



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT

NATIONAL ASSEMBLY

THE HANSARD

VOL. II NO. 3

THE HANSARD

Wednesday, 15th February 2023

The House met at 2.30 p.m.

[The Speaker (Hon. Moses Wetang'ula) in the Chair]

PRAYERS

QUORUM

Hon. Speaker: Serjeant-at-Arms can you ring the Quorum bell.

(The quorum bell was rung)

Hon. Speaker: Order, Hon. Members. We now have the requisite quorum to transact the business of the House. Clerk-at-the Table. Hon. Members, take your seats.

MESSAGES

NOMINEE FOR APPOINTMENT AS DEPUTY
GOVERNOR OF THE CENTRAL BANK OF KENYA

Hon. Speaker: Hon. Members, take your seats. Pursuant to the provisions of Standing Order 42 (1), I wish to report to the House that I have received a Message from His Excellency the President regarding the nomination of a person for appointment as the Deputy Governor of the Central Bank of Kenya (CBK). In the Message, His Excellency the President conveys that in exercise of the powers conferred by Section 13 (b) of the Central Bank of Kenya Act, Cap. 491 as read together with Section 5 of the Public Appointments (Parliamentary Approval) Act, 2011, he nominates Dr Susan Jemutai Koech to the position of Deputy Governor of the CBK. The President, therefore, seeks approval of the Parliament on the said nomination.

Hon. Members, Section 13 (b) of the Central Bank of Kenya Act reads, "There shall be two Deputy Governors who shall be appointed by the President through a transparent and competitive process and with the approval of Parliament."

(Members walked in the gangways)

Hon. Members, take the nearest seats. You may wish to know that the approval of appointment of the Deputy Governor of CBK is another one of the exceptions where the applicable law prescribes approval by Parliament. Indeed, the House continues to conduct such exercise jointly with the Senate. Just for clarity, the vetting process shall proceed in the following manner:

1. That the vetting of the nominee proposed for appointment as Deputy Governor of CBK shall be conducted by the Departmental Committee on Finance and National Planning of the National Assembly jointly sitting with the Standing Committee on Finance and Budget of the Senate.

2. The quorum of the joint sitting of the Committees will be the respective quorums of each of the Committees as stipulated in the Standing Orders of the respective Houses.
3. That as contemplated under Rule 9 (vi) of the Joint Rules, unless a decision is reached by consensus, any vote to be taken in the joint sittings of the Committees shall be by the separate Houses. This will ensure that the numerical differences of the individual Members representing the Houses in the joint sitting has no effect on the decision of the joint sittings of the Committee.
4. That the Joint Committee shall, having conducted the vetting hearings, submit a joint report to the respective Houses in the manner contemplated by Paragraph 7 of Joint Rule 9 (v).
5. That the approval process should be conducted in accordance with the provisions of Public Appointments (Parliamentary Approval) Act, 2011.

Hon. Members, whereas the Central Bank of Kenya Act does not provide specific timelines within which the House is to consider the nominee, Section 8(1) of the Public Appointments (Parliamentary Approval) Act, 2011 requires the relevant House to undertake the exercise within 28 days. Hon. Members, in this regard, the Committees should expeditiously proceed to jointly notify the nominee and public. Thereafter, the Committees should undertake the necessary approval hearings and submit their joint Report on or before Thursday, 9th March 2023 to enable the House to consider the proposed appointment within the statutory timelines.

Thank you. Next Order.

PAPERS

Hon. Speaker: Leader of the Majority Party.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Speaker, I beg to lay the following papers on the Table:

1. A notification of presidential action on the recognition of the Pemba Community as an Ethnic Community of Kenya.
2. Reports of the Auditor-General and financial Statements in respect of the following institutions for the year ended 30th June 2021 and the certificates therein:
 - (a) Chuka University;
 - (b) National Environment Complaints Committee;
 - (c) National Environment Tribunal;
 - (d) Regional Centre on Ground Water Resources, Education, Training and Research in Eastern Africa;
 - (e) PC Kinyanjui Technical Training Institute;
 - (f) Mathenge Technical Training Institute;
 - (g) Tigania East Technical and Vocational College;
 - (h) Industrial and Commercial Development Corporation;
 - (i) Tourism Fund;
 - (j) Athi River Water Works Development Agency;
 - (k) National Environment Trust (NET) Fund;
 - (l) Council for Legal Education;
 - (m) Council for Legal Education, Staff Car loan and Mortgage Scheme;
 - (n) Water Resources Authority;

- (o) North Eastern National Polytechnic;
- (p) Engineers Board of Kenya;
- (q) Nursing Council of Kenya;
- (r) Mwea Rice Mills Limited;
- (s) Hydrologists Registration Board;
- (t) Kenya Veterinary Board;
- (u) Kenya Veterinary Vaccine Production Institute;
- (v) Information, Communication and Technology Authority;
- (w) Kenya Medical Research Institute;
- (x) Garissa University;
- (y) Nairobi Centre for International Arbitration;
- (z) Kenya Safari Lodges and Hotels Limited.

Thank you, Hon. Speaker.

Hon. Speaker: Next order.

NOTICES OF MOTIONS

Hon. Speaker: Hon. Gladys Boss, the Deputy Speaker.

NOTING OF THE REPORT OF THE
61ST SESSION OF ACP PARLIAMENTARY ASSEMBLY AND
42ND SESSION OF ACP-EU JOINT PARLIAMENTARY ASSEMBLY

Hon. Gladys Boss (Uasin Gishu County, UDA): Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House notes the Report of the 61st Session of the Organisation of African, Caribbean and Pacific (ACP) Parliamentary Assembly and the 42nd Session of the ACP-EU (European Union) Joint Parliamentary Assembly laid on the Table of the House on Wednesday, 30th November 2022.

Hon. Speaker: Thank you. Next is Hon. Wamuchomba.

DEVELOPMENT OF POLICY STANDARDISATION
AND PRODUCTION OF SCHOOL UNIFORMS

Hon. Gathoni Wamuchomba (Githunguri, UDA): Hon. Speaker, I beg to give notice of the following Motion:

THAT, aware that school uniforms which is a variety of standardised clothing worn by students in educational institutions create homogeneity among students irrespective of their social-economic status or fashion preference; further aware that school uniforms keep students focused on education not clothes, reducing peer pressure and bullying, enhance school pride, unity and community spirit as they go a long way in contributing to the students sense of belonging to their school's population enhancing school pride, unity and community spirit as they go a long way in contributing to the students' sense of belonging to their school's population, and appreciating that in Kenya, the Kenyan education system, schools across the county, whether private or public schools require that students wear uniform in order to be allowed to attend classes; concerned that the cost of uniforms has continued to escalate becoming prohibitively expensive for the poorest within the community, with some of the schools demanding that the parents pay uniform money to specific schools' accounts, a move that locks out

many children whose parents cannot afford the expensive uniforms listed, this House, therefore, resolves that Government through the Ministry of Education develops a policy on standardization and production of school uniform in the country.

Thank you, Hon. Speaker.

Hon. Speaker: Next Order.

PROCEDURAL MOTIONS

LIMITATION OF DEBATE ON SESSIONAL PAPERS

Hon. Speaker: Leader of the Majority Party.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. 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 Sessional Paper 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 and five (5) minutes for any other Member speaking, including the Leader of the Majority Party and the Leader of the Minority Party and the Chairperson of the relevant Committee (if the Sessional Paper 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.

Thank you, Hon. Speaker. I would like to request Naomi Waqo to second.

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

(Question proposed)

Hon. Members: Put the Question!

(Question put and agreed to)

Hon. Speaker: Next Order.

LIMITATION OF DEBATE ON REPORTS OF CONSTITUTIONAL COMMISSIONS AND INDEPENDENT OFFICES

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. 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 Constitutional Commissions and Independent Offices be limited as follows: – A maximum of four hours 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, and 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 Chairperson of the relevant Committee, the Leader of the Majority.

Hon. Speaker, I beg to move and request Hon. John Murumba Chikati, Member for Tongaren to second.

Hon. Speaker: Give him the microphone.

Hon. John Chikati (Tongaren, FORD-K): Hon. Speaker...

Hon. Speaker: Wait for the microphone. You are giving microphones to unconcerned Members. Give him the microphone. There you are.

Hon. John Chikati (Tongaren, FORD-K): Thank you, Hon. Speaker. I second.

(Question proposed)

Hon. Members: Put the Question!

(Question put and agreed to)

Hon. Speaker: Next Order.

LIMITATION OF DEBATE ON ANNUAL
ESTIMATES AND IN COMMITTEE OF SUPPLY

Hon. Speaker: Leader of the Majority Party.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. 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 the Report of the Budget & Appropriations Committee on Budget Estimates contemplated under Standing Orders 239 and 240 be limited as follows:

- (i) General Supply Debate:- A maximum of three (3) sitting days with thirty (30) minutes for the Mover in moving and fifteen (15) minutes in replying; a maximum of fifteen (15) minutes for each of the Chairpersons of the Departmental Committees and 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 in speaking be accorded to the Leader of the Majority Party, the Leader of the Minority Party and the respective Chairpersons of the Departmental Committees in the order that they appear in the Second Schedule to the Standing Orders; and,
- (ii) Committee of Supply: A maximum of six (6) sitting days for the consideration of the proposed allocations to the respective Votes/Programmes in the order specified in the Schedule submitted by the Budget and Appropriations Committee.

Thank you, Hon. Speaker. I would like to request Hon. Irene Mayaka to second.

Hon. Irene Mayaka (Nominated, ODM): Thank you, Hon. Speaker, I second.

(Question proposed)

Hon. Members: Put the Question.

Hon. Speaker: It is the desire of the Members that I put the Question.

(Question put and agreed to)

LIMITATION OF DEBATE ON SENATE AMENDMENTS
TO NATIONAL ASSEMBLY BILLS

Hon. Speaker: Leader of the Majority Party.

Hon. Kimani Ichung'wah (Kikuyu, UDA: Hon. Speaker, I beg to move:

THAT, pursuant to the provisions of Standing Order 97(1), this House orders that each speech in the general debate contemplated under Standing Order 146 (Consideration of Senate amendments to Bills originating in the National Assembly) be limited as follows:

A maximum of one hour and thirty minutes, with not more than 15 minutes for the Mover in moving, 15 minutes for the Chairperson of the relevant Departmental Committee, and five minutes for any other Member speaking, including the Leader of the Majority Party and the Leader of the Minority Party if the Bill is not party-sponsored, and that five 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, the Leader of the Minority Party and the Chairperson of the relevant Departmental Committee, in that order.

Thank you, Hon. Speaker. I request Hon. Adams Korir to second.

Hon. Speaker: Give the Member the microphone. Give Hon. Adams Korir the microphone. You are giving it to the wrong Member.

Hon. Adams Korir (Keiyo North, UDA: Thank you very much, Hon. Speaker. I beg to second.

Hon. Speaker: Thank you, Honourable.

(Question proposed)

(Question put and agreed to)

CONSIDERATION OF CERTAIN BUSINESS DURING RECESS

Hon. Kimani Ichung'wah (Kikuyu, UDA: Hon. Speaker, I beg to move:

THAT, notwithstanding the provisions of Standing Orders 41 and 42 relating to conveying of Messages from the Senate and from the President or the National Executive, Standing Orders 120, 122 and 126 relating to Publication, Procedure upon Publication and First Reading of Bills and Standing Order 210(2) relating to Tabling of Statutory Instruments, this House orders that during the Short and Long Recesses of the Second Session:

- (i) Upon receipt of any Message from the Senate, or upon receipt of any name of a person nominated for appointment to a state or public office from the President or any other office in the National Executive, the Speaker shall forthwith refer such Message to the relevant Committee for consideration, without having to recall the House, and report such fact to the House on resumption.
- (ii) Upon receipt of any Message relating to the Senate's Amendments to a Bill originating in the National Assembly, the Speaker shall forthwith refer the Schedule of the Senate Amendments to the relevant Committee for consideration pursuant to the provisions of Standing Order 145 (Senate amendments to Bills originating in the National Assembly), and report such fact to the House on resumption.

- (iii) Should a Bill be published during the said period, or a published Bill become due for First Reading, the Speaker shall, upon lapse of at least three days following the publication of the Bill and following a determination that such Bill is of priority, forthwith refer such Bill to the relevant Committee for consideration pursuant to the provisions of Standing Order 127 (Committal of Bills to Committees and public participation) and cause the Bill to be read a First Time upon its next Sitting and the Second Reading may be taken forthwith, or on such other day as the House Business Committee may determine.
- (iv) Should any statutory instrument be transmitted for tabling before the House during the period, the Speaker shall, following a determination that the statutory instrument is of priority, forthwith refer the statutory instrument to the relevant Committee for consideration and cause the statutory instrument to be tabled in the House upon its next Sitting in accordance with the provisions of Section 11 of the Statutory Instruments Act (No.3 of 2013); and,
- (v) Should any Paper be transmitted for tabling before the House, the Speaker shall, following a determination that the Paper is of priority, forthwith refer the Paper to the relevant Committee for consideration and cause the Paper to be tabled in the House upon its next Sitting.

I beg to move Hon. Speaker and request the Hon. Beatrice Kemei to second.

Hon. Beatrice Kemei (Kericho County) UDA: Thank you, Hon. Speaker.

I beg to second the Motion.

Thank you.

(Question proposed)

(Question put and agreed to)

Hon. Speaker: Leader of the Majority Party, there is another Procedural Motion that I approved but is not in the Order Paper. I invite you to move it as well.

LIMITATION OF DEBATE ON PROPOSALS TO
AMEND THE CONSTITUTION AND STANDING ORDERS

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

THAT, pursuant to the provisions of Standing Order 97(1) and notwithstanding the resolution of the House made on Wednesday, 15th February 2023 during the morning sitting relating to limitation of debate on Motions, this House further orders that each speech in the debate on the general debate on the proposal to Parliament to consider amending the Constitution and the Standing Orders be limited as follows: A maximum of 20 minutes for the mover in moving and 10 minutes in replying, and 10 minutes for any other Member speaking except for the Leader of the Majority Party and the Leader of the Minority Party who shall be limited to a maximum of 15 minutes each; and that priority in speaking be accorded to the Leader of the Majority Party and the Leader of the Minority Party in that order.

This is to allow more Members to speak. We realised that when debate on this Motion began in the morning, there was a lot of interest from Members to speak to it. They will be able

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to speak to it immediately we are done with Order No. 13 to 16. We will get back to that debate. Members who were not able to contribute to it during the morning session will have the entire afternoon and early evening to do so before the House rises.

I beg to move and ask Hon. Dorice Donya to second.

Hon. Dorice Donya (Kisii, WDM): Thank you, Hon. Speaker. I second the Motion.

(Question proposed)

(Question put and agreed to)

Hon Speaker: Next Order.

BILLS

First Readings

THE NATIONAL TRANSPORT AND
SAFETY AUTHORITY (AMENDMENT) BILL
(National Assembly Bill No. 43 2022)

THE CANCER PREVENTION AND
CONTROL (AMENDMENT) (NO. 2) BILL
(National Assembly Bill No. 45 2022)

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

MOTION

APPROVAL OF CALENDAR OF THE
HOUSE FOR THE SECOND SESSION

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

THAT, pursuant to the provisions of Standing Order 28, this House approves the Calendar of the National Assembly (Regular Sessions) for the Second Session (2023) as contained in the Schedule to the Order Paper.

I am doing this on behalf of the House Business Committee. The Schedule on page 12 of the Order Paper contains the calendar. As discussed by the House Business Committee, this Calendar is in line with our traditions. It was noted in the House Business Committee that the Calendar has also been aligned to the Competency Based Curriculum (CBC) Programme so that those who are young fathers like Hon. Adams Kipsanai and Hon. Toroitich can have time with their children during the two-week school holidays. We have tried to align the Calendar even with the CBC school holidays so that young Members of Parliament can also have time to spend with their families and others like Hon. Irene Mayaka can also get time to socialise with their constituents. I do not know why Hon. Opiyo Wandayi doubts that Hon. Irene Mayaka has constituents. Nominated Members also have constituents and that is why their parties have nominated them. They have very important constituents that they must engage and socialise with and apprise them of their work in the House.

We will have a very busy session during the first six weeks because of the budget process with the processing of the Budget Policy Statement, the Supplementary Budget and the Medium-Term Debt Strategy Paper. We will take a short 10-day break around the time that our children will also be breaking for their mid-term so that we also encourage them with their homework over the mid-term break. We will then resume for another five weeks following which we will take a four-week working recess to process the budget estimates for the next financial year before we come to the second part of the year beginning 6th June when the Cabinet Secretary is expected to come and table his revenue estimates.

I do not want to belabour the Calendar. I ask that we support it as we embark on the new year. I request Hon. Opiyo Wandayi, who also sits in the House Business Committee, to second.

Hon. Opiyo Wandayi (Ugunja, ODM): Hon. Speaker, I rise to second the Motion. I underscore what has been said by Hon. Kimani Ichung'wah. This is basically a Procedural Motion indicating the timelines for our operations in the House. More importantly, that Calendar provides for recess periods in between that should also be utilised prudently.

During the Session we are in, we shall be dealing with budget matters which are already in process. We want Members to take time to look at the budget proposals very keenly. There are Committees whose work does not stop with the work of the Chamber. Even if we are on recess, Committees must continue to do their work of looking at pertinent issues of concern that are within their mandate. We are also aware that Members need time to bond with their families and critically, to also engage with their constituents. At the end of the day, it is the constituents who matter.

The matter of the Committees will come up here again. I will be speaking about it in more detail because I foresee a danger. I know it is not in order for us to anticipate debate in this House but the proposal to allow Cabinet Secretaries to come here and deal directly with Members with regard to their Questions may have the unintended effect of killing Committees. That is my hunch. If we are not careful, Committees may become moribund and useless. We must strike a balance. Even though we oppose that proposal totally on our side, if at the end of the day it carries the day, we must be careful as to what we will do with these Committees. Otherwise, the chairpersons, vice-chairpersons and Members of the Committees will basically become by-standers on issues which are of concern to their respective Committees. I am just fore-warning you. Even as you take a vote on these issues, try to be careful.

I beg to second.

(Question proposed)

(Question put and agreed to)

Next Order.

MOTION

APPOINTMENT OF A NOMINEE TO THE PARLIAMENTARY SERVICE COMMISSION

Hon Speaker: Leader of the Majority Party.

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

THAT, taking into consideration the Recommendations of the Parliamentary Service Commission in its Report on the Recruitment of the Parliamentary Service Commissioner who is not a Member of Parliament, laid on the Table of the House on Tuesday, 14th February 2023, and pursuant to the

provisions of Article 127(2)(d) of the Constitution, this House appoints Hon. Johnston Muthama as a Member of the Parliamentary Service Commission.

Hon. Speaker, we laid the Report of the Parliamentary Service Commission on the Table of the House yesterday afternoon. As I said, I am only doing this on behalf of the Parliamentary Service Commission. If Members have had an opportunity to go through the Report, they will see that due process has been followed because the most important thing in this recruitment processes is to ensure that due process is followed.

Having perused this Report, I am satisfied, as I am sure many other Members are, that due process was followed in consideration of the 171 applications and shortlisting of eight qualified applicants whose interviews were conducted by the Commission. Subsequently, the recommendation to the House is contained in that Report to fill that vacancy with Hon. Johnston Muthama.

I also confirm that Hon. Muthama meets the set requirements for appointment to this position of a Commissioner. He has the requisite academic credentials, technical proficiency, leadership and public affairs skills that put him above many of the other 170 applicants who had applied for this position. I agree with the Commission's recommendation towards the appointment of Hon. Johnston Muthama as a Commissioner for a set term of six years as stipulated under our Constitution. He will only serve a one six-year term. Hon. Muthama is coming to replace Hon. Chepkonga who was here yesterday afternoon as the Report was being tabled. It was mentioned that he resigned to run in the 2022 General Elections. I heard him affirm that he is here meaning he was elected and made it back to the House.

As we thank Hon. Chepkonga for the good work that he did while working as a Commissioner in the last Commission in the 12th Parliament, we encourage Hon. Muthama who has served this country and this House as a Member of Parliament and a Whip in this House and in the Senate. He is, therefore, an experienced legislator and somebody who knows the issues that concern Members of Parliament, Senators and their welfare. We expect that Hon. Johnston Muthama will take up this position in the Commission, if and when approved by this House, and serve in the Commission to ensure that Members' welfare and all their concerns are properly addressed. I challenge Hon. Muthama that having served in this House when there were very few Members of Parliament and when not all Members of Parliament were accommodated in offices, he knows the same problem persists.

As the Commission has promised, we would be encouraging Hon. Muthama, when he joins the Commission, to ensure that that tower is completed. At least I have seen that during the night all the lights are on. I even asked why are we wasting power and I was told the technicians were testing the lighting system in the offices and the lifts. Therefore, it is a good sign that there is some progress toward the completion of the tower to ensure that all these MPs serve their constituents well and with proper facilities.

Hon. Speaker allow me in conclusion to thank the Parliamentary Service Commission (PSC) which you chair for expeditiously processing the nomination of Hon. Muthama with all the other 171 Members together with the secretariat of the Commission. They worked for a very short time to shortlist and interview those people and they came up with the name Hon. Muthama.

[The Speaker (Hon. Moses Wetang'ula) left the Chair]

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

Finally, Hon. Deputy Speaker, I urge the House to approve this nominee and pave way for his swearing-in so that he can join the Commission and contribute to the transaction of business within the Commission. With those very many remarks, I beg to move and ask my good neighbour and friend Hon. Josses Lelmengit to second.

The Deputy Speaker: Hon. Josses proceed.

Hon. Josses Lelmengit (Emgwen, UDA): Thank you, Hon. Deputy Speaker, for allowing me this chance. My microphone went off and I had to request an extension of time.

(Laughter)

Like I had said, I second the appointment of Hon. Johnston Muthama as the Commissioner for PSC. He has a wealth of experience in politics and legislation. I hope that we the young legislators who came in recently will learn from his vast experience. I look forward to meeting him here and also in the Commission so that I can learn more from him. Thank you.

(Question Proposed)

Hon. Deputy Speaker: Can I put the Question?

Hon. Opiyo Wandayi (Ugunja, UDA): On a point of Order.

Hon. Deputy Speaker: What is your point of Order Hon. Opiyo Wandayi? Proceed Leader of the Minority Party. I will only allow one person and that is Hon. Wandayi, if I can pronounce his name right.

Hon. Opiyo Wandayi (Ugunja, UDA): Hon. Deputy Speaker, this is such an important Motion that I would wish Members are allowed to contribute to because it concerns their welfare. Before putting the Question, let us be careful about it. This is a critical matter and it only happens once in a term of Parliament perhaps. At the outset, I have no issue with the appointment of Hon. Johnston Muthama to the Commission. He has been our colleague here in the past, both in the 11th and 12th Parliament and even as early as the 10th. He understands the issues that we are confronted with every other day as MPs. The PSC is one of those independent Commissions that are established by the Constitution and this particular Commission is charged with the responsibility specifically of looking into the welfare of Members, especially on the matter of services and facilities that Members need to undertake their mandate effectively and efficiently. It is a Commission that is so important to the functioning of this House and indeed the entire Parliament. It is a Commission that again incidentally is chaired by none other than the Hon. Speaker of the National Assembly. It has Commissioners who are sitting MPs. Incidentally, even those Commissioners who come from outside the House are former MPs. I do not know why but that is the kind of institution we have established. Apart from Hon. Muthama, we have Hon. Racheal Ameso, a Commissioner who was an MP representing Kakamega County in the 11th or 12th Parliament.

So, it is a Commission comprising of legislators, past and present. It should be, therefore, a Commission that is very much cognizant of the issues that it needs to deal with to ensure that Members discharge their responsibilities effectively and efficiently. I will not talk much about the current Commission because it is still very new. However, there are issues with past Commissions that we must point out as Hon. Ichung'wah pointed out earlier. The Parliament towers; that monument you see there, has been in the process of being completed for the last 10 years. I remember the foundation was laid sometime in 2013 when I was a new Member of this House. Three Commissions down the road, the building is still unoccupied! Billions and billions of taxpayers' money have gone down the drain if I may say so. I say this with authority because I happen to have examined reports concerning it when I chaired Public

Accounts Committee (PAC) in the 12th Parliament. We do not want to see such a situation going forward. The new Commission must do its work within the timelines set and also prudently within the limitations of the resources which are available.

Other social aspects of the mandate of this Commission are on the employment, remuneration and general welfare of the employees of the PSC. Let me say this without the fear of contradiction that in this regard this Commission has also let us down. We have had instances where the employment of staff in this Parliament has not been done transparently but has been done in a skewed manner. The Commission has condoned, abated and encouraged tribalism and what have you, in terms of employment, recruitment, remuneration, promotions and others to an extent that the PSC has become like what someone called “An Animal Farm”. There are employees in this Commission who are stuck. They cannot progress and if we look at the reasons, it is where they come from, their names, their looks, their gender and their religion. That is something that must come to an end. It is not tenable. For instance, Hon. Deputy Speaker, in the entire parliamentary structure in terms of employees, the entire Parliamentary Service, as we speak, there are communities in this country which have got no representation and there are others who have got no representation at the higher echelons of the Parliamentary Service Commission. I will speak for my own community, the indomitable Luo Community. There is no single member of the Luo Community in the senior management of this Parliament as we speak. I do not know why. When I speak I know I am speaking from a point of knowledge, and I can go on and on. So, as Hon. Muthama comes to join this Commission, it must change its way of doing things. It must be fair; it must be transparent, and it must also apply the rules of natural justice.

We have seen the gerrymandering is orchestrated when chances of promotion arise in this Parliament. This House or this Parliament is the epitome of our democratic culture. Therefore, it should demonstrate to the rest of the country that it upholds the values and principles that are set out in the Constitution. If Parliament cannot do that, which other body can? I appeal to this Commission chaired by our venerable Speaker, Hon. Wetang’ula, to correct those mistakes. As I conclude, I have been told that there are instances where even employment numbers have been escalated.

Hon. Kimani Ichung’wah (Kikuyu, UDA): On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: What is your point of order, Leader of the Majority Party?

Hon. Kimani Ichung’wah (Kikuyu, UDA): Thank you, Hon. Deputy Speaker. I have tremendous respect for the Leader of the Minority Party.

I rise under Standing Order 87 (4), which states that no Member shall impute improper motive on any other Member or Senator except upon a specific substantive Motion of which at least three days’ notice has been given, calling in question the conduct of that Member or Senator, including Members of the Commission and on a question or statement of fact. Hon. Opiyo Wandayi has said, as a statement of fact without adducing any evidence, that there is no single member of his community in the top management of the Parliamentary Service. Hon. Deputy Speaker, it may be very good to speak to the community out there but facts before us speak contrary to what Hon. Opiyo Wandayi is saying because I know there are very senior officers in Parliament, including Directors....

Hon. Opiyo Wandayi: Name them!

(Loud consultations)

Hon. Kimani Ichung’wah (Kikuyu, UDA): Even without naming them, the Hon. Members are already naming them. I want to dissuade Hon. Members from discussing our officers on the basis of their ethnicity.

Hon. Deputy Speaker, it is only fair that Hon. Opiyo Wandayi sticks to the facts. I do not want him to name officers, because he has been here since 2013 and we have served with him. He knows the officers. He knows those who are in directorates as directors, deputy directors and senior officers of this House. Therefore, it may be very easy to speak to the gallery and the people out there inciting communities that they are not employable or are not employed. My brother, it may look very nice saying it here, but he is saying something about Members of Parliament who represent those communities, that they do not speak for them, which is not true. I am also saying this because Hon. Opiyo Wandayi knows that there are Members of Parliament from the communities he has alluded to who have had people employed to serve in the Parliamentary Service and in other state positions. Therefore, I find it extremely and completely out of order for Hon. Opiyo Wandayi to insinuate that there is a community whose members have not been employed to serve in any senior position within Parliament while he knows that it is not true. I wish he could have tabled a list of the people holding senior management positions within the Parliamentary Service, showing their ethnicities. You would see that even members of the Luo Community are serving in very senior positions within the Parliamentary Service and in other echelons of the Government. I just want to appeal to him to stop inciting people.

Hon. Deputy Speaker: Hon. Member.

Hon. Opiyo Wandayi (Ugunja, ODM): I will not pursue that line. If he listened to me very carefully, I said at senior management levels. It all depends on how you perceive “senior management” to mean. All the same, the point is driven home. What I am doing currently is to demonstrate the severity of this issue. I am undertaking my own private special audit in my capacity as the Leader of the Minority Party on the recruitment exercises that have been undertaken by the Commission in the last three financial years. Once I conclude the exercise, I will be tabling that report here.

Hon. Deputy Speaker, what that report will reveal will shock you because I am aware that even in the very latest recruitment process, the numbers were inflated beyond what was advertised. Those kinds of things cannot happen under our noses as Members of Parliament in a Commission that is supposed to take care of our welfare. That is what I am saying. I talk very freely. Hon. Kimani Ichung’wah knows me very well. When I am prompted to talk freely, I will do so without fear or favour because we must right these wrongs. This Commission must be transparent even as we approve Hon. Johnstone Muthama’s appointment.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Okay. Is it the mood of the House that we put the Question?

Hon. Members: Yes!

(Question put and agreed to)

MOTION

GENERAL DEBATE ON PROPOSALS TO AMEND THE CONSTITUTION AND THE STANDING ORDERS

THAT, noting the contents of a 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 amendment to the Constitution

while the restructuring of parliamentary oversight to allow for 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 the 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, Senate Oversight and National Government Affirmative Action Funds; 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 the His Excellency the President.

*(Moved by Hon. Kimani Ichung'wah
on 15.2.2023 – Morning Sitting)*

*(Resumption of debate interrupted
on 15.2.2023 – Morning Sitting)*

Hon. Deputy Speaker: Hon. Owen Baya, Member for Kilifi North.

Hon. Owen Baya (Kilifi North, UDA): Thank you very much Hon. Deputy Speaker for giving me the opportunity to contribute to the debate. The President has raised very important and serious issues for this nation. The first one....

Hon. Deputy Speaker: Apologies, Member for Kilifi North. I have just been informed that there was a Member who had some time left. It is Hon. Wilberforce Oundo. Let us give him his nine minutes and then we shall proceed. I am sorry, I had not been informed. I will then come back to you, Hon. Owen Baya.

Hon. (Dr.) Ojiambo Oundo (Funyula, ODM): Thank you, Hon. Speaker. I was going to protest in the loudest of all the loud noises I could have made.

Hon. Deputy Speaker, as I was saying before my time elapsed in the morning, yesterday, the Hon. Speaker presented a Message from the President. He said that, pursuant to Standing Order 42 (2), the President can send a message to the National Assembly.

Hon. Deputy Speaker, I suppose that arises from the constitutional mandate of the President to address Parliament. As we talked in the morning, as much as there might be merits in the text of the memorandum, there is a problem with the process. In the reading of Standing Order 42 (2), the intention is a message conveying either appointments or matters of mutual interest. In simple or layman's understanding of the word "memorandum", it is more or less like an instruction to a particular body by a superior body to act in a certain manner. For that, we find a lot of difficult to have even considered tabling the same memorandum in this House for debate. Many Members of Parliament, and many commentators, have had difficulties with Article 115 of the Constitution of Kenya that allows the President to refer an Act of Parliament or Bill back to Parliament for purposes of attending to some kind of reservations. By that very nature, we have argued that the President abrogates himself the powers to make laws yet the Constitution of Kenya is explicitly clear that the law-making process rests in the National Assembly with the participation of the Senate. That is by virtue of Article 94. We take great

offence for this memorandum. The mere fact that it has even been allowed to come and be debated on the Floor of this House is improper.

Secondly, Article 2 of the Constitution of Kenya proclaims the supremacy of this superior law such that any process to change it cannot be initiated by the whims of any individual of whatever status or position. We find this to be unconstitutional and an attack on democracy and the values of this country. Under Article 131 (2) and what was affirmed by the Supreme Court in its judgement on the BBI case, the President is bound to respect, uphold and safeguard this Constitution. The President cannot at any time contemplate, imagine or initiate a process of amending the Constitution yet he has sworn to uphold, respect and safeguard it. This is a matter that has already been exclusively settled by the Supreme Court. Unless that aspect is set aside, whatever the President has said here is essentially a breach of the Constitution. Generally, it is breaching the Constitution and he is liable for impeachment as required.

For Parliament to even countenance and start talking about it essentially means that Parliament has abdicated its duty as a law-making body. Even though the Motion is coached in such a way that we note or make general comments, everybody will wonder of what value are general comments over a document that illegally found its way into this House. The President, or anybody, cannot make legislative proposals or changes to the Constitution or the law by writing to the Speaker of the National Assembly. The power of the Speaker does not include making laws. We might be here noting and making general comments while making general comments is an illegality. Parliament is becoming part and parcel of the process to usurp the constitutional demarcation between the various arms of the government. We continuously complain that the Executive has muzzled Parliament yet, as Members of Parliament, we continuously allow this kind of situation to remain with us.

In view of what has been mentioned and stated, the President, in his memorandum, raises a few issues. Again, it confirms our fears that the talk about the unconstitutionality of the NG-CDF might be anchored in very high places in this country. There is nothing unconstitutional about the NG-CDF Act of 2015. Indeed, the Supreme Court, in its ruling, avoided touching on the same. It only made passing comments about the NG-CDF Act of 2013. For the President to think that the NG-CDF is unconstitutional and it needs to be entrenched in the Constitution, honestly speaking, means that he is part and parcel of the problem bedeviling such an important Fund to the common *mwananchi* on the ground. We, as Parliament, must resist this.

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

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

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

Hon. (Dr.) Robert Pukose (Endebess, UDA): Thank you, Hon. Temporary Speaker. I am just listening to my colleague, Hon. Oundo, continue lamenting and declaring that the President has brought a Motion that is unconstitutional. Our Constitution and Standing Orders provide that a Bill be introduced either by the Majority Party or the Minority Party. It can also be sponsored through either a Private Member's Bill or a Committee. In this case, the President's Memorandum has not introduced a Bill. What he has done is writing to Parliament, through the Leader of the Majority Party.

Hon. (Dr.) Ojiambo Oundo (Funyula, ODM): How?

Hon. (Dr.) Robert Pukose (Endebess, UDA): Therefore, this Memorandum should be argued in that context. It is not an introduction of a Motion by the President as the Head of State. I think Hon. Oundo is out of order.

The Temporary Speaker (Hon. David Ochieng’): Hon. Oundo, I think you get the gist. There is no Motion on the Floor brought by the President. What is on the Floor is a Message by the Speaker that has led to a general debate. The President has not introduced a Motion to the House.

Proceed.

Hon. (Dr.) Ojiambo Oundo (Funyula, ODM): Thank you, Hon. Temporary Speaker. It is noted. My colleague from Endebess also needs to know that the Leader of Majority Party in the National Assembly is none other than Hon. Ichung’wah. He is not the President of the Republic of Kenya. Probably, he also needs to record that in his notebook so that he does not confuse the two positions.

As I have said, the President makes reference to various issues. The issue of the NG-CDF is completely out of order. There is nothing unconstitutional about it. Of course, the most interesting proposal, which we take with a pinch of salt and is indeed a mockery, is any intention to establish the Office of Official Opposition or the Office of the Leader of the Official Opposition. The 2010 Constitution was explicitly clear that we must do away with the Kenya African National Union (KANU) era hangovers. I see that quite a number of my colleagues could still be having KANU era hangovers. We have moved on. We have adopted a presidential system where Parliament takes up the role of checking or overseeing the national government. That we cannot abrogate. If we leave it, we have lost it. We need to blame ourselves.

As I conclude, because time has run out, it is the issue of the Ministers or Cabinet Secretaries coming to the House. We have complained continuously that to get 290 Members plus Women Representatives to speak in this House is not possible. Asking a Cabinet Secretary to come here and spend one or two hours and all Members asking questions will have no chance to respond, that is why the Leader of the Minority Party warned that we stand a chance of weakening Committees and later rendering them useless.

For those few remarks, we note that the memorandum is just cosmetic and has no value to the records of the House.

Thank you.

The Temporary Speaker (Hon. David Ochieng’): Thank you so much. Hon. Members, we have enough time. I will dissuade us from coming here to lobby. We will follow the requests list. We are going to debate this Motion for the rest of the day. Everyone will have a chance to speak on the Motion.

The next chance goes to Hon. Baya.

Hon. Owen Baya (Kilifi North, UDA): Thank you very much, Hon. Temporary Speaker, for giving me an opportunity to participate in the general debate on the President’s Memorandum.

At the outset, I would like to tell Hon. Oundo that when the debate was introduced, he had an opportunity to rise on a point of order to request the Speaker to give a ruling on the constitutionality of this debate at that particular point so that this House does not at any one time entertain something that is unconstitutional. However, because he chose to sit in his place and not rise on a point of order, it is not in good taste for him to say that what the Speaker has allowed to be discussed in this House is unconstitutional. We are within the constitutional parameters to discuss this memorandum since he did not rise on a point of order to question the constitutionality of this debate.

Hon. Temporary Speaker, the President, like any other Kenyan, has an opportunity to bring to this House a petition or anything to be discussed here. The President also takes leave to give us his thoughts. So, let us discuss them in a general debate. There is no Motion or Bill

to amend the supreme law in the memorandum that the President has brought to Parliament. He says, in his memorandum, that these are his ideas.

In this general debate, I would like to go straight to the issues raised. On the issue of two-thirds gender rule, this country has grappled with it in Parliament for many years. Hon. Aden Duale and Hon. Chepkong'a tried to do that in the 11th Parliament and there has been, for many years, attempts to try to get the two-thirds gender rule passed. I know many Members, even some who speak negatively about it, know that we have a constitutional obligation to ensure that we achieve the two-thirds gender rule. The Supreme Court of this country, during the leadership of former Chief Justice Maraga, actually said that Parliament was illegally constituted because it did not comply with the two-thirds gender rule. We have an opportunity, as Members of Parliament and makers of law, to change the Constitution and any other law that is here so that we can achieve the two-thirds gender rule as prescribed by the Constitution. The President is giving us ideas that we need to look at to ensure that we achieve the two-thirds gender rule.

I would like to request this House of Parliament to consider the views as provided to see whether it is possible for us to achieve this very important milestone that is in the Constitution. I support that we need to move to that threshold to actualize the two-thirds gender rule in this Parliament.

On the Office of the Leader of Opposition, you know, the Opposition in this country is like a headless chicken trying to find where to go. They are holding public *barazas* all over trying to provide leadership and bring ideas. I hear that tomorrow they will be at the offices of the Independent Electoral and Boundaries Commission (IEBC) to hold prayers outside the door. If they had an opportunity to be in this House, that leadership would bring those ideas here on how to drive this country forward instead of going to marketplaces and trying to get ideas out there. Where change can come and laws can be changed, it is in this House and this is where we need the leaders of Opposition so that whatever they are discussing out there in the marketplaces and in all those other places can be brought to this august House for us to discuss and have this country move forward instead of always looking for an opportunity to go out there and disturb the peace of the country just because they want to speak.

We want to give them an opportunity to speak, give ideas and oppose the Government in this House. We want them in this House so that we can have a sober debate for them to listen to other people and also for Kenyans to listen to them. They get the monopoly of being listened to when they go to Kamukunji or Embakasi. They have the monopoly just being listened to and there is nobody to reply or respond. We want to respond to them here formally in this House. That is why we want the leader of the Opposition here so that when he speaks we can be able to respond to him.

Hon. Temporary Speaker, issues of accountability are very important. In this country, we have suffered deficiency of accountability for many years. This is because a chairman of a committee brings a report that cannot hold water. A Cabinet Secretary does not feel responsible for that report. He only allows it to come to this House, it is delivered here, and nobody questions its contents. If questions are raised, he delegates the responsibility to respond to a junior officer who then writes a report to bring to Parliament. We are saying we would like Cabinet Secretaries to be responsible. We vetted and approved the appointments of Cabinet Secretaries in this House. They must be accountable to this House. That is why we want them here. If our Standing Orders can be tweaked to provide an opportunity for Cabinet Secretaries to come here, even for one hour, to respond to the questions that we raise, no Cabinet Secretary would joke with Parliament. He will not at any one time issue a statement here in Parliament for which he cannot fulfil. That is why we need Cabinet Secretaries to come to this House.

We saw the saga on the NG-CDF. I was in Mombasa and I took the brunt of it but if the Cabinet Secretary were to come here to respond to our concerns, I do not think he would

have taken so much time to release funds. This is what we need to do. We should bring the Cabinet Secretaries to this House so that they can answer to Parliament. There are a lot of subsidiary legislations or regulations that Cabinet Secretaries sign into law without the approval of this House. There are very many other extra-legal laws. For example, we currently have issues to do with junior secondary schools. We have issues to do with how the education sector is being run. The Cabinet Secretary is having it easy because he cannot be called to come to this House. In Tanzania, Uganda and other East African Community (EAC) countries, Cabinet Secretaries go to Parliament to respond to questions raised by Members of Parliament. This must also happen in Kenya so that we can be part of the EAC in terms of parliamentary responsibility and accountability. That is why I support the proposal by the President that we should have Cabinet Secretaries sitting in this House to respond to questions that Hon. Members may raise.

The issue of entrenching in the Constitution the NG-CDF and the NGAAF is fundamental. These are important funds. The more we continue to operate without having these funds entrenched in the Constitution, the more a lot of busybodies out there will always be rushing to court to challenge their legality. I am not, in any way, saying that the NG-CDF or the NGAAF are unconstitutional. For me, these are funds that are properly anchored in law. The NG-CDF Act of 2015 is properly anchored in law. There are very many people here who are permanent litigants – people who just love going to court to challenge everything that happens in this country. Yes, they are vicious litigants. They can derail a good course for no good reason.

The Temporary Speaker (Hon. David Ochieng’): Hon. Baya, the word is “vexatious”.

Hon. Owen Baya (Kilifi North, UDA): Vexatious. Thank you. You know, my English is only...

An Hon. Member: “Vicious” is correct.

Hon. Owen Baya (Kilifi North, UDA): “Vicious” is also correct apart from “vexatious”.

An Hon. Member: ... (*Off record*)

Hon. Owen Baya (Kilifi North, UDA): Good! You know I used to be a teacher of English. What I am saying is that in order for us to run away from that problem, it is very important that we anchor the NG-CDF and the NGAAF in the Constitution. The NG-CDF is one of those funds which have brought a lot of development in this country. There are children in this country who can only access education because they receive money from the NG-CDF. There are villages in this country where the only development they have seen is through their Members of Parliament initiating projects funded by the NG-CDF. The NG-CDF is a fund we must protect from all angles so that it can continue to take this country forward. Imagine what we have done with the Ksh44 billion that we get through NG-CDF. Suppose we even got double that amount? This country will move in leaps and bounds in terms of development. We are duty-bound, as Members of Parliament, to use the power of legislation to actually anchor the NG-CDF in the Constitution, however much time it takes. I believe we are duty-bound, as Members of Parliament, to anchor in the Constitution the NG-CDF since it brings Kenyans to almost the same level in terms of equitable resource allocation for development.

The Temporary Speaker (Hon. David Ochieng’): Well said, Hon. Baya. The next chance goes to the Member for Uasin Gishu County.

Hon. Gladys Boss (Uasin Gishu County, UDA): Thank you, Hon. Temporary Speaker. I am just trying to put my timer on so that I make sure that I stay on time.

Thank you for giving me the opportunity to be able to make my contribution in relation to His Excellency the President's Message to the National Assembly touching on various amendments to the Constitution. This is in order to actualise the aspirations of Kenyans in relation to gender inclusivity and affirmative action, the NG-CDF, NGAAF, the proposed

Senate Oversight Fund and entrenching the proposed Office of the Leader of Opposition in our Constitution.

Hon. Temporary Speaker, allow me today to focus on the one in relation to gender inclusion and affirmative action. This is the only area that does not have many subscribers. I know that matters relating to the NG-CDF and other funds have many subscribers but the gender question has been bedevilled by many setbacks in this country for many years. This has largely been a part of my professional life and it should go on record how difficult it has been to achieve the two-thirds gender threshold.

It is important to look back in history because it will convince us that this message, coming from the President, is extremely important. It is the closest we have come to actualising the two-thirds gender rule considering the level at which the matter is being canvassed. The two-thirds gender rule question has a long history. It started with the Beijing Conference, where women from this country were led by Hon. Nyiva Mwendwa, who is a great woman indeed. At that time, affirmative action was neither entrenched in our Constitution nor would it be spoken about in this country.

The women came back from Beijing with great hope because Kenya was on its way to sign the United Nations Convention on Human Rights. The matter of the two-thirds gender rule is not a women or men issue but a human rights issue of equality. This was followed by the women's caucus in Bomas during the constitutional conference, which finally culminated in us having Articles 81 and 100 of the Constitution. It clearly states that not more than two-thirds of either gender should be in any elective or appointive positions. At this stage, we managed to put in our Constitution the fact that we must include people with disabilities, youth, ethnic minorities and women of all spheres of life, in our country.

These Articles, despite being put in the Constitution, did not achieve much. This is because thereafter, Parliament was required to enact a law to implement this particular part of our Constitution. Since this did not happen, the women's movement and the civil society that deals with matters to do with women and human rights – which has been part of my professional life, went to the Supreme Court to seek for advisory.

The Supreme Court said it expected implementation would have happened within 10 years after the Constitution was promulgated. This was in 2015 and despite that advisory, nothing happened. Around that time, the late Justice Onguto – may God rest his soul – made a landmark decision of the court. He declared the then Cabinet unconstitutional because it did not meet the two-thirds gender rule threshold. This was after the now Governor for Kirinyaga, Hon. Waiguru; and the immediate former Governor for Kitui County, Hon. Charity Ngilu, were removed from the Cabinet. At that time, we had a shortage of women in the Cabinet. The late Justice Onguto declared that the Cabinet was unconstitutional. He only preserved and allowed it to continue because we were about to go for a general election.

Therefore, it ought to have been implemented in 2017. Justice Ongutu died shortly after making that ruling. In fact, as a women's movement, we were worried that maybe he was killed because he had supported us. Thereafter, a chorus was started by negative minded people in our society and some Government operatives who decided that the wage bill had become an issue and that the exacerbating factors were women and devolution. They attempted to reduce the constituencies from 290 to 210, and the counties from 47 to 10. Through Hon. Joe Mutambu, they attempted to remove from the Constitution, the paragraph that says “not more than two-thirds of any appointive or elective positions can be held by one gender”. Thank God this backfired.

Thereafter, we made several attempts. We had the Chepkonga Bill, which was unacceptable to the women's movement and I. This is because it said that the two-thirds gender rule should be achieved progressively. We must put it on record that the United Nations Convention on Human Rights, to which Kenya is a signatory, states that human rights are

achievable immediately and not progressively. It is only social and economic rights that can be achieved progressively. Justice Mumbi gave another court order that required Parliament to enact a law within 60 days to implement the two-thirds gender rule. This was followed by the Duale Bills I and II, which did not succeed. Thereafter, again, the courts were faithful to the women of Kenya. Justice Mativo ordered that Parliament implements the two-thirds gender rule or stands dissolved. I remember at that time the women's movement decided it was not good to pursue dissolution. This was shortly before election and it would have given Parliament another lifeline of five years. We were not going to give them that opportunity.

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

[The Temporary Speaker (Hon. (Dr) Rachael Nyamai) took the Chair]

In the 12th Parliament, where I had the privilege to sit as a Member, the Federation of Women Lawyers (FIDA), the Centre for Rights Education and Awareness (CREAW) and many other civil society groups began to sit down. Finally, the Law Society of Kenya (LSK) went to court which resolved to dissolve the 12th Parliament. Despite being a Member of Parliament, I participated in calling for the dissolution of Parliament. That is how serious we took this matter. Justice Maraga gave the advisory to the President and today that advisory remains alive at the desk of the current President.

Hon. Temporary Speaker, the President's view on this matter is timely because the 13th Parliament will stand dissolved should we not implement the two-thirds gender rule. We now look forward to this Parliament taking this opportunity – considering that we have the political will from the highest office in the land – to ensure that finally the Parliament of Kenya is able to implement the two-thirds gender rule. I am greatly delighted as someone who has participated in this journey with women's movement in Kenya because this is the closest we have come to actualizing the two-thirds gender rule, as Parliament. I look forward to the time the Bills will come to Parliament for debate.

Thank you for giving me the opportunity to add my voice to this very important topic.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Very well spoken. The Member for Magarini, Hon. Harrison Kombe, is next. It seems he has left. The Member for Roysambu, Hon. Augustine Mwafrika, you may have the Floor.

Hon. Kamande Mwafrika (Roysambu, UDA): Thank you, Hon. Temporary Speaker, for giving me an opportunity to also support this Motion. His Excellency the President has asked this Parliament to consider amending the Constitution so that we can achieve more, especially the first one on the two-thirds gender principle.

I am just imagining what would have happened if the former President did exactly what the Chief Justice had requested him to do – to dissolve Parliament due to this constitutional anomaly – this country would have been plunged into a constitutional crisis. As Hon. Shollei has just said, the 13th Parliament is not excepted from that Supreme Court's ruling. That ruling is still lying on the desk of the current President. Therefore, I support the request by the President so that we can implement the two-thirds gender principle.

Hon. Temporary Speaker, I also want to comment on the matter of creating the Office of the Leader of the Opposition. This is necessary so that he can use the platform of Parliament to criticise the Government. I wish to congratulate His Excellency the President. As we know, many people and many leaders do not like to be criticised but he has proposed that the Opposition be given a platform so that they can criticise the Government. I support the proposal for creating the Office of the Leader of the Opposition. It is necessary.

In regard to Cabinet Secretaries coming to Parliament to answer questions from Members of Parliament, this is more than necessary. I would like to give an example of a crisis we have today in the Ministry of Lands, Housing and Urban Planning. When Madam Karoney became the Cabinet Secretary in that Ministry, she became untouchable. Just as a reminder to you, lawyers or advocates demonstrated because the Cabinet Secretary in the Ministry of Lands then messed up that Ministry. She removed some files from that Ministry. I understand that some of those files were taken to Nyayo House while others were taken to Survey of Kenya. Kenyans have waited for long since that time. The transactions at the Ministry of Lands, Housing and Urban Planning have not been possible because there are no files. The reason she took them there is still unknown. Today we are proposing that that Cabinet Secretaries...

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): You may take your seat. I would like to request you not to over-engage on naming a former Cabinet Secretary as you debate this Motion. I am just quoting Standing Order 87 on content of speeches. It reads as follows:

“Neither the personal conduct of the President, nor the conduct of the Speaker or of any judge, nor the judicial conduct of any other person performing judicial functions, nor any conduct of the Head of State or Government or the representative in Kenya of any friendly country or the conduct of the holder of an office whose removal from such office is dependent upon a decision of the House shall be referred to adversely, except upon a specific substantive Motion of which at least three days’ notice has been given.”

Hon. Mwafrika, the matter that you are raising is extremely important, but it is better for it to come as a Motion if you really want it to be discussed. I am sure that you can proceed with the Motion without overly mentioning a former Cabinet Secretary. So, if you really want to do this, you can do it in a Motion, and then proper notice should be provided.

You may proceed.

Hon. Kamande Mwafrika (Roysambu, UDA): Thank you, Hon. Temporary Speaker for that correction. What I was saying is that, if it were like today whereby we are proposing Cabinet Secretaries to be coming to Parliament to answer questions from Members of Parliament, we would have requested the relevant Committee to summon that Cabinet Secretary to come here and tell us where she took the correspondence files and the deed files from the Ministry of Lands, Housing and Urban Planning. This is because there are Kenyans who applied for loans but the registration of charges has never been effected due to the fact that those files are not available. There are also other Kenyans who applied for registration of titles, and for the last three years or so that has not been done due to the fact that the files are not available in the pigeons at the Ministry of Lands, Housing and Urban Planning. I support the proposal that Cabinet Secretaries should come to Parliament to answer to questions from Members of this House.

Hon. Temporary Speaker, I also support NGAAF so that the Women Representatives can be given muscle to participate in the development of the areas they represent in this House.

With those remarks, I support the request by the President to amend the Constitution.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Thank you very much, Member for Roysambu. Let us have Hon. Gichimu Githinji, Member for Gichugu.

Hon. Gichimu Githinji (Gichugu, UDA): Thank you, Hon. Temporary Speaker for giving me an opportunity to also contribute in this general debate on the proposal to Parliament to consider amendments of the Constitution.

Let me start with the proposal to amend the Constitution to entrench the NG-CDF, NGAAF and the proposed Senate Oversight Fund into the Constitution. It appears that there is a convergence of minds between the wisdom of the President and the wisdom of this House through the Members who took the initiative to start the process, which has already been

canvassed in this House. I will therefore not belabour the point because it is already agreed in this House that it is important to entrench the NG-CDF, NGAAF and the proposed Senate Oversight Fund in the Constitution, especially in the wake of the very many cases that are threatening these funds, mostly NG-CDF. There are so many people who appear to be like they are enemies of Kenyans because they do not want the people from the grassroots to benefit from national devolved funds like NG-CDF. Entrenching them in the Constitution does not mean it is unconstitutional, but it is just to keep away the busybodies from going to court. It will firmly make it possible for the citizens of this country to have no fear of these funds disappearing at any particular time. That is already work in progress and I believe these proposals will find their place in the *ad-hoc* committee which was formed jointly involving the Members of the National Assembly and the Senate. On the other aspects, it is very important to obey our Constitution which requires, under Article 27(8), that the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.

Hon. Temporary Speaker, the President comes squarely within the Constitution to propose amendments. The requirement of the Constitution is the State. Who is the head of State? It is the President. In this proposal, the President has done what the Constitution requires of him, which is to propose amendments so that Parliament can play its legislative role to make sure that a law is passed that will also obey the Constitution and safeguard this country from the threats of court rulings like the way it happened in the 12th Parliament. It was different from this one. We do not know whether someone is also contemplating going to court again and threaten this Parliament with dissolution.

The other aspect is the amendment of the Standing Orders through the Procedure and House Rules Committee, which will also come to this House for approval, so that Cabinet Secretaries can come and answer questions before this House. We have so many questions that lapsed because Cabinet Secretaries were not available. They sent juniors to the committees and were ineffective. This time round, any Cabinet Secretary who does not answer a question within reasonable time will face the House and tell Members why he or she has not answered their questions. I had many questions about roads in my constituency. I have one road which I call the “belt of Gichugu” which covers all the wards in Gichugu Constituency. I asked a Question in the last Session. Once a Session ends, all the questions that had been asked lapse. So, I have to start it all over again. If the Cabinet Secretaries had been obligated to come to this House, probably that would have been sorted out and my people from Gichugu Constituency would have been aware of what is happening with their roads, water, electricity and many other development projects that they are looking upon me to follow up. Citizens rarely know what happens in parliamentary committees. However, in this particular situation, the citizens or Kenyans will follow up on matters before this House.

The other issue is the establishment of the Office of the Leader of Opposition, which I believe is a very important point. It is not being proposed for the current situation but for posterity. It is not known who will be the Leader of Opposition in the next five or 10 years. Any side of the political divide should not think that this law is being made for a particular person. It is being made for an office that can be occupied by anyone in future. It is good. In Kenyan politics, I have seen that the margins in elections are usually very thin. It is also good to appreciate that the other side has also made a very big effort to be in Parliament. They need to follow up, put the Government in check through participation in Parliament and lead the other side in Parliament at least for better and meaningful engagements. We may not follow up what happens out there when there are demonstrations or other things by people who are in the Opposition. They are also doing a good thing but we may not follow it. When they are here, everyone may follow their points, listen and probably see what can be accommodated and what cannot be accommodated. It is a right to demonstrate. However, at the same time, it will be

more important if the issues are raised in this House through an established Office of the Leader of Opposition.

Finally, it is also important to empower Senate in terms of oversight. The Constitution allows division of revenue between the national Government and the county governments. We, as Members of Parliament, oversee the national Government. We are largely facilitated but we may also require further facilitation. There is no single requirement of facilitation of Senate to oversee the counties. That is why it is very important to facilitate the Senate through a fund that is also in the Constitution, so that they can oversee the appropriation of the many billions of shillings that go to the counties for development.

Since this is a general debate, there is no vote that will be taken on it. Generally, I support the whole idea of entrenching in the Constitution whatever has been proposed.

Thank you.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Very well. Next to speak is the Member for Mandera South, Hon. Abdul Haro. Hon. Members, I am trying to stick to the requests list as much as possible.

(Hon. Abdul Haro spoke off record)

I can hear what you have said. Before you speak, I would like to say that I am not going to take the points of order because I think you are trying to catch my attention. I realise that Members have done a lot of research on this Motion. So, let us give them enough time to speak.

You may proceed, Member for Mandera South.

Hon. Abdul Haro (Mandera South, UDM): Thank you, Hon. Temporary Speaker. I stand to support this Motion. I thank His Excellency the President for sharing the four issues that he has presented in his memorandum. The issues are very important. The fact that they have been debated for long, that is, since the previous years until now and they are still relevant makes them quite important. There are four issues that have been shared in the President's Memorandum – the two-thirds gender principle, the creation of the Office of the Leader of Official Opposition, inclusion of various decentralized funds in the Constitution, the NG-CDF, NGAAF and the proposed Senate Oversight Fund; and also the re-structuring of parliamentary oversight to allow Cabinet Secretaries to appear before the House.

Hon. Temporary Speaker, those four issues are timely and most welcome. I thank the Hon. Speaker for referring them to the relevant Committees. It is my hope that those relevant Committees, including the Departmental Committee on Justice and Legal Affairs, the Joint Parliamentary *Ad Hoc* Committee, and the Procedure and House Rules Committee, will expedite the processes that will help us to move these four issues forward.

The two-thirds gender principle is anchored in the Constitution. I consider it to be the single most important issue of existential threat to this House, if it is not handled properly. It is only fair that this issue is sorted out once and for all. The 12th Parliament was unable to resolve this matter despite former Chief Justice David Maraga making a ruling on it. It is now the right time to make sure this matter is resolved once and for all.

On the creation of the office of the leader of the opposition, as it has been argued by many Members here, this is an issue that is not pegged on an individual, rather one that is aimed at addressing a lacuna in our Constitution. The 2010 Constitution created a void where the second-best presidential candidate in our general elections is always out of Parliament. His or her troops will be in the House, but they are themselves out of Parliament and do not have a role to play in the governance of the country. Therefore, it is a very important issue as it will help us address part of that lacuna in our law. It is also an issue that we have to deal with now, not for individuals that we may have in mind, but for posterity. This will help us to give a legal

platform and structure to the leader of opposition to be in a position to contribute legally and in a constitutionally structured manner to governance issues in the country.

When we talk about inclusion of various decentralised Funds, especially the NG-CDF and the NGAAF, I am sure we all know how important that is. When it comes to the issue of the NG-CDF, we have seen some busy bodies and civil society organisations (CSOs) run to court on the pretext that the NG-CDF is not constitutional. Despite that, we know that the NG-CDF is constitutional. Therefore, to conclude this matter, remove any doubt and settle the worries of the busy bodies and the civil societies that keep running to court over this matter. We need to entrench the NG-CDF in the Constitution.

The Joint Parliamentary *ad hoc* Committee has already done quite some work on this matter. It is my hope that the Memoranda from the President, which is inclusive of the four issues, will not re-invent the wheel when it comes to the matter of the NG-CDF, the NGAAF and the Senate Oversight Fund. The Joint Parliamentary *ad hoc* Committee has already made some good progress on this matter. Therefore, we need to build on the work that has already been done by this Committee so that we do not delay the process any further. We all know the importance of the NG-CDF. Through it, many schools have been built. According to reports from the NG-CDF Board, in the last five years, in the sector of bursary alone, six million students and Ksh57 billion have been used to support the education sector in this country. We cannot belittle the importance of the NG-CDF. This habit of people running to court all the time to challenge the disbursements and implementation of this process thus causing confusion needs to be rested once and for all. That is why it is important that we look at these matters now. This is a historic opportunity for the 13th Parliament to settle all of those issues.

It is also good to note that His Excellency the President, William Ruto, has shown the goodwill to support these processes through and through. Because we do not know whether there will come a time when we will have a President and an Executive which are as committed, we need to support these four important issues that are before us today.

When it comes to the two-thirds gender principle, a number of Members have expressed themselves on this matter. I want to state that it should not be looked at from the lens of male or female gender. This is an inclusive gender matter as it was mentioned by some of the Members in the morning. Today, this is a matter that appears like it is, perhaps, a gap that needs to be filled by the female gender. However, we are not sure that, maybe, a few years down the road, we may have the female gender as the majority in the House and it is the male gender who will require to be nominated! Therefore, I would wish that we look at this matter from that lens so that we can give it the 100 per cent support that it requires knowing that the shoe might be on the other foot tomorrow as was alluded to by another Member.

I will stop there. Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Thank you very much. Member for Mombasa County, Hon. Zamzam Chimba.

Hon. Zamzam Mohammed (Mombasa County, ODM): Asante sana, Mhe. Spika wa Muda. Nashukuru kwa mjadala wa leo hasa kuhusu suala la thuluthi tatu ya akina mama. Pia nampongeza sana Mbunge wa Mandera Kusini kwa kulipigia pondo sana suala hili kwa maana leo ni akina mama, kesho mtalia nyinyi wanaume. Kwa hivyo, lazima tuafikiane ili tuweze kuupitisha mswada huu.

Ningependa pia kuchangia mjadala wa leo kwanza kuhusu NGAAF. Ningependa kuanza na NGAAF kwa sababu mimi ni mwakilishi wa akina mama. Ni muhimu tuwe na NG-CDF na Mgao wa Ziada wa Uangalizi ambao unafahamika kama *Senate Oversight Fund*. Kuhusu huo mgao wa *Senate Oversight Fund*, mimi ningependa kuuliza kwa nini tuseme *Senate Oversight* wakati sisi sote tuko Bungeni? Nafikiria tungeuita *Parliament Oversight Fund* au Mgao wa Bunge wa Uangalizi. Hii ingekua bora zaidi. Lakini yote tisa, kumi

ningependa kupongeza hatua ya kwamba tuhifadhi fedha hizo ndani ya Katiba yetu ili tuweze kusaidia jamii kule mashinani.

Mpaka sasa, wengi wa watoto wetu wako nyumbani kwa sababu kuna mtu aliamka siku moja asubuhi akaona kuwa watoto wanaopewa hizi pesa za ufadhili hawafai. Kwa hivyo, sharti tuweke migao hiyo kwenye Katiba. Hata hivyo, hiyo ni sheria na mimi naunga mkono kuwekwa kwa mgao huo ndani ya sheria ili uweze kufikia wananchi kule chini.

Jambo lingine ambalo limezungumziwa katika mjadala wa leo ni kuhusu kiongozi wa upinzani. Inasikitisha sana kwa sababu siku zote wenzetu wakisimama kuongea utasikia wako kule Kamukunji ama Mavoko lakini huwezi kuwasikia kanisani. Ningependa kusema kuwa ni lazima tuweke heshima na tusikumbushane kule tumetoka. Ni nani alimwibia mwenzake? Ni nani alipita na ni nani hakupita? Hii ni kwa sababu kama tunataka kujenga taifa, basi ni lazima tuwe na mwafaka wa kuheshimu kwa viongozi wote. Siwezi kukaa katika Bunge hili nikiona kiongozi wangu wa chama akidhalilishwa. Hata kama hawataji majina huwa naelewa wanaenda wapi. Kwa hivyo, ni lazima tuheshimiane. Tumheshimu pia kwa sababu alikuwa kiongozi ambaye alipigania taifa hili na aliweza kutuletea Katiba hii ambayo tunaifurahia leo kama akina mama 47 ndani ya Bunge hili. Mhe. Raila aliweza kuipigania Katiba hii ya 2010 na leo hii tunazungumzia kuhusu thuluthi mbili ya wanawake ndani ya Bunge kwa sababu yake. Ningependa apewe heshima na tuheshimu viongozi wetu wote.

Najua pengine wengine wako kule kwenye chai na wanatazama kwenye televisheni. Labda wameweza kungusa gusa hapa na pale lakini ningependa kuwaambia kuwa mimi kama mama Kaunti Mombasa, siwezi kukubali hilo. Tumheshimu Baba Raila Amolo Odinga kama tunavyostahili kuheshimu viongozi wengine.

Ningependa pia kusema hili: ukiangalia Serikali iliyopo, inasikitisha sana kwa sababu leo mijadala ambayo imeletwa hapa ni juu ya vyeo...

Hon. Ndindi Nyoro (Kiharu, UDA): On a point of order, Hon. Temporary Speaker.

The Temporary Speaker (Hon. (Dr.) Rachael Nyamai): Hon. Ndindi Nyoro, what is your point of order?

Hon. Ndindi Nyoro (Kiharu, UDA): I am sorry, Hon. Temporary Speaker. I think I pressed to contribute. I am sorry for that.

Hon. Zamzam Mohammed (Mombasa County, ODM): Asante sana, ndugu yangu Mhe. Ndindi kwa kuweka hilo wazi. Nikiendelea, ningependa kusema kuwa mijadala ambayo imeletwa Bungeni leo ni juu ya vyeo. Kwa mfano, kuna Hoja kuhusu kupewa cheo cha Parliamentary Service Commission (PSC) kwake Mhe. Muthama, ambaye tunampenda sana. Tunamtakia kila la heri lakini awe na jicho la tatu kuangalia pande zote kama alivyosema Kiongozi wa Wachache Bungeni. Ahakikishe nafasi za kazi zinapewa pande zote bila kuzingatia kabila, chama wala rangi. Ninampongeza sana kwa hilo.

Lakini, masikitiko yangu makubwa ni kuwa Wakenya wanakufa njaa. Ninawakumbuka ndugu zetu wa Mkoa wa Kaskazini Mashariki, Tana River na wengineo. Ukiangalia kila sehemu, watu wanakufaa njaa. Wakenya wanahangaika. Wanyama wanakufa. Kama Wabunge, ningependa tuweze kupanua akili zetu kwa upana zaidi na kuhakikisha kuwa wale waliotupigia kura wakatwezesha tuje Bungeni tunawapa kipaumbele. Njaa imekuwa baa la kustaababisha sana katika hili taifa lakini tumelifungia hilo tatizo macho. Leo hii, twazungumza mambo ya vyeo na mengineyo. Tumesahau mamilioni ya Wakenya. Leo hii, hawajui wataweka nini mdomoni. Wanatafuta hata maji na ndiyo maana mimi nakubaliana na huu mjadala unaosema tuwalete mawaziri hapa Bungeni ili waweze kuwajibika.

Leo tunataka kuwauliza: wamepewa nafasi ya kuwa mawaziri, kwa mfano, Waziri wa Kilimo au Waziri wa Maji; je, wamepanga mikakati gani? Akili yao wameipanua vipi ili janga hili la njaa waweze kupigana nalo kuhakikisha kuwa kule Turkana, Kaskazini Mashariki, Mwakirunge, na Mombasa watu wanapata chakula? Hatuwezi tukakaa siku zote, miaka nenda, miaka rudi tukisumbuliwa na hili tatizo. Njaa imekuwa kitu cha kurejelewa!

Dubai ni nchi jangwa lakini leo hii ni kijani kibichi kila sehemu. Jua linachoma mpaka katikati ya utosi, lakini leo hii wanatoa matunda na mboga nzuri na safi kwa sababu wamepata viongozi wenye msukumo na wanaowafikiria wananchi. Dubai iliyokuwa jangwa, leo inazalisha chakula kingi zaidi.

Kwa hayo, ningependa kueleza Waziri wa Kilimo kuwa wakulima wanalalamika kuwa mbolea iliyotolewa bure inauzwa Ksh3,500. Tunataka Wakenya wapate chakula lakini maji tunayaongeza ushuru, mbolea zinauzwa, na shamba nazo zimekuwa adimu. Tutaweza kubadilisha maisha ya Wakenya ikiwa tunawaweka katika hali ngumu Zaidi, hasa wakulima?

Wabunge wenzangu, ningependa tuweke historia ya kubadili maisha ya Wakenya katika hili Bunge la Kumi na Tatu. Tunafaa tufuate Katiba. Wabunge wa jinsia ya kike ni wengi humu Bungeni. Sitawataja majina lakini inasikitisha sana kuwa Mbunge mmoja hapa amesema katika mkutano mahali kuwa, kina mama wanatakia nini kujaza Bunge. Amesema eti watakuja kuwa “flower girls” na “slay queens”. Ningependa kumwambia mahali yuko kuwa, pengine akimleta mkewe hapa tutaweza kumbandika hilo jina “slay queen”. Hatuwapei heshima waheshimiwa wa jinsia ya kike humu Bungeni. Hatujakuja hapa kwa matani na kutafutana na watu bali kuwatafutia Wakenya haki zao. Tuko hapa kuangalia vile tunaweza kuboresha maisha ya wananchi na hadhi ya mama katika hili taifa ili aweze kuheshimika. Siyo popote utakapomuona mwanamke unafikiria tu mambo ya ngono. Hapana! Tunataka heshima kwa akina mama.

Nikimalizia, katika yale yamezungumzwa leo kuna jambo kuhusu IEBC. Hatuwezi kusema kila siku tutatunga sheria ili kumwezesha kiongozi wa upinzani... IEBC inaweza kupeleka taifa hili katika vita vya kila siku! Ndiyo maana ningependa kuwaambia wenzetu hivi: mtakuwa mwatudhalilisha na kutuita majina yote kama vile *the Kamkunjis* na *Mavokos*, lakini *it ends with IEBC*.

Sisi tunataka usawa. Nikiumwa leo na ucheke, jua kesho utaumwa pia. Kwa hivyo, ikiwezekana waweke usawa katika tume ya IEBC ili iweze kuhudhumia Wakenya kwa usawa na kila mmoja apate haki yake. Leo mama Zamzam nikianguka, nijue nimeanguka kwa haki. Dadangu Nyakaira akianguka, ajue pia ameanguka kwa haki. Mambo ya kufanya *filfinyange* kisha Kenya iingie kwenye mtihani hatuwezi kukubali.

Ninaona muda wangu umeisha lakini kama mama Mombasa, ninaunga mkono mjadala huu wa leo wa kuweka ofisi hii rasmi ya kiongozi wa upinzani na kuweka *two-thirds gender rule* katika Katiba. Ninaamini tutayatimiza kwa pamoja. Asanteni sana na Mungu atubariki sote.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Very well Member for Mombasa. Hon Kaluma.

Hon. Peter Kaluma (Homa Bay Town, ODM): Thank you very much, Hon. Temporary Speaker.

We do not have a substantive Bill before us. His Excellency, the President is inviting us to share our insights on these matters he remitted to the Speaker of this honourable House. I will, therefore, keep to that devoid of politics.

On the first issue on implementation of the two-thirds gender principle, let me clarify that the determination and advice by the former Chief Justice to the President related and concerned the 12th Parliament. It is not an issue for anybody to seek to dissolve this Parliament. That person has to take a case to the High Court and have tries at the Supreme Court or go to Supreme Court on advisory opinion. I am saying that based on law and the fact that, that advisory was made before this Parliament came into being, and it was not known how this Parliament would be composed.

Secondly, the measures the President proposes, and I know the President has a technical legal team advising on these proposals, those measures will still not help us realise the two-thirds gender principle which is anchored on Article 27 of the Constitution dealing with the

doctrine of equality and non-discrimination. The problem with the two-thirds gender principle, and I am not opposed to it... I am a son of a woman, a grandson of a woman, father of a woman, husband of a woman and brother of several women. Therefore, I support.

I want our female gender, just as the male gender, to be in the leadership space because their contributions are both valuable. The problem with the realisation of the two-third gender principle is about the electoral system instituted by our Constitution, particularly Article 38. Everybody is entitled under that Article dealing with political rights to stand for elections, register to vote and to vote whomever they want. That provision, therefore, institutes what we call the first-past-the-post principle of elections where people seek seats and the citizens within various constituencies elect whomever they want. You cannot realise any specific gender quota be it one-third, two-thirds, or one-half principle in such a system.

I wanted to explain to Members that in South Africa and Rwanda, where they have realised it, actually it is not first-past-the-post, but rather, it is the party list or proportionate representation system. Before the parties are voted in an election, they present a zebra list which enables the parties to meet the gender requirement. The line is then drawn and Members are picked. The question you want to ask is whether Kenyans agree to parties ultimately electing representatives for them. So long as Kenyans insist that they have to vote for their leaders and that the person who wins the elections wins, it is very unfair for anybody, without amending the Constitution, to institute the party-list system. It is very unfair to wait for Hon. Gikaria to be elected by the people of Nakuru or for Hon. Kaluma to be elected by the people of Homa Bay or for Hon. Irene Mayaka to be specially elected and then start questioning Parliament on why it is not properly constituted. That is not the business of Parliament. I agree with the President that we need to establish the gender principle. However, the amendment we need is not the one proposed in the Memorandum. The amendment should be one that removes the first-past-the-post system under the Constitution and institutes a party-list system. I doubt Kenyans would agree to that system. In any event, even if the Bill were to first come to Parliament, as the Deputy Leader of the Majority Party will confirm, it still will have to go to a referendum. In fact, most of these proposals will have to go to a referendum. Knowing how our parties operate, I doubt Kenyans would accept a party-list system. So, we are stuck with the current system. The fact is that with the constitutional design, the gender principle is incapable of being realised.

I agree with the President on the proposal to have the NG-CDF and the NGAAF entrenched in the Constitution, save to add that we are not seeking the entrenchment because the current NG-CDF Act or the law underpinning the NGAAF are in any way unconstitutional. We need to have our teams in court explain to the court that time has come for the court to tell those Kenyans who believe only the NG-CDF or the NGAAF should be litigated to find other business to do. I think that is the direction we are going. We are seeking to entrench the Fund in the Constitution so that it is firmly secured, so that those benefits can continue to exist beyond the wishes of Parliament and the Executive per time.

I have a problem with the proposal relating to Senate Oversight Fund. Whether we call it Senate Oversight Fund or Parliamentary Oversight Fund, it will run afoul of the Constitution. I know Hon. Johanna Ng'eno will agree with me. And this is not to say that I am opposed to Senators being facilitated better. The remuneration of public or State officers is to enable them discharge their functions. Whether we call ourselves Members of Parliament and call others Members of the National Assembly, Article 260 of the Constitution says our title is Member of Parliament. The roles of a Member of Parliament run from Article 93 to Article 96 of the Constitution. In summary, the roles of a Member of Parliament, whether in the Senate or in the National Assembly, are legislation, representation and oversight, whether of State officers or of budget, and a bit of appropriation. Our salary and that of Senators, whether it is little or too much, is to enable us discharge those roles. You want to ask yourself the question: If we were

to create a parliamentary oversight fund, what will stop us from creating a parliamentary legislation fund and a parliamentary representation fund? Hon. Ndindi Nyoro will then ask you what you will be getting your salary for because you have created separate funds to perform these functions. Anyone who takes that Bill, if it were to be proposed, to the constitutional court or to the Supreme Court will get the entire Bill collapsed before it is debated.

The way to go - and I am saying this because the President proposed that we find a way to facilitate the Houses of Parliament better - if it is the salary that is low, let us get the Salaries and Remuneration Commission (SRC) to create a leeway, whether it is for the Senate or Members of Parliament in the National Assembly. If it is about facilitation, Parliament as an entity already has the power to make budget. Let us have a budget line under the Parliamentary Service Commission (PSC) whose duty is to facilitate and cater for the welfare of Members. We can say the Senators will get more money in terms of the people they employ or facilitation. We then budget for the money straight away and it be included in the Estimates. Otherwise, this thing we are calling Senate Oversight Fund will not work.

A leader of official opposition cannot exist in a presidential system. Also, he cannot exist absent a Prime Minister on the other side. Either way, this is going to change the structure and functioning of Parliament. Ask yourself: If there is a leader of official opposition, what would the Leader of the Minority Party be doing there? What would the Leader of the Majority Party be doing if the Prime Minister should be there? We have to decide whether we want a parliamentary system or a presidential system. We are happy that cabinet secretaries should come to the House - and this is important for me - but we should be careful. If we are not careful, we will kill all committees and they will have no work to do.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Very well spoken, Hon. Kaluma.

Member for Turkana Central, Hon. Joseph Emathe. He is not in. Hon. Naomi Waqo, Member for Marsabit.

Hon. Naomi Waqo (Marsabit County, UDA): Thank you, Hon. Temporary Speaker, for allowing me to add my voice to this very important debate going on. At the outset, I support the Motion on the Memorandum by the President seeking our attention and support. I support this Motion because it touches on areas that are very important to us as Members of Parliament.

I want to start with the NGAAF and the Senate Oversight Fund. I was a nominated Senator in the 12th Parliament and five years ended while we were pushing for a Senate Oversight Fund. Senators go through challenges. They are supposed to oversight billions and billions of shillings when they are not even facilitated. Unless they are facilitated, corruption and mismanagement of funds and all the things we hear happen in the counties will not be controlled. Senators should be empowered to perform their oversight role. They should be given funds to help them be more effective.

As for the NGAAF, it is now seven months since we were elected, but unfortunately, we have not received the funds. That is why I support this proposal. If all this is covered in our Constitution, we will not face these challenges and we will be more effective. Women will come to the House, serve and do their work at the grassroots without any problem.

Many vulnerable students have been supported by these funds. The NG-CDF covers a constituency while the NGAAF covers a whole county. The practice as at now is that the same amount of money that a constituency Member of Parliament gets is the same amount of money a woman representative gets. That confuses us because you cannot compare a single constituency with four to five or even six constituencies in a county. When we amend this and integrate it into our Constitution, our interests will be taken care of and even the NGAAF will be well-covered. That then means that women will also get funds that are relevant to their services and that will help them do their work effectively.

I also support the issue of cabinet secretaries appearing before the Members of Parliament. Right now, there may be a gap between us and cabinet secretaries simply because some of them are not well-known to the Members of Parliament. During the vetting process, cabinet secretaries appear before their respective committees, but are not known to everybody. By them appearing before the Members, we will create a good working relationship, talk to one another, have dialogue, discuss issues that affect our country and also challenge them on the Floor of the House. That will then enhance the relationship between Parliament and cabinet secretaries. It will help us and even the cabinet secretaries to be more effective. Representation of the people will be done well. From the conversations that go on, debates and questions raised, the people we serve will see that their areas are well-represented and their questions are answered well unlike when some cabinet secretaries are not even known by the Members of Parliament.

On the position of the leader of the official opposition, since Independence, we have enjoyed serving this great nation that we all love. Since we started practising multipartyism, leaders of opposition have always suffered because they use their money to campaign and immediately after the elections, they are forgotten. By having this position, we will have a special place for them to have their own office and they will be kept busy. We are currently experiencing a challenge because the opposition leader, Hon. Raila, is busy on the streets holding rallies and meetings with people. If this office is created, he will have a better place to meet people, organise and serve the nation in a better way. Having a place for the opposition leader in Parliament is good and we need to accept and move on with it. We know very well that where there is no vision, people perish. If we continue the way we are, we may not get anywhere. Allowing, embracing and giving them the opportunity to serve the country better by challenging our Government and other governments in future will be a good thing to practise.

I want to mention something on the issue of the two-thirds gender rule. This is something that we have been fighting and praying for as women leaders. Today, it is us, but tomorrow or ten years down the line, you do not know. Maybe we will be sympathising with the male gender. When we first started the debate of the two-thirds gender rule, we thought that many people were supporting us. In fact, in the 12th Parliament, Hon. Duale was very passionate together with many other Members of Parliament. They were very passionate. They tried to support us. We had many breakfasts, but at the end of the day, we did not succeed. If our President is the one to now initiate the entire process, as women leaders, we should just run with the whole idea and see how best we can capture and grab the opportunity and succeed because it is long overdue.

Women have done a lot for this country to be where it is. When you look at the performance of women in every office they serve, you cannot compare with the men. They give their best and serve the nation with a lot of passion. When it comes to the two-thirds gender rule, however, it has been very difficult because when it comes to elections, women face a lot of challenges. Our campaigns are money-based and financed very well. Women do not have much money and so they face a lot of challenges and are intimidated in many ways. When we put the two-thirds gender rule in place, it will help women to get into power without much problem.

I conclude by challenging women in this House and everywhere to support this Memorandum so that it succeeds. We will then be proud that our Government has taken care of us and we will catch up with the rest of East Africa and African countries that have gone before us and embraced women leadership in a better way.

I support the Motion. Thank you.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Very well. Member for Dagoretti North, Hon. Beatrice Elachi.

Hon. Beatrice Elachi (Dagoretti North, ODM): Thank you, Hon. Temporary Speaker. I also rise to speak on the Memorandum by the President. From the outset, as someone who started as a woman leader in this country by training women, let me state that the issues in the Memorandum are not new. They are things we have really talked about in this country until we even arrived at the level of passing the new Constitution in 2010. We thought that we will achieve the two-thirds gender rule and move on as a country. In the 11th Parliament, we had an opportunity to pass all the Bills that were to be enacted as a requirement by the Constitution. At that time, we were completely unable to even just touch on Articles 100, 81 and 27 which all speak about affirmative action and the two-thirds gender rule.

We appreciate and thank the President for bringing the Memorandum. I just want to speak very candidly and say that the main matter has been sandwiched between too many issues. We will find ourselves, again, losing this proposal if we are not careful. We should look at it as a House and agree that some of these issues can move on since we have the *ad hoc* Committee that had started the process of integrating the NG-CDF in the Constitution. That is a good avenue to deal with issues of the NG-CDF so that we remain with the issue of the two-thirds gender rule in this proposal for it to work.

When I look at the issue of the two-thirds gender rule that has been brought in with good intentions, those who advised the President could have read and realised that they had picked on Article 27 of the Constitution, which is within the bill of rights. That is why everyone is now talking about this referendum. It is in the bill of rights. Kenyans themselves said that you cannot implement anything that touch on the bill of rights without taking it to a referendum. Therefore, we might find ourselves being unable to do it until we go to a referendum. Article 27(8) is very clear. When you read it word by word, it states as follows:

“In addition to the measures contemplated in Clause 6, the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.”

The moment you bring in that Article, ask yourself how it will work when we nominate women yet we are supposed to push it through political parties so that it becomes elective. When canvassing for the real Bill, we would want to get clarity so that, as women, we do not start a journey and then find ourselves in a situation similar to the one Hon. Duale found himself in.

When you look at the issue of the opposition office, I think we must agree that sometimes we have to have our own minds in the House. We are legislators and where we feel things have not gone right, we do not need to say that they are right. Ours is a presidential system and it is Kenyans who agreed upon it. Let them know that the day they will go to another referendum, they will take us to a parliamentary system, but for now, let us tell Kenyans that whether they like their opposition leader or not, they cannot entrench it here because we are in a presidential system. We borrowed the American system, therefore, we have to live with it. There is no opposition leader in America. Trump is not there. They have the majority and the minority and we must accept that. It is about how the minority side works to ensure they put checks and balances to our Government. In my opinion, that is the best way and it will work effectively. If we try and adopt this, then everyone will be saying they need a Prime Minister which will mean that we formulate the position. We should sit down in a bipartisan way and agree that for the sake of Kenya to move on, we need a hybrid system that works for the country.

Hon. Temporary Speaker, I then come to the issue of the Senate which I think, given the other processes that we have, the lawyers advised us accordingly. Let us not call it the Senate Oversight Fund, but instead call it Parliamentary Oversight Fund. That way, we will avoid questions and the sibling rivalry that we have always had with the Senate. We want to finalise this matter. Remember, it is not a Motion or a proposal. It is a message the President wants us to ventilate on in order to generate good ideas. I am hoping all that we are saying is

being picked so that when the time comes, we will work around it. I am aware that the Supreme Court has spoken. It said that we can proceed, but let us do it in the right way. They have also given us the time to do it the right way. They have not come to us and said just do it for the sake of doing. Therefore, as we speak on this matter, we have to ask the Chairs of the Justice and Legal Affairs Committee (JLAC) and the *ad hoc* Committee if they are in a process to.. I am hoping the process we had started in the joint committee that Parliament had approved concerning our funds is continuing. We should not delay or derail it because that will be very unfair for this House. We cannot be given an opportunity to pass the funds and then squander the opportunity. We must not go back to the drawing board. We are about to set out a rare process which will lead us to redundancy. We will need to merge them and this will be so unfortunate for this House. Can we stand firm on what we started when it came to our funds? We need to deal with our funds as we await on this. It is a process that we need to ask ourselves whether we want to see these issues being merged into one Bill. If this is combined to one Bill, we will be shooting ourselves in the foot. We will be forced to take all these issues to a referendum which will be very sad for this House. Let us also be legislators who believe in ourselves that we can legislate and move things.

Hon. Temporary Speaker, today, we have left the courts to legislate. The other day there was an interesting ruling where the courts decided with finality that clinical doctors in Nairobi be exempted from paying certain license fees. There are certain licences that they are normally given by the county government. One wonders. How are you going to move away from this? I am hoping that women will achieve the two-thirds gender rule but in the right way.

I thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. (Dr) Rachel Nyamai): Thank you. Next is the Member for Baringo North, Hon. Joseph Makilap.

Hon. Joseph Makilap (Baringo North, UDA): Thank you, Hon. Temporary Speaker. From the outset, I want to say that the President had very good ideas by submitting this Memoranda. However, his advisers could not separate the beans from the maize. I want to start with the issue of the leader of opposition. Hon. Temporary Speaker, truthfully speaking, this is intended to cure the business of winner takes it all in an election, especially in a very closely contested election that almost goes 50/50 and that person that almost commands half of the country is left without participating in the democratic process of our country. I agree that this matter could become very difficult given that the current Constitution of this country envisages that Kenya shall have a presidential system of Government. I want to provide logical ideas so that Members of this House realise that this matter will not be achieved soon unless a few things are addressed.

Hon. Temporary Speaker, under this system, you can have a president who has won the elections of a country, but lacks the numbers in Parliament. It will be a situation where one is a president, but a minority in Parliament. In that case, if you say that the second candidate becomes the leader of opposition and the winner in the election becomes a president... Honestly, let us get things right. I belong to Kenya Kwanza, but I must be truthful to this nation that in this last election, if the current President did not work hard to ensure that we had the numbers in this House, we would have been the minority and yet we won the elections. Does this mean that we have a leader of opposition in the House and we have a president who won elections? This is the complexity of a presidential system. Therefore, we either chose as a country to use this system or adopt the parliamentary system. For instance, if you want to cure this particular matter, then allow those persons running for President to also contest as Members of Parliament so that when they are elected, they can occupy the positions of Leader of Majority and Leader of Minority. Many Members in this House do not understand that the 2010 Constitution does not anticipate that a Member of Parliament is either opposition or government. We are supposed to provide an oversight on the Government. This is why when

we were inducted in the House, we were told it is free sitting. What does that mean? It means that each of us has an opportunity to check and oversight the Government.

Therefore, on the matter of the leader of opposition, there is much to be done. If we want the leader of opposition to be in this House, let us change the law so that presidential and deputy presidential aspirants can run as Members of Parliament or Senators. This way, they can come to the House as the Leader of the Majority Party or the Leader of the Minority Party. But just to imagine that the leader of opposition comes to this House where we already have a Leader of the Minority Party is a clash of the law does not require a neurosurgeon. This is a fact and let us act on facts of law so that we try to address the winner-takes-it-all issue. The President means well for this country, but the lawyers who are supposed to advise him and bring order are not doing so properly. I say that with a lot of sincerity.

Let me address the matter of the oversight funds. We had already started a process and we were on the right track to ensure that the NG-CDF and the NGAAF are in the Constitution. We do not want to come back and use this Memorandum to achieve what we want. Let the process of anchoring the NG-CDF and the NGAAF proceed as it was to the end. With that, we shall achieve the results immediately.

On the Senate Oversight Fund, we should be knowledgeable enough. It is not about the Senate. The people who are trying to sell this to the Senate are giving them false hope because it is believed that the NG-CDF belongs to Members of Parliament. The NG-CDF does not belong to us. It belongs to the people of Kenya. Our work should be to oversight the NG-CDF. In this House, when we struggle to ensure that the NG-CDF is anchored in law, it is not because these are our funds. It is because these are resources to implement programs at the constituency level; programs that are not captured in the Fourth Schedule and functions that belong to the national Government that are not catered for by the county governments. If you create a Senate Oversight Fund, then Parliament will also demand for a National Assembly Oversight Fund. If we want to create an oversight fund, let us call it the Parliamentary Oversight Fund so that all Members of Parliament, in the Senate and the National Assembly, benefit from it.

These two are clashing. We need to ask ourselves to what extent should Senators oversee county governments? We have members of county assemblies (MCAs) who are legislators mandated to do day-to-day oversight of county governments. So, to what extent will the Senators' oversight role go? Let us face facts as they are. The MCAs are supposed to oversee the governors, the County Executive Committee Members (CECs) and the expenditure of the counties. At the national level, we oversee the national Executive. To what extent do Senators oversee county governments in this country? These are facts. Whether you are in Kenya Kwanza or Azimio la Umoja-One Kenya Alliance, these are the facts.

Hon. Temporary Speaker, for the purposes of the NGAAF, I support this 100 per cent because the women in this Parliament also want to address matters that are peculiar to them. It will come a time when there will be more women than men in this Parliament and we will want representation. Now, the NGAAF is not an oversight fund for women. It is a fund that women in Parliament are overseeing that tries to address inadequacies on the ground that affect children, women, and everyone else.

On the issue of the two-thirds gender rule, I want us to be alive to Article 38 of the Constitution. In the bill of rights, every Kenyan has a right. Any amendment that touches on the bill of rights must go to a referendum and not through a parliamentary initiative. What does this mean? It means that we do not want to engage in the ping-pong business like what happened with the BBI. Therefore, to address the two-thirds gender rule in this House, this must be done outside the confines of the Constitution, through Parliament, within the confines of the Independent Electoral and Boundaries Commission (IEBC) and the political parties of Kenya.

We need to sit down as a nation to realign this so that it will be a win-win for Kenya as opposed to messing with the 2010 Constitution. The President has very good intentions, but we need to realign and adjust them to fit the system.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Very well. Hon. Irene Mayaka.

Hon. Irene Mayaka (Nominated, ODM): Thank you, Hon. Temporary Speaker. I want to give my remarks and comments to what in my view is a proposal from the President. I do not want to imagine that this is the beginning of a process of initiating constitutional changes from him.

First, we have heard very many Members in this House castigating what Azimio la Umoja-One Kenya Alliance has been doing in terms of the people *barazas*. There is no rule in this country that says that you cannot have courts of public opinion when speaking to the people of Kenya. Whether the office of the official opposition is there or not, nobody prevents anyone from speaking to the people of Kenya.

On my comments to the President's Memorandum, in my view, he took the BBI proposal, went through it, liked what he saw and he decided that he also wants to give an opinion on it. I do not fault him for that because some of the things he mentions here that were in the BBI are fantastic suggestions that would put this country at a very good place.

On the two-thirds gender rule, remember this is on Article 81(b) of the Constitution, but it has never been properly implemented. The Article does not give the meat and specifics of how this should be done in a proper way.

*[The Temporary Speaker (Hon. (Dr)
Rachael Nyamai) left the Chair]*

*[The Temporary Speaker
(Hon. Peter Kaluma) took the Chair]*

In my view, we need to have a holistic review of the Constitution. The other day when we were in Mombasa, a clerk-assistant from Canada gave us an example of a compelling political process they have in their country. Political parties are made to select and put aside specific constituencies for women. That way, the two-thirds gender rule is achieved. This is one of the ways we should be considering to resolve this issue. We have had excellent examples of women who have come to Parliament through the affirmative action being elected. Others have even been elected as governors, for example, Governor Cecily Mbarire. Others who have been elected as Members of Parliament include Hon. Millie Mabona and Hon. Martha Wangari, just to name but a few. I like the fact that some of our male colleagues recognise the fact that soon it will be the male child who will be fighting for this two-thirds gender rule. As things are, the women are winning these seats very fast. We have shown good examples out there and people are selecting more women.

Hon. Temporary Speaker, on the issue of the leader of the opposition, again, I will refer you to the BBI. The spirit behind the BBI was that as a country, we should never have a situation where the winner-takes-it-all. The BBI not only advocated for the office of leader of the opposition, but also budgeted for a shadow cabinet. Ideally, what the President is proposing right now, the courts already ruled that these initiatives cannot come from the President, which I do not agree with. However, we respect the decisions of the court. This is a matter that should be taken back and prosecuted through public participation and a decision reached. It cannot come from the presidency. As I said, these are his ideas and proposals. They are rightful, but this is not the process.

When it comes to cabinet secretaries coming here for questioning, I agree with the Members who said that this would render our committees irrelevant. Part of the work

committees do is to question cabinet secretaries who appear before them. If we start bringing cabinet secretaries here, committees will become irrelevant.

The BBI proposal was that 50 per cent of our cabinet secretaries ought to be Members of Parliament. Through this process, it would be much easier for us to question cabinet secretaries and for them to be held accountable. The other process the President is proposing is, in my view, a back door and a shortcut towards bringing back the BBI to Parliament. That should not be the case.

On the Senate Oversight Fund, I agree with my colleagues. Ideally, this should be the Parliamentary Oversight Fund. Our colleagues here brought a very good Motion that was committed to a committee. I think we should follow that process. The proposals in Article 34(a) to (d), which cover the NG-CDF, the NGAAF and additional funds, including the Senate Oversight Fund, is something that we should give priority. We should enact it into law to become the Parliamentary Oversight Fund that covers both the Senate and the National Assembly.

I conclude by saying that we should, as a House, not be encouraging such very pertinent constitutional reforms to come through opinions and memos. We will be setting a very dangerous precedent in this country. This ought to follow the right procedure. I encourage Members of the Justice and Legal Affairs Committee, as they proceed to look at this matter, that it does not matter whether you are from the Kenya Kwanza or the Azimio side, they should do the right thing. Set the right precedent. As my good senior, Hon. Governor James Orendo, once said, the Government eats its own children. This thing will one day eat you if you are not careful with it.

I submit.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Ndindi Nyoro, Chairperson of the Budget and Appropriations Committee.

Hon. Ndindi Nyoro (Kiharu, UDA): Thank you very much, Hon. Temporary Speaker, for giving me the opportunity to give my views about the communication by the President. As you said before, this is a general debate. We are just giving our views. There is no voting yet. I will talk about a few issues. Number one, I am very elated by the President's view that corresponds with the views of this House that the NG-CDF is so important an institution and fund that it can no longer be left hanging to the whims of the people. That it cannot be left to be buried from all sides by people who do not understand its importance in so far as Kenyans are concerned.

The NG-CDF is not an Member's kitty. The NG-CDF is a community fund. It has been a very helpful and far-reaching fund in this country. Many countries have come to benchmark on it and implemented the programmes that we run in this country. A majority of the projects we see completed across every corner of this country are NG-CDF sponsored. Kenyans are getting value for their money. In fact, if you go around the country, you will hardly identify a stalled project funded by the NG-CDF. This is because the processes are very thorough, especially concerning the money that is set aside for development. That Fund is protected and only five per cent is left for other things other than development, say, recurrent expenditure for the office of the administrator.

Today, I came to this House late because I was in Kiharu yesterday and part of today, and I am still talking about the NG-CDF. We have launched a programme we are calling Kiharu Masomo Bora Programme which covers all day schools in Kiharu. It caters for 14,000 learners in 60 institutions. Through the NG-CDF, we have optimised the fees, the requirements of the school and the money required per student. We have scaled down to only Ksh1,000 per term the fees payable by parents per student. Only Ksh1,000 per term. We have done this by optimising the supplies schools get. If we pool the NG-CDF money and other resources

together, we will be able to aggregate all the supplies, say, stationery, other educational needs and meals.

Out of the Ksh1,000, because of the Kiharu NG-CDF and other stakeholders, all learners should take the 10 O'clock tea or *uji* in school. Learners will get lunch and it is not *githeri* every day, but three days, *githeri* and three days, rice. We will also provide 10 O'clock tea on Saturdays, so that all learners remain in school for six days a week. I am talking about Kiharu because this is an NG-CDF project. There are many such kind of projects across the country because of the thorough oversight by Members of this House. Money can now reach the corners where people need resources and Government support. Therefore, anchoring the NG-CDF in the Constitution is a very noble course. Some of the projects we undertake like the Kiharu Masomo Bora Programme the one I have just talked about, will need to be sustainable. For the sustainability of the NG-CDF programmes and projects, we need to be sure that this kity is here for posterity. Our planning is not just for today. They are plans for the future too.

I want to say something about the Senate Oversight Fund. I have had a privilege to serve in the Budget and Appropriations Committee where we appropriate over Ksh370 billion to our counties. Some of the money can unlock our local or village economies, and our taxonomies across all counties if only these funds are expended in a manner that stimulates the economy. Unfortunately, the bulk of this money goes into paying salaries and recurrent expenditures. The amount that survives takes off through the leadership.

Hon. Temporary Speaker, we need men and women who will be the eyes of Kenyans in regards to how counties expend public money. That will go a long way in giving our Senators enough strength in terms of funds to move around, to question and to do all manner of audit. I am not talking about audit in terms of books. I mean audit in terms of projects conducted or undertaken by counties in regards to value for money and usage in terms of how these programmes help Kenyans.

Therefore, it is good enough for us to extend these funds to Senators. They are doing a very good job. We need to support them to watch over the bulk of the money in the counties, which is close to Ksh400 billion. In fact, if county funds were expended the way we do with the NG-CDF, the national Government would be left with very little to do. This is a lot of money in our villages supporting education, healthcare and all the other functions that we and the county governments conduct. Therefore, it will be a good thing if we support our Senators and give them the tools that they need to conduct thorough oversight of our counties. That is important.

On the issue of the two-thirds gender rule and the office of the Leader of the Official Opposition, I want to talk broadly about them with regard to democracy. Our democracy has come from far and we are becoming a champion in the region. Looking back at the inception of democracy, democracies that are properly anchored are democracies that grew after countries developed state bureaucracy. Democracy came after the State existed. Countries that have democracy coming before the State never experience stability. However, countries that first experience a strong state bureaucracy and then democracy comes in to check them usually thrive. You cannot check a State that does not exist. Therefore, it is important that even as we talk about strengthening our democracy through the two issues that the President has communicated, we realise that for a democracy to thrive, a State needs to be strong.

For us to move out of the politics of static and toxic identity, we need to create other fluid identities. Currently, our politics is domiciled in tribe and ethnicity which is toxic and there is no movement. However, if we create industrialisation and a good economy, we will have other identities like where we work and levels of education which are fluid because anyone can move from one area to another in terms of identity.

Therefore, we are in the right direction by checking our economy. As we build on that in terms of governance, our democracy will be premised on an economy that thrives and a people who are already engaged in being active agents of our economy.

Thank you. I submit.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Ndindi Nyoro, I want to call upon all first time MPs to visit Kiharu and see for themselves what the NG-CDF is doing for the Kiharu people under your oversight. As a person who has seen it, I know it is good.

The gentleman from Nyando, Hon. Jared Okelo.

Hon. Jared Okelo (Nyando, ODM): Thank you, Hon. Temporary Speaker. Allow me, from the outset, to welcome back my colleagues, the Office of the Speaker and the secretariat in general having been at home during our recess for the last two months. On the same breadth, allow me to express our collective frustration and resentment, as a House, on this matter of NG-CDF. Before we went home for our recess, the Cabinet Secretary for Treasury made an undertaking that from the 9th day of December 2022, Ksh2 billion will be expended to our accounts every week. By now, every individual constituency account should be having Ksh80 million. The Cabinet Secretary has walked back on all the promises he made. Up and until the time we showed up in Mombasa during our induction and staged a small go-slow, we had not received anything.

This House is a co-equal branch of Government with the Executive together with the Judiciary. This House has gone into lengths to midwife and legislate pieces of legislation from the Executive without any inordinate delay. However, we are where the Executive makes promises to us that it never respects. Today, the Executive will come out to ask us to pass the Supplementary Estimates I of 2022/2023 Financial Year. I want to ask this House to refuse to pass this Supplementary Budget until the entire NG-CDF monies are wired into our accounts. Why do I say this? Most of our children who solely depend on the bursaries are still held up in homes without any recourse and we are here passing every piece of legislation and agenda from the Executive. I want this House to stand strong and refuse to pass the Supplementary Budget until all the monies are submitted.

Back to the course, there are four issues that have been raised by William Samoei Ruto with regard to his Memorandum to the Speaker of the National Assembly on oversight, office of the official opposition, the NG-CDF and gender representation. If you read Article 255 of our Constitution, apart from the NG-CDF, all these proposals must go through a referendum. As you alluded to during your contribution, there is nothing illegal and unconstitutional about the NG-CDF Act of 2015. However, we still want to anchor it in law so that it can be solidified in a way that no court in this Republic will once again tinker with it as we have seen in the recent past. So, I am afraid that if we carry out an omnibus legislation and include the NG-CDF in the proposals as advanced by the President, then the NG-CDF Act may face the wrath together with all these three proposals as presented by the President. Therefore, I want to ask that we decipher issues. If it is about the NG-CDF, let it be a stand-alone advancement of a proposed legislation. Let us not lump it up with the rest of the proposals that are likely to face a problem with the Judiciary branch of our Government. I want to ask that even as the Departmental Committee on Justice and Legal Affairs (JLAC) retreats to look at these proposals, let the NG-CDF be a stand-alone. Let it not be together with the rest.

It should not be lost on us that the reason why the Building Bridges Initiative (BBI) died at the Supreme Court is because the former President, Uhuru Kenyatta, gazetted a team that went around the country collecting views on changing certain constitutional issues. Therefore, the mere fact that the President gazetted that team, the entire BBI died in the hands of the seven judges of the Supreme Court. Now, President Uhuru only gazetted; he did not do anything else. We have been invited by William Ruto by way of a letter to the Speaker of the National Assembly to consider changing the Constitution. He has not only written a letter but

also included a memorandum and suggested areas where changes should be made. I am very afraid that if it goes before a court of law – and indeed it will through the civil society - this thing will be dead on arrival just because President Ruto has put his hand in the proposed changes to our Constitution. We also need to see the amendments for what they are.

There has been a proposal to bring back Cabinet Secretaries in this House. What does that, therefore, mean? That the work of oversight committees will die. What will be the role of Parliamentary Accounts Committee (PAC) and Parliamentary Investments Committee (PIC) if the Cabinet Secretaries can personally present themselves before this House?

This is an elaborate process of killing the role of the Opposition. You understand when you talk about the Public Accounts Committee (PAC), PIC and all oversight committees, only the Opposition can occupy and dominate those committees. By killing those oversight committees, you inevitably kill the Opposition. So, on one hand, we are being conned to get into a trap by allowing Cabinet Secretaries to come here, killing the oversight roles while, on the other hand, we are being told we also need the role of the Leader of the Official Opposition in this House.

I think we are smart and can avoid being brought in this conundrum. This is something that will go before the Republic and Kenyans will have to voice their concerns on this matter. I do not know how prepared Kenyans are to increase the number of the female gender in this House by 100. How will this feed into the national budget at a time when the country is suffering? Yet, the Cabinet Secretary for the National Treasury came out to say the country is broke. At the same time, we are also saying we bring in 100 more women into the National Assembly.

Hon. Temporary Speaker, in order to cure this because it is important that this House is balanced, why not compel political parties during their nomination processes to have an equal number of women and men inside this House? So, at the end of the day, we do not lump up additional budget in the House but only cure the number of women brought by way of political parties. This way, we will adhere to the law and side-step the idea of pumping in an additional Ksh10 billion in the budget of the National Assembly or the Senate.

Hon. Temporary Speaker, with that, I thank you for giving me the opportunity.

The Temporary Speaker (Hon. Peter Kaluma): Thank you very much. Hon. David Gikaria, the person under whose charge our environment is protected.

Hon. David Gikaria (Nakuru Town East, UDA): Thank you Hon. Temporary Speaker and good friend. First of all, I rise to support this Motion. Hon. Temporary Speaker, when you were giving your remarks or contributions, I followed keenly and to some extent, you did not convince me on one of the aspects which you alluded we should look into critically, so that it does not land in the courts and is thrown out because of a few legal technicalities.

I agree with you that the President is only inviting us to give our views since this is not a Bill but a proposal. Of course, he is a gentleman and not “Mr. know it all”. He wants to pick a few things from you, Beatrice, others and me. He wants to understand if we are in a true presidential system and then how do we bring the Opposition in Parliament. These are issues he wants to look at critically and make a decision after actual legislation.

Another issue I agree with you is we should look at this devoid of politics. Let us avoid politics when discussing because sometimes we play to the gallery and forget what this House is meant to do. I totally agree with you that we need to look at this request devoid of politics so that we can give our best.

Did the President mean well when he made this request through a memorandum? I want to say yes. He meant well for this country because he has seen what is ailing it. He has just given us a proposal and it is up to us to improve it so that we can achieve what he intends for this country. The first thing I want to address, and which has been said by many speakers, is whether we need to have a referendum.

Hon. Temporary Speaker, I have learnt a lot from you, Hon. Otiende and others. If you look at Article 255, it guides us on how to amend the Constitution. It says a proposed amendment to this Constitution shall be enacted in accordance with Article 256 which is through Parliament or 257, and approved in accordance with clause (2) *via* referendum which gives the procedure of collecting at least 20 per cent of registered voters signatures and things like that.

As Members of Parliament, we need to look at if this proposal relates to any of the following mandates. As we debate, this country has become a country of politics almost every other day. We have just come from elections and now this. We need to see if we will go the parliamentary way to avoid politics which comes with a referendum.

Hon. Temporary Speaker, we will go for a referendum under Article 255 (1) if this proposal touches on: (a) the supremacy of this Constitution; (b) the territory of Kenya; (c) the sovereignty of the people; (d) the national values and principles of governance referred to in Article 10 (2)(a) to (d); (e) the Bill of Rights; (f) the terms of office of the President; (g) the independence of the Judiciary; (h) the functions of Parliament; (i) the objects, principles and structure of devolved government; and it goes on. It is important for us to see if this proposal will go to a referendum or we can make the amendments here. These are the critical issues we need to look at.

Of course, Article 255 (2) gives the process of how a referendum should be undertaken. We also need to ask ourselves why the President is doing this. We should go back to the Constitution and look at the authority of the President as enshrined in this Constitution, his functions and, lastly, decisions. Again, this will inform us looking at what the President has proposed whether he is legislating or is a requirement by law.

If we look at Article 131(1)(e) of the Constitution on the authority of the President, it states that he is a symbol of national unity. So, is he doing this for purposes of individual gain? Article 131(2) (c) talks about the President being a symbol of national unity. So, is he doing this for individual gains or as a symbol of national unity? He is doing it as a symbol of national unity.

Article 131 (2)(c) says

“The President shall promote and enhance the unity of the nation.”

All the proposals for amendment to the Constitution and in the Presidents’ memoranda... The President has been given a mandate by this Constitution to undertake these functions. Those are the things that we will be checking on at the end of the day.

Secondly, Article 132 talks to the Functions of the President. Article 132 (1)(c) (i) says and I quote:

“Once a year, the President shall report, in an address to the nation, on all the measures taken and the progress achieved in the realisation of the national values, referred to in Article 10.” That is also a function of the President and it is what he has done.

Article 132(2) (b) says and I quote:

“The President shall nominate and, with the approval of the National Assembly, appoint, and may dismiss the Attorney-General, in accordance with Article 152.”

The Attorney-General is a legal advisor to Government and the President. I doubt the Attorney-General has failed to do his part to provide the President with that aspect of legislation.

Lastly, Article 132(4) says...

The Temporary Speaker (Hon. Peter Kaluma): Thank you Hon. David Gikaria for ending your presentation. You remind me of the late Hon. William Chepkut who would recite all provisions without reference. Can we have Hon. Clive Gisairo of Kitutu Masaba?

Hon. Clive Gisairo (Kitutu Masaba, ODM): Thank you Hon. Speaker for allowing me to contribute to these proposals by the President. I will start with the most touching element, which is the National Government Constituencies Development Fund (NG-CDF). All Members who spoke today have spoken about the importance of the NG-CDF. I will continue to reiterate that this is not money for the Members of Parliament. We are here as representatives of constituencies. When we speak, we are speaking on behalf of our NG-CDF committees back in the constituencies. We are here to ensure that those committees and the fund managers have funds to provide services to the constituents. Having this in the Constitution is a priority. We thank the President for believing in the same. The NG-CDF committees need these monies in their accounts. The Government, through the Treasury, promised to be releasing Ksh2 billion weekly. That was in November. To date, only Ksh10 billion has been released. The financial year is coming to a close. We should stand firm as a House for the sake of our constituents.

For the Senate oversight, we have been having the Constitution in force for the last 10 years. I would like to ask whether this is a new role or it has been there for the last 10 years, for us to decide on how to frame it. If we say it is an oversight role, the question will be if Senators have been overseeing the counties or not.

The National Government Affirmative Action Fund (NGAAF) goes without saying. It plays a key role. NG-CDF alone cannot touch everyone. There are some key elements that it leaves out, the vulnerable, the women and the young girls. We need to let matters that are close to our women be handled by the women. As we ensure the NG-CDF is in the Constitution, NGAAF cannot be left behind.

Implementation of the two-thirds gender rule is a dicey one. We have daughters and we are husbands. We know the importance of having women in leadership and all positions to help shape this country. We need to be extremely careful to reach there. We need our girls to grow up knowing that they can also be competitive. I would like to look at it differently. On the women representative position, instead of saying we can nominate them, why not say the first 47 go through then we look at the difference in the House and the top countrywide fits in to balance the equation? That way, our girls will grow up knowing that it is not easy and they have to be competitive. Academically, girls are currently almost outshining boys in schools. Let us not make it any different out here. That is the only way we will have our daughters fit in this society without thinking they are getting handouts.

On the position of the Leader of the Official Opposition, as many have said, we are a presidential system and we have to make our choices. It could be hybrid. Let those who are contesting for presidency contest for Parliament and the one who wins can then resign and the one who loses takes the official role as the Leader of the Official Opposition in the House. I have listened to the Leader of the Majority Party sometimes making jokes about this side. Meeting the people is part of our role. You cannot say you are in Government because you are sitting on that side. You are in Parliament. All legislators are here to play their representation, legislation and oversight roles. Our Leader of the Majority Party, Hon. Kimani Ichung'wah, should be our leader in ensuring that we play our oversight role to the Government. He does not have a responsibility to defend the Executive. He should ensure that the Executive delivers on its mandate.

Actually, he should not be called the Leader of the Majority Party; he should be called the Leader of the House. The moment we start throwing rocks back, saying that we are meeting the people out there, we will say it is the way we would like it. We can meet people in markets or arrange prayer meetings. All are meetings. We are meeting the people and the agenda is the same. So, the Leader of the Official Opposition has no place in the current setup of the Constitution and there is no way we are going to sneak it in.

As one Member said, it will be a tragedy if one day the President has a minority in the House and his Cabinet Secretaries have to come to the House. He will need a lot of oxygen to

resuscitate them. They will literally be lynched. Oversight is the role of Committees and we need to leave it that way. Unless we want to do away with Committees, we have no business having Cabinet Secretaries in the House. Committees are powerful enough to represent this House. With the numbers in this House, we will never have enough time to interrogate a Cabinet Secretary. The best way is to let them be dealt with at the Committees level. There are no shortcuts.

If these proposals are to come to the Floor of the House, let them come as separate Bills so that if any of them falls on the way, it falls alone. If we include all these proposals in one Bill, we risk placing NG-CDF on its death-bed, something we as parliamentarians should not allow.

Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Thank you. Is Hon. Joseph Emathe, Member for Turkana Central in the House? He is not there. Hon. Dido Raso, the Vice-Chairperson of the Departmental Committee on Administration and Internal Affairs.

Hon. Ali Raso (Saku, UDA): Thank you very much, Hon. Temporary Speaker. I rise to support the Memorandum by His Excellency the President. Kenya is a unitary State and the President is the Head of State. By dint of the Constitution, the President is the most powerful person in the land. It is we the people of Kenya who have given him those powers. He can use his powers to get things done by hubris or manoeuvre his way to get things done.

The President, who was also a Member of the National Assembly representing Eldoret North for many years, has decided to approach this House and say: "Hon. Members, I think there is a lacuna in our Constitution and we need to think differently and get things done." He is approaching this House to have a conversation. He tried to extol at length how useful the Fund is, its importance and that without the National Government Constituencies Development Fund (NG-CDF), we, as Members of Parliament representing single-member constituencies, are sitting lame ducks. For that reason, it is incumbent upon us to realise that we cannot have our cake and eat it.

The President has touched on the National Government Affirmative Action Fund (NGAAF). The honourable ladies in this House will approach their constituents who are a larger number than the single-member constituencies that many of us in this House represent. A lot is expected of them including NG-CDF bursaries, taking mothers and fathers to hospital, taking orphans to schools and even sometimes buying wheelchairs. That takes a lot of resources and it calls for strengthening of that particular office if we must make something out of it.

To fix the conundrum of the NG-CDF, the President has said that we should put it in the Constitution so that the vicious litigants year-in, year-out, will not take Parliament to the courts.

It is the same on the issue of the Senate Oversight Fund. Senators oversee 47 counties that are given about Ksh370 billion annually, which is a lot of money. Without oversight and anybody raising a finger, that appears to be money going down the drain. We all come from counties that are raking in billions of shillings year-in, year-out, but you do not see where the money goes. Somebody must look at those resources and tell the citizenry that something is disappearing. In the absence of giving Senators those powers to go around and engage with county governments and the citizenry, we are throwing good money after bad money. It must stop somewhere. The only way this can be stopped is by Senators not going to kneel down before Governors, but by them appearing to be watchkeepers on behalf of Parliament.

On the issue of gender, for those who have been in this august House long enough, our women colleagues have approached us severally to talk about this issue of the two-thirds gender rule. But we have sat on our hands and yet the reason why we have increasing numbers of women Members of Parliament is because we have given a few, through affirmative action, the hands upon which they are able to stretch the muscles of other young women leaders.

Unless this is entrenched into the Constitution and we look for a formula to get enough women to this House, it will be impossible for them to get the chance to occupy the highest offices in this land. We should not appear to be giving women favours or handouts. Let them be given the opportunity to exercise their leadership in this House. The thinking that the President has brought on board is noble and doable and as a House, we must rise to the occasion.

Finally, with regard to the issue of the Leader of the Official Opposition; people can deny it but for a country without opposition, the Government can tend to do what we saw happening after the handshake. Initially, we had a very strong and robust opposition in the last Parliament but, as soon as there was a handshake, the opposition was killed and the Government of the day did whatever it wanted to do with hubris and a despotic approach to many issues. For that reason, I think when we borrow from other jurisdictions, which we have done before for instance from the United States of America (USA), or the United Kingdom and we have seen that it is the opposition that puts the Government on its toes, that will be a good move.

I think we, as a House must, for once, put aside our political philosophies that sometimes are not Kenyan. The different sides of the divide borrow different philosophies. But we do what is good for this country. Finally, as I said on the Cabinet Secretaries appearing before the House, severally, the Chairpersons of different Committees have been coming to the Floor of the House with statements and reports. We ourselves have been challenging those Members to the extent that we tell them that they are just messengers and, therefore, will not convince us. Now, the President is saying he wants to give us his Cabinet Secretaries to come and respond to our Questions and we are saying no. So, sometimes, we must ask ourselves what is it that we really want as a House.

That you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Thank you. Hon. Members, we have barely less than 30 minutes to go. So, I want to encourage those of you who are going to get time to be as targeted as Hon. Dido Raso. If you can be done within less than 10 minutes, do it so that other colleagues can get the time.

Hon. Beatrice Kemei, the gentle lady from Kericho County.

Hon. Beatrice Kemei (Kericho County, UDA): Thank you, Hon. Temporary Speaker for giving me this opportunity to contribute to this general debate on the proposal by H.E. the President to Parliament to consider amending the Constitution. Many Members have spoken about the same. I want to start by appreciating what the Members have said. The constitutional amendment is not something new. The first Kenyan Constitution has been amended severally. Even the USA has amended its constitution around 27 times, and India over 90 times. This shows the importance of amending the Constitution is actually to adjust provisions that are inadequate and to add to that shows that amendments are necessary to correct the national weaknesses and, of course, to adopt the changes that come with it.

In this case Hon. Temporary Speaker, just the way other Members have spoken, there was the BBI that, of course, had some good part of it. I remember the President looked at it and spoke about it where he said there is a good side of it and there are those areas that needed to be corrected. However, it never saw the light of the day. So, in this case Hon. Temporary Speaker, I want in a very special way to appreciate the fact that it is coming to us to look at and speak to it.

The four issues that His Excellency the President has forwarded to us to speak to are very important. To start with the NG-CDF and NGAAF, I want to appreciate the Members who have been here before. They have worked hard using the NG-CDF and NGAAF. Hon. Ndindi Nyoro, in a few minutes, told us what he has done with NG-CDF. I want to congratulate him for that and many other Members. However, I was only in a way unhappy and disappointed

that he never mentioned NGAAF, the National Government Affirmative Action Fund. But I appreciate the Members who have spoken to it.

When we were in Mombasa, we realised that we did not have a distinction among the majority, minority and the Government. All of us spoke to these very important funds. Even now, back in the counties and constituencies, we have children who, while others have gone to school, they are waiting for the bursaries. When the President proposed that it be anchored in the Constitution, it means that we will not be having people going to court against it; we will not be having people speaking against it and with this knowledge that NG-CDF and NGAAF, Members of Parliament just oversee it. I wish Hon. Oundo was here so that I can let him know that Women Representatives are also Members of Parliament. He talked of Members of Parliament and Women Representatives. We are also Members of Parliament.

NG-CDF and NGAAF have done so much. The only difference is that the Women Representatives are given slightly less than Ksh7 million NGAAF per constituency, while the Members representing single constituencies are given over Ksh130 million, I believe. But even with the Ksh7 million, it has done so much. We take care of widows, single mothers, orphans, elderly and even children. We also fight gender-based violence which not only affects women and girls, but also affects boys and men. So, I support that NG-CDF and NGAAF should actually be anchored in the Constitution. Same to the Senate Oversight Fund. I support it. Why am I saying so? If we look keenly, we will realise that people who go to Senate from what I hear from the village, are people who are already satisfied. They already have what they need. They say that there is no money in the Senate, but they do so much oversight. So, I also support that.

On the two-thirds gender rule, we waited in the 12th Parliament for Members of Parliament to pass it. The unfortunate part of it is that it was not passed. This time, I have been listening to Members but others are not sure of what the President's proposal on the two-thirds gender rule means. From what I understand, of course, I know it will still come to the House. It is not that we will have many Members to fill the space, but we shall not have extra Members. That is why some Members were saying that they do not want to have 10 billion. It is not that, if we have 47 Members, the top up from nomination should come from the gender which has less representation in the House. And this does not mean that it is only women. I do not know why there is this misunderstanding that when we talk about the two-thirds gender rule, it is talking about women and we are not lesser. It is only that, from the past, people did not understand women and their abilities.

I appreciate that we have women Cabinet Secretaries, Principal Secretaries and the many Members of the National Assembly and Senators. With time, people will understand. It is very interesting that, even back in our constituencies and counties, people say: "Let us have a seat for women - which is the Women Representative seat - and then the other seats are for men. Let people understand that women also are leaders. I will appreciate when this is anchored in the Constitution. It will give women strength. Do not forget that we have also been speaking and talking about the boy child. At the moment, as Members - including myself have said - I know girls are working very hard in schools. When results come out, girls are doing well. We have boys who need to be mentored and encouraged. We, in future, do not know which gender is supposed to be assisted. That is the more reason this two-thirds gender rule should be upheld in the Constitution.

I very strongly support having the Leader of the Official Opposition appreciated and having an office. Having a strong opposition is key to, at least, give checks and balances in the functioning of government, give constructive criticism of government's policies, plans, Bills, laws and the programmes of the government, and even make the government to work for the people, support social welfare and do good to the public. Having an opposition leader and that honourable office is key. With this, I believe people will not be talking of a handshake or *mkate*

nusu and that people will not be against a leader coming out to the public and to *barazas*. People will not say it is because they are looking for this position. They will have their honourable place, maybe in Parliament. It will be good for them.

Finally, Cabinet Secretaries being in the House is not a bad idea. However, as much as we have Committees that we may not speak to and may not have time, we will want to listen more of what the President has in this. Up to the end of five years, some of us may not know who the Principal Secretary or Cabinet Secretary was. We may not know their abilities.

The Temporary Speaker (Hon. Peter Kaluma): Is Hon. Josses Lelmengit, the gentleman representing Emgwen in the House present? Let us have Hon. John Gitonga of Manyatta Constituency for five minutes.

Hon. Gitonga Mukunji (Manyatta, UDA): Thank you, Hon. Temporary Speaker. Let me say I am privileged to give my opinion on this Memorandum. I will not waste any time. I will go straight to my thoughts.

Firstly, the President has conjured a very good debate - a debate that is enriching what we are supposed to be doing in this House. The issues that the President has brought across in this House are not to his benefit. As a matter of fact, I am looking at all these issues and see them benefitting this House and some benefitting even his opponent whom he competed with in the last election.

Hon. Temporary Speaker, the issue of two-thirds gender rule has been pertinent in the debate in this country. Hon. Temporary Speaker, when you were giving your submission, I was very keen on your opinion of solving this issue. Yes, this issue is in the Constitution and so there is a need to know how to solve it. It is not an issue that cannot be solved. The formula the President is bringing can actually solve this thing once and for all. It will not be a wonder if the current Chief Justice gives the same declaration that Maraga gave a few years ago that Parliament should be dissolved. The more we sit on this issue, the more we lose and we will not get where we are supposed to get as the 13th Parliament. I feel that this Parliament has what it takes to look at these recommendations by the President and come up with something that can help the two-thirds gender rule to be finalised once and for all. We do not even have to talk much because we know the gender rule is a rule that can apply both ways. It is important to note that the increase that we are talking about of the few Members of Parliament will remove us from a very huge quagmire that this country has on Parliament being unconstitutional. If we do that, then I know we will be able to ensure that after the next election, we can put in the measures where the political parties can implement.

I thought I had more minutes. On the issue of NG-CDF, it is important to note that, right now, we have a big challenge. Our kids are at home and many parents are in trouble because their kids are not yet in school. Putting NG-CDF and National Government Affirmative Action Fund (NGAAF) in the Constitution will make the two Funds solid and nobody will joke with them. I fully support that recommendation. It is important to note that I would not like to put all these things together so that, when one fails, the other one will not be able to move.

The Temporary Speaker (Hon. Peter Kaluma): Thank you very much, Hon. Gitonga. The gentle lady from Moiben Constituency, the Hon. Phylis Bartoo. You have five minutes.

Hon. Phylis Bartoo (Moiben, UDA): Thank you, Hon. Temporary Speaker. I rise on behalf of the people of Moiben Constituency to make my pronouncement on the Memorandum by His Excellency the President, Dr William Samoei Ruto. I want to speak on two issues on the gender rule and NG-CDF being entrenched in the Constitution.

These issues which the President brought to the House for us to debate are very important. This is a President who has been a Member of Parliament - a ranking Member for that matter. He has risen through other ranks to become the Deputy President and to be the

President of Kenya as at present. It means that he has a lot of experience and insights while showing direction on what we need to borrow.

The issue of NG-CDF being entrenched in the Constitution is very important. Kenyans are very litigious. We like rushing to court to put bottlenecks on issues which are important to the nation. For example, at the moment, NG-CDF has a case in court. So, we are unable to initiate any development in our constituencies because the money dispensed to us is a very small percentage. It took the intervention of Members of Parliament when they were at a retreat in Mombasa to raise their voices for the Executive to decide whether they want to give us in piecemeal or not. Up to now, what we have is very little and the financial year is coming to an end.

Those Funds are very important and we need to entrench them in the Constitution, including NGAAF and the Senate Oversight Fund for Senators because they also need to be empowered. To lead people, they must have capacity and be well empowered to serve. I think this is very important and I know if we went for public participation, Kenyans are very ready to give a nod to NGAAF, NG-CDF and Senate Oversight Fund. That is because they know their importance. They have felt and seen those Funds transforming their lives. I want to underscore the fact that this is not money for the Member of Parliament. In fact, if anything, it never goes to their hands. It is for the people to develop and transform their lives. So, this should be done expeditiously and stabilised.

On the issue of two-thirds gender rule, this conversation has come of age. Since the times of the Beijing Conference, until now we are still debating on gender. Yet, we have not met the two-thirds gender rule. When we were in Mombasa for induction, we had colleagues from other parts of the world like Tanzania, South Africa and even outside Africa. They gave testimonies of how they are ahead. They have met the two-thirds gender rule but for us in Kenya, we are still struggling. It is high time we entrenched this in the Constitution and did it to finality so that we can move on to address other issues rather than going round dealing with the same issue. My time is up and I want to end there because I indicated I was making my pronouncement on only two issues.

Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Thank you for that wise presentation. Hon. John Waluke, you have five minutes.

Hon. John Koyi (Sirisia, JP): Thank you Hon. Temporary Speaker, for giving me a chance to also contribute, although there is not much time. The President of this country meant well on the four issues he wrote to the Speaker of the National Assembly for us to discuss. On NG-CDF, we get a little money for our constituencies, including you Hon. Temporary Speaker. This is about Ksh131 million compared with my county governor who gets Ksh12 billion. This is incomparable and like day and night. The work done in counties is quite different; maybe one project in a year. While you can get more than 20 something projects being done with our little money including paying fees in form of bursaries for our children. Like, in my constituency, I am paying for 5,000 children with all the money I am given.

Hon. Temporary Speaker, the Senate should be given enough money for oversight. We want the Senate to oversee this money and see where it goes to, what it does from the counties because all the billions are stashed somewhere and yet the money is not seen.

The other one is about women of this country. Girls should be allocated money. Our female Members are equally like us. Their money should not be delaying the way it has been. They should be given money. We want to see what they are also doing with their money because they have cried for long that the money delays. So, when our money comes, we would like to see our women also get that money so that we can compete to do development in our counties.

Hon. Temporary Speaker, we need to be very careful with the Constitution. You have been here with me for three terms. Remember in the 11th and 12th Parliament, we passed very bad laws. The first was the Security Laws (Amendment) Bill and the other one was the Finance Bill. It came from the retired President. Later on, we have seen and blamed ourselves that the laws we passed at that time were not good. Our President has requested us to amend and insert. It is a test to us as Members of Parliament to go through those requests. If there is one that is not suiting us, then, we shall not pass it.

If they are all good for the country, we are going to pass them. Some Members in this House – I will not say all – get excited when they see a Bill or a Motion without reading it carefully. We need to instruct them to read and understand very well so that they can get excited when they pass a Bill or a Motion that you have indeed, understood what they intend to do. It is up to all of us as a House together...

The Temporary Speaker (Peter Kaluma): Thank you very much, Hon. Waluke. The Member for Banisa, Hon. Kulow Hassan.

Hon. Kulow Maalim (Banissa, UDM): Thank you, Hon. Temporary Speaker for giving me this opportunity.

At the inception, I want to thank the people of Banisa for giving me a second term. This is due to the fact that I had initiated a wide range of transformation there, including roads, water sector, police housing, airstrip and many others.

I assure that I will work for the people of Banisa Constituency for this second term and ensure that they get their democratic dividends.

On the debate that is before us, I would like to support the Memorandum presented by the President.

Allow me to quote a book written by the philosopher Frantz Fanon called *The Wretched of the Earth*. He said: "Each generation must out of relative of security establish its mission, fulfil it or betray it." It is in fulfilling this mission that His Excellency President Ruto initiated this Memorandum. One of the items in it is the creation of the Office of the Leader of Opposition. Every country which has good democracy must have a leader of Opposition. He establishes a shadow Cabinet and shadow Cabinet Secretaries and comes up with alternative policies to that of the Government. Because of this, as a country, it is important to have the Leader of Opposition. Our Leader of Opposition is automatic today. He is the leader of the second majority party. It is none other than Hon. Raila Amolo Odinga.

I want to say something about Hon. Raila Amolo Odinga. Allow me to paraphrase from the Rivonia Trial of President Nelson Mandela in respect to Hon. Raila Odinga, who is a man of good standing and senior citizen in this country. President Mandela said: "During his lifetime, Hon. Raila Amolo Odinga has dedicated himself to the struggle of Kenyans. He fought against the Kalenjin and Kikuyu domination. He cherishes the ideal of democracy and free society in which all Kenyans live together in harmony and equal opportunity which is an ideal for which he is prepared to live, achieve and die for." It is with this befitting words that I want the Office of the Leader of Opposition to be given to our respectable leader, Hon. Raila Amolo Odinga. Therefore, I support President Ruto's initiative for the creation of Office of Leader of Opposition.

The second item is the creation of two-thirds...

The Temporary Speaker (Hon. Peter Kaluma): Order, Hon. Hassan. How many minutes will he have?

(Hon. Temporary Speaker consulted the Clerks-at-the-Table)

You will have six minutes when the debate will continue on this Motion tomorrow.

Hon. Kulow Maalim (Banissa, UDM): Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Be keen on the Order Paper because when the debate on the Motion starts, we will start with you.

Hon. Kulow Maalim (Banissa, UDM): Thank you.

ADJOURNMENT

The Temporary Speaker (Hon. Peter Kaluma): Hon. Members, the time being 7:03 p.m., this House stands adjourned until tomorrow, Thursday, 16th February 2023, at 2:30 p.m.

The House rose at 7:03 p.m.

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