to remove the bit of the Memorandum that deals with the NG-CDF and oversight funds because we were already on it. Let us use it because as part of the *ad hoc* Committee, we have already gone much further than this Memorandum. We have already drafted the necessary amendments to the Constitution which do not require a referendum. Let us move with speed, run with that and first leave outside these other issues that might raise partisan politics. Let us take care of our interests before we take care of other interests. If you do not heed my caution, watch this space. If you maintain this Senate Oversight Fund together with these three other issues, they will be lost in space and the consequences will be quite dire because we are racing against time.

The idea of amending the Constitution is not a bad one. Our Constitution is ripe for amendment. Twelve years after any Constitution is enacted, it is good for citizens to sit together and look at what is bad and what is good. Amendment of any constitution, however, should always be bipartisan. It should always involve the public. In fact, it is not just bipartisan in Parliament, it is beyond Parliament. All previous attempts to amend the Constitution by former presidents Daniel Moi and Mwai Kibaki failed because the initiation was not bipartisan. I want to caution that this initiative, in so far as it is not bipartisan, is the wrong way to look at amendment to the Constitution. We require a bipartisan approach.

I want to tell my brothers and colleagues in the Departmental Committee on Justice and Legal Affairs right from the word go that this initiative will fail on two accounts. First, it is the account on which the Building Bridges Initiative failed. I am not saying that I agree with the Supreme Court. I do not, but they pronounced themselves. That is as it is now. In so far as this initiative is expressly by the President and this Memorandum starts in paragraph one and two by restating the date when the President said it and then attaching a copy of the President’s Memorandum, it will fall afoul the determination of the Supreme Court in terms of initiation.

It makes no difference that that was a popular initiative. Even here, the argument will be that if it is a parliamentary initiative, the President is not a Member of Parliament. How will you say that it is a parliamentary initiative and it is initiated by someone outside Parliament? In both cases, whether it is by popular or parliamentary initiative, it passes through Parliament.

The second mistake was the President writing to the Speaker. The Speaker is a neutral entity in this House. The person to initiate would be the Leader of the Majority Party, the Leader of the Minority Party or an individual Member. Expressly, the Leader of the Majority Party introduces the Motion, but the Motion reads that it was written to the Speaker. There are already two technicalities that make this initiative run afoul of the law. Let me now examine two things.

First is the idea of the leader of official opposition. This is a bad idea. It is not well-founded either in terms of constitutionalism or purpose. It does not take cognisance of Articles 108 and 130. Let us be clear. In this House, there is no Government or opposition as per the Constitution. If you look at Article 130, the national Government comprises of the President, the Deputy President and the Cabinet, not the Leader of the Majority Party or any of you here in Parliament. When we come here as the Minority Party, we do not come here as opposition, we come as the Minority Party. The word “opposition” does not appear anywhere in the text of the Constitution. How can you introduce a leader of a non-existent entity?

(Laughter)

Hon. Wanyonyi, I am telling you now. I am helping you understand the law, so just listen. That idea is precipitated on misinformation and misunderstanding that those who are in the majority are here on behalf of the Executive and those in the minority are here on behalf of the opposition. That is not so. In fact, the whole idea of the presidential system is that we, as a Parliament, check on the Executive collectively. The moment you start trying to bring in the leader of official opposition, you run into many problems.

The first problem is that you can have a Parliament where the majority party has not produced the President. Can you imagine a situation where if we had maintained what we believe is ours, Azimio la Umoja-One Kenya Alliance is the majority in this House and Kenya Kwanza is the minority? Can you imagine a situation where the Azimio la Umoja-One Kenya Alliance would have the presidency and then you get another person who is in the Azimio la Umoja-One Kenya Alliance to come be the leader of Kenya Kwanza in Parliament? Is that not ridiculous? It is based on the assumption that whoever has the majority membership in Parliament will always produce the President. It is not so.

Secondly, there are the positions of the Leader of the Majority Party and the Leader of the Minority Party. So, I suppose you then remove the position of the Leader of the Minority Party and replace it with the leader of the official opposition. What will you do with the Leader of the Majority Party? Do you still call him or her the Leader of the Majority Party? You will call them the Leader of Government Business yet there is no Government in Parliament. What if the person who is the runners-up is an independent candidate? The Constitution allows for that. So, you run as an independent, you get the second-highest votes and then come to Parliament to head a party which you are not part of. It is ridiculous, ladies and gentlemen. Let us rethink this thing seriously.

The issue of having a leader of official opposition because we want accommodation is one we must examine deeply and not artificially. If we want a parliamentary system, let us be honest and adopt that system. I will tell you that in the Committee of Experts, we had adopted a parliamentary system but it was changed by our then colleagues in Parliament.

I will move very fast, Hon. Temporary Speaker. Just give me two minutes.

There is also the issue of cabinet secretaries in Parliament. They will be strangers. The President is not a stranger because he is allowed. The Cabinet Secretary for the National Treasury comes here due to necessity because we are the budget-makers. The Cabinet Secretary does not come to the Floor of the House. He stays at the bar. If you want cabinet secretaries on the Floor of the House, you must admit them as Members of Parliament. That changes the numbers and the functions. Is it a good thing? No. First, because you will definitely weaken the committee system. Our Constitution gives committees the powers of the High Court which have never been used. Why have we not used them? If we cannot use them as 15 or 20 people sitting in a committee yet we have the power, what is the assurance that we will use them as 349 people in the House? And...

(Hon. Otiende Amollo spoke off-record)

The Temporary Speaker (Hon David Ochieng’): Kindly give him five minutes.

Hon. (Dr) Otiende Amollo (Rarieda, ODM): Mark you, when you do that, something else comes into play. There is a reason why there is a prescription in composition of committees. Those of the majority party always have a majority membership of one. In the oversight committees, those in the minority party have a majority membership of one so that we can better check the Executive. If we come here with the numbers that we now have in play, there will be no oversight. The oversight committees will be dead. Parliament as a plenary will just be putting the question. The question will be put and cabinet secretaries will go.

Lastly, we might think we are strengthening parliamentary democracy but we are weakening it. We must be very careful, including on the issue of numbers. You must know that the issue of numbers in terms of gender representation goes against the contrary issue of cost. Are Kenyans prepared to pay 100 more Members of Parliament or not? The fundamental question we must ask ourselves is whether we still need two Houses of Parliament today. If you ask me, I would say no because we have sufficiently entrenched devolution.

Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon David Ochieng’): Thank you so much, Hon. Otiende. Well said. I hope you get a chance to pursue those arguments at the right time.

Hon. Timothy Rotich of Marakwet West.

Hon. Timothy Kipchumba (Marakwet West, Independent): Thank you, Hon. Temporary Speaker, for giving me this opportunity to contribute to this heavy subject matter. I know it is not very easy to speak after listening to the wisdom from the Senior Counsel Otiende Amollo.

Looking at the intention of the President, it only takes a President who believes in constitutionalism and the rule of law to propose such a raft of constitutional amendments. If you have a President who still believes that we need a strong opposition in this country, we must be proud of that President. If it was any other President, his intention would be to suppress the opposition.

Looking at this document, Hon. Otiende Amollo has said that the President is initiating a constitutional amendment. In my opinion, this is a Memorandum. This cannot qualify as an initiation of a constitutional amendment. This is a Memorandum requesting Parliament to institute a constitutional amendment and cannot, therefore, be interpreted to mean that the President has initiated a constitutional amendment.

I have looked at the issues from a broader perspective. On the issue of gender inclusion and affirmative action, this House must be alive to the fact that the courts have made a finding to the effect that this House is not properly constituted. It does not conform to the law. It is a matter that we must take up seriously. I have looked at the proposal by the President and I associate fully with it. The President has argued that currently this House has 290 Members of

Parliament. We shall have 97 Members of Parliament, which is a third, who are women in terms of gender as currently constituted. The proposal by the President is sound. If it is adopted, it will make the equation easier in terms of amending the Constitution to include the gender principle. If the proposal by the President is adopted by this House, it will be progressive. He has provided that the law be amended to include women and political participation fund.

Gender inclusion should be progressive and realised at a certain end. The issue of including women in the Constitution shall not be there forever. That is why he has proposed this amendment. I support that there should be a sunset clause to retire it upon attainment of the Constitution requirement. As we retire to amend the Constitution, we should remember to have a sunset clause because there shall come a time that we shall have equality in this country. We shall avoid this agenda of trying to assist the other gender.

I fully support that we should entrench the NG-CDF, the Senate Oversight Fund and the NGAAF in the Constitution. The reason for that is that in the event the matter is taken to court, then to amend a legislation or statute is easier than to amend the Constitution. If a question comes concerning the constitutionality of the NG-CDF, the Senate Oversight Fund and the NGAAF, then it may require a referendum in future in order to amend it. That is why I fully support the same. I also support the Senate Oversight Fund. There is a lot of wastage in the counties currently. The Senate will be properly empowered to check the excesses of the county governments.

There is the issue of the creation of the office of the official leader of opposition. Mr. Montesquieu talked of separation of powers. He is the father of separation of powers. We have a serious minority in the opposition. For a country to function properly, we must have an office of the leader of opposition to check the excesses of the Government. It is very dangerous to have a Government that is not checked properly. Instead of the leader of opposition going to the streets, let him come to the House and advance the interests of the minorities on the Floor.

I support the proposals in totality. My learned senior, Hon. Otiende Amollo, has said that these proposals require a referendum. We can have a parliamentary proposal or one initiated through public initiative. If it is initiated by the House and it is accepted, and it comes to the determination whether we require a referendum, then that matter shall be taken to a referendum, irrespective of where it originates from.

Thank you, Hon. Temporary Speaker. I support the Memorandum.

The Temporary Speaker (Hon. David Ochieng'): Hon. Maalim Farah.

Hon. Maalim Farah (Dadaab, WDM): Hon. Temporary Speaker, thank you very much for giving me this opportunity to contribute. We are going to make very fundamental changes into our system of Government that will impact on generations to come. It is only fair that we give it the utmost thought. We should not think about the political expediency of the day but think about it for posterity.

I had said this somewhere else. I was in this House in the 7th Parliament and I wrote a new Constitution. I said that it must come from *wanjiku*, the ordinary people out there. I was in the opposition. At that time, our Head of State, the late President Moi, wondered why 222 educated and elected leaders of this country would surrender the role of thinking for the future of this country to somebody out there in the streets who is either roasting maize or doing a small thing there. I had a problem with that. I never thought that would bite me again and come back to us. I am convinced that we made a mistake. We should have listened in parts but not in totality to that late sage's ideas.

None of the American's 37 constitutional amendments that were done in the United States of America (USA) required a referendum. I am convinced by and large that this House has the capacity and powers to amend the Constitution and do a lot of work in it except in matters that touch on very pertinent issues in Article 255 of the Constitution. The Constitution that we have today, in terms of whether the governance would be a presidential system or

parliamentary system, became a victim of the political intrigues of that day when we were writing it. There was a split within my party which was called the Orange Democratic Movement (ODM). There was another group which had advocated for a devolution that there would be 13 or 14 different regions in the country based pretty much on the way the promises were then plus a few promises that were super big and that they were going to split into three or two. Then there were those people who were opposed to devolution completely. Then, there was the issue of parliamentary and presidential systems. Both of them became victims of the political intrigues of that time where there was a lot of political infights both within the ODM and other centres.

Hon. Temporary Speaker, we had a system that was a hybrid of a presidential system and parliamentary system. We had a President who had a constituency. People voted for their President of choice. However, he came in here to be sworn in as the Member of Parliament for Othaya or Baringo Central Constituency. If one failed to secure the presidential vote, he would still come to Parliament as a Member of Parliament for that constituency and lead the opposition from here. We had a system in which ministers were from Parliament. Because they were from here, we could censure them. I remember sitting on that Chair one day and I sent eight ministers out of the House because they did not come up with satisfactory answers. In my opinion and that of the House, the answers were not satisfactory and befitting their status in the country and the manner in which it should be governed. I told them that we would not transact any more business until they came up with answers that satisfied the House. The President asked them if they knew what they had done because when this kind of thing happens, the Government should resign. That is a censure motion on the Government because you did not do your job the right way. President Kibaki warned all his ministers that if they went to Parliament, it is supreme and they must attend to the issues of Parliament, act accordingly and fast enough when issues were raised by the Members of Parliament.

Today, we have cabinet secretaries who we do not know by name. The Member of Kwanza Constituency is an old Member like myself though he pretends to be young by dyeing his hair. We used to have all the cabinet ministers on our walls in primary school. We knew the names of all the ministers. The ordinary person in the village knew that if there were issues with education, the minister must do better than what he was doing then. When delegations came to Gatundu, the ordinary people used to complain about ministers who were sleeping on their job. The ordinary people would state their problems in education, roads and infrastructure, public works and the local government. That is why the late Hon. Mudamba Mudavadi was famous. He was bigger than life because local government was where all the counties were represented, namely, municipalities, county councils, town councils and urban councils.

My position is that we cannot bring twenty strangers in the House and call them cabinet secretaries. You do not have the power to censure them and tell them how to do their job. How are you going to censure a cabinet secretary who does not come with a satisfactory answer or who is sleeping on their job? Based on the proceedings of the House at that time, we have to admit that we made mistakes. We borrowed from the German Länder, the Americans and the British and tried to put it together for it to work. We always want to borrow. We must come up with our own narrative. It is like saying you have a car with an engine of an Audi, a Mercedes Chassis and the electrical system of a Toyota. The car cannot take you far. This Constitution is similar to that. We need to revisit that.

As far as the issue of the NGAAF is concerned, I have been advocating for something similar to that from the beginning. I proposed that instead of setting aside seats for the ladies who are our mothers and sisters, give them the affirmative action. Help them to win the elections. Set aside money for them and then they will be able to compete. Given the right opportunity, the men might become the minority in this House. That is the way to do it. Because of the historical marginalisation of our ladies in politics and public life, we must give them an

affirmative action and the resources they need to effectively compete against us instead of setting aside seats for them.

As far as the NG-CDF is concerned, in the county where I come from, Hon. Sigei of Sotik used to be the District Commissioner and was running the entire county. The District Commissioner used to run the entire Garissa County. I do not know the number of District Commissioners we have nowadays, but the only development projects that we see are the ones that were performed and implemented through the NG-CDF. We do not know where the billions of shillings that are put into counties go. Does anyone know where the money goes? Do we have any Member of Parliament who is so happy with what is being done by the county government in certain areas for them to replace the NG-CDF? I do not have a problem with us entrenching this in our Constitution and the need for us to have proper oversight, but we need to have oversight of county governments. Who is overseeing them right now?

Hon. Temporary Speaker, forgive me for taking extra minutes because I am the oldest Member of Parliament.

The Temporary Speaker (Hon. David Ochieng'): One more minute.

Hon. Farah Maalim (Daadab, WDM): Two minutes. Hon. Temporary Speaker, why do we have elections for members of county assembly (MCA), Members of Parliament, Senators and the President being held on the same day? That is why it has become a do or die situation and Kenyans want to fight at all levels because they are agitated. Why can we not have different dates for each of them? One for the President, another for the Senator, another date for the Member of Parliament and the MCA.

In the United States of America, Senate elections are staggered. Every two years, a third of them go for elections. The other two years, another third goes to election and a third one in another. We will have a system where Members of Parliament will be free in their conscience. Today, if you go for election at the same time as your presidential candidate, you will not be guided by the interest of the country. You will be guided by your survival and what will happen to you if you propose the person who comes from your own backyard. We are trying to create a nation. We have a State called Kenya, but we do not have a nation called Kenya. To get a nation called Kenya, let us have these things staggered and then half of the Members of Parliament from Luo Nyanza will not be worrying about who is going to be the President. Half the Members of Parliament in Rift Valley and all the Members of Parliament from North Eastern will not be worried. Everybody will choose someone without fearing the consequences. You cannot do that today. Can a Member of Parliament or a Senate aspirant in Luo Nyanza dare to oppose Hon. Raila? Can a Kalenjin from the Rift Valley dare to oppose His Excellency Dr. William Ruto if they do not agree with his ideas? We, therefore, need to have a Constitution that essentially takes care of that.

First of all, we have to know our problems. Treating the sicknesses of this country is by first knowing half the problem. Once we have known half the problem, let us see how we are going to cure it. This country requires us to think loud. That is the only way we can get a proper Constitution and have the right amendments and this country will go...

The Temporary Speaker (Hon. David Ochieng): Thank you, Hon. Farah. I will have Hon. Wanyonyi, followed by Hon. Nyikal.

Hon. Ferdinand Wanyonyi (Kwanza, FORD-Kenya): Thank you, Hon. Temporary Speaker, for the opportunity. I have been sitting here for some time and I have listened to all the contributions including the one by my good brother, Hon. Farah, who has talked about us being here for quite some time. I was in the 11th Parliament with him.

Point of correction. From my understanding, it is constitutional for the President to send a Memorandum to Parliament. He sent a Memorandum to Parliament and asked us to see if it can be considered. He did not direct, but he requested. It is like coming up with a memorandum as a Member of Parliament asking Parliament to consider some changes. We should make it

clear because people have misunderstood the Memorandum. He just sent a Memorandum and he is requesting if we can make the changes. It is constitutional. That must be clear. I am not a lawyer, but I am a student of English. I understand what it is as a ranking Member of the House. Before somebody comes to discuss what the President is doing, they need to think twice.

I agree with most Members from the other side. I have been a Member of various committees and we have had such cases in the past. You can ask a question or raise an issue with a specific ministry, and the cabinet secretary shuts it off and sends a principal secretary or a chief administrative secretary (CAS) who comes but does not fully understand what Members of Parliament wanted from that ministry. Bring cabinet secretaries here. We have not said they will come to occupy the front row. They do not have to mix with us because they are not Members of Parliament. These seats are specifically for those who are elected or nominated to the House. So, when the cabinet secretaries come here, and we will all be here, I will be sitting there and of course, we will be making them accountable.

Cabinet secretaries coming here does not mean they will take over the jobs of Members of Parliament, or go to the Senate for that reason. The President has simply directed that cabinet secretaries come here to fully explain issues or problems facing ministries like agriculture, water, or whatever it is. As we talk, the Ministry of Agriculture is again having problems because the department of irrigation is misplaced. It is now under the Departmental Committee on Blue Economy and Irrigation. What is irrigation? Irrigation is the practice of applying controlled amounts of water to land to help grow crops. If such a question is brought to the Floor of the House, the specific cabinet secretary will come and answer while sitting there, and not here. Let us get it right as Members of Parliament that the President is trying to make life easy for us by making cabinet secretaries answerable.

There are many issues out there like insecurity. Look at my neighbours in the North Rift where people are dying all over the place because of insecurity. If you ask one or two fellows who may not necessarily come from the North Rift, but maybe Nyanza or the Coast, they would probably have good issues to raise. With cabinet secretaries coming here, it will help us a great deal to unravel such issues. Colleagues, this is the way to go. We have seen that before. I am sure the Member who was against this has since walked out, but when we had ministers here, I was still a new Member of Parliament, and he would come here and start sweating, but things should be done. By the time he would come back after consultation, he would be on record. We were not forcing him to accept what he had possibly done. When it came up, you would know the issue had been fully responded to, and you are satisfied with whatever presentation you had sought. Let us look at what the President has proposed practically, and see whether we will do what we are supposed to do.

Secondly, the question of the President coming here is again something that we are overdoing. Let us accept that, that is what is supposed to be done.

Gender is something that we have to look at. I do not want to beat my chest, but I have more girls in my family than boys, and out there, ladies are more. We are doing this for prosperity. We are not doing it for today. This gender issue coming up here... Last time, the Chief Justice almost threw us out. We almost went out because we have not implemented that. Let us implement that for prosperity and not for now. I am sure the next two terms or so you will be surprised that there would be more ladies here. I even had a serious problem in my constituency of defeating a lady because ladies are more than men. Most of the men were busy drinking and doing other things while the girls went to vote. If my records were not correct, I would not be in this Parliament talking to you. Therefore, let us look at that gender issue as it is today because you never know what will happen in ten years to come. This is an issue that we can do. If we are to do a memorandum - it is a very easy thing - it will just go through. Let us have that, but it is only fair that we deal with the issue of gender.

I do not see anything wrong with the issue of the opposition. I do not care who comes here as the leader of opposition. In fact, one Member here might be the leader of opposition in whatever form, but let us have that accountability in this House. The Government must be taken to task to enable it explain some of the issues which may not be covered by the Members on the other side because we would be attacking whatever it is, and there are consequences when you start attacking your own side. It is only fair that if it is going to go the memorandum way or whatever means, let us have the office of the official opposition in the House.

Hon. Temporary Speaker, he could be one of the Members of Parliament and we have no problem with that. However, if you want us to go to the lawyers, some are here, but they are not giving us directions. I am an economist while others are educationist and doctors, but our lawyer colleagues should come forward, not for their own selfish gain, but to guide us. I think this debate should be taken seriously so that we can have an opposition in the House.

In fact, those of you who are young and old can compare the days when we had opposition leaders here. The Government was taken to task and issues were solved unlike today when we do not have the opposition. Today, I cannot oppose my President because there are consequences to saying that I do not agree with the Kenya Kwanza Party. We are forced to agree, but when opposition is here, I can convey my contrary opinion through my colleagues in the opposition.

Hon. Temporary Speaker, that is what we should do. Let us not talk about this problem. Let us agree that the opposition will come and answer issues that affect the future of this country. You will be answerable and one day you will be asked what you did when you were in Parliament. I want to go on record for having reintroduced the opposition in this Parliament because 20 to 40 years from now, some of us will not be alive. Those who will be alive will be look back at this.

I support this Memorandum. *Asante sana*, Hon. Temporary Speaker.

The Temporary Speaker (Hon David Ochieng'): Hon. Nyikal.

Hon (Dr) James Nyikal (Seme, ODM): Thank you, Hon. Temporary Speaker, for giving me an opportunity to discuss. This is an extremely important topic that we are discussing. I do not think we have much difference in the contents. I would like to highlight the three things we have to look at here. Technical issues, as Hon. (Dr.) Otiende Omollo brought out, to procedures as I was indicating earlier in the morning. When I raised the issue of why we are having this Motion without taking leave of the House, is not because I have any issues with the contents, but it is because we must look at procedures. If we do not do that, that is how the original issue of the BBI, despite the contents, actually faltered. What is the objective of this Motion that we have now? If we look at what the Memorandum states, note, consider and make general comments. It is not asking us to either support or oppose. It is, therefore, okay to make general comments, note and consider.

At the same time, you will realise that all these aspects they are talking about have actually been placed before the various committees of the House. The issue of the two-thirds gender rule and the office of the leader of the official opposition, as the Chair of the Justice and Legal Affairs Committee (JLAC) stated, is already before them and they will bring the report to us for discussion. Therefore, why are we going through this process now yet that will come?

Hon. Temporary Speaker, if you look at the issue of decentralised funds, the NG-CDF and the Senate Oversight Fund, we have an *ad-hoc* committee that already reported to us in Mombasa. As Hon. Tindi has said, if we are not careful, we can lose if we band it together. If you look at the issue of cabinet secretaries to answer Questions, this is already before the Procedure and House Rules Committee. We may be discussing very important things, but if we do not follow the procedures and do not look at the technical issues, we will miss out on all that. We must be very careful to follow procedures. The other issue that I can talk about is the sincerity or lack of it of the amendments that are coming. During the campaigns, when we were

talking about amending the Constitution, the President was very categorical that this is not the time to review the Constitution, but the time to improve the welfare of our people. What has changed now? If you are insincere, even when you bring good things to the people, they do not serve them. Sincerity is extremely important.

Now, let us look at the two-thirds gender rule. The issue is that we are not sincere on technical matters. The issue here is arithmetic. As a country, we are not keen to pay the amount of money that is needed to have a larger Parliament. We have been going round and round on this issue of two-thirds gender rule. Nobody has a problem with this and that is why it was in the BBI. Article 177 of the Constitution on the composition of county assemblies takes care of that. We would have just applied the same formula. At the end of elections, we should count the number of the whichever gender that is affected and nominate enough Members as per Article 177 of the Constitution. This is not an issue that we can say that some agree to while others do not.

If you look at the issue of the leader of the opposition, again, we need a more profound change in the Constitution. As Hon. Otiende said, we have to look at the whole structure of a presidential or a parliamentary system. In the parliamentary system, we have the Leader of the Majority Party and Leader of the Minority Party as Hon. Otiende explained. I cannot explain it any better. Again, these are technical issues that we should look at.

On the NG-CDF, everyone agrees on this. There is no argument on this. Everyone in the country agrees to this except a few civil society organisations that perhaps are being paid to destabilise this issue. We agreed on all these. On the contents, this country has agreed that there is need to amend the Constitution. Apart from the technical issues, the areas that have been mentioned are areas that we all agree with.

Therefore, this is the time when must put aside our differences and look at procedures properly, the intentions and the sincerity of the people, be it the President, or who is bringing the issues before us. By being insincere and by not following the right procedures, they may ruin the whole process and will kill the contents.

That is my contribution on this debate today because to a large extent, we are only giving our views. This does not add any contribution at all to the process that we will go through.

Thank you very much, Hon. Temporary Speaker, for giving me this opportunity.

The Temporary Speaker (Hon. David Ochieng’): Thank you. Hon. Sigei Francis, the Member for Sotik Constituency.

Hon. Francis Sigei (Sotik, UDA): Thank you, Hon. Temporary Speaker, for giving me this opportunity to contribute to this important Memorandum. First of all, I support this Memorandum in totality. Why? Our President is very sincere in what he is doing. Second, this was in his manifesto. These are the issues that he raised during the campaign rallies that he ran all over the country. When the President brings his agenda to Parliament, he is telling us to have conversations around them. Therefore, I rise to support all the items in the Memorandum.

The issue of the two-thirds gender rule has been with us for a very long time. It has been difficult for our women, ladies, sisters and aunts to make their way to Parliament. This is an opportunity for us to have conversations and agree that it is a high time we pass this law. Therefore, entrenching the two-thirds gender rule is important.

On the issue of the NG-CDF, the Senate Oversight Fund and the NGAAF, we have discussed these Funds several times and it is high time we passed them. Over the weekend, we were in our constituencies and I was in Sotik. You can imagine the number of people who were waiting for funds. We have been facing challenges and, therefore, this item must be dealt with once and for all, so that our people can access these funds and other facilities.

The Senate Oversight Fund is important. You can imagine how much money is being utilised in the counties, yet Senators are unable to move around. If we give them money for

oversight, they will effectively oversee what is happening in the counties. On the issue of the leader of opposition, I think this is for posterity and I support that push. For cabinet secretaries to appear in the House, as a country, this is a very important move. If cabinet secretaries will be coming here, they will be asked Questions one on one and they will answer without any problems. Currently, there is a problem because we cannot interrogate cabinet secretaries as much as we would like to.

Hon. Temporary Speaker, I support the Memorandum. Thank you.

Hon. David Gikaria (Nakuru Town East, UDA): On a point of order, Hon. Temporary Speaker.

The Temporary Speaker (Hon. David Ochieng): Hon. Gikaria what is out of order?

Hon. David Gikaria (Nakuru Town East, UDA): Hon. Temporary Speaker, I was looking at my gadget so I can understand whether this Motion will continue in the afternoon or tomorrow. My gadget is not working and I want you to give me some direction.

The Temporary Speaker (Hon. David Ochieng): Hon. Gikaria, the afternoon Order Paper is already out and I am sure it will guide you. This chance goes to Hon. Pauline Lenguris. I cannot see her. This chance was supposed to go to Hon. Pauline Lenguris of Samburu. In her absence, it will go to Hon. Wilberforce Oundo.

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): Thank you, Hon. Temporary Speaker. Cognisant that the minutes are almost gone, I hope as per the Standing Orders, I will be allowed to continue when this Motion resumes.

We are living in interesting times, indeed, that somebody who is not authorised by law or the Constitution can write to Parliament in a manner coached as if to give instructions to Parliament. The Constitution of Kenya is extremely clear under Article 131(2) that the President is required to respect, uphold and safeguard the Constitution. Any attempt to do anything else, imagine or contemplate changing the Constitution by the person holding the Office of the President is a breach of the Constitution. The way the Memorandum to the Speaker is coached, smirks of hubris. For lack of better words, it is, indeed, mischievous. I think the courts...

The Temporary Speaker (Hon. David Ochieng): Hon. Member for Funyula, you will have your nine minutes the next time this Motion comes up for debate.

ADJOURNMENT

The Temporary Speaker (Hon. David Ochieng): Hon. Members, time being 1.00 p.m., this House stands adjourned until today Wednesday, 15th February 2023 at 2.30 p.m.

The House rose at 1.00 p.m.

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