

PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

THE HANSARD

Tuesday, 22nd September 2020

The House met at 2.30 p.m.

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

PRAYERS

MESSAGE

APPROVAL OF THE THIRD BASIS FOR ALLOCATION OF THE SHARE OF NATIONAL REVENUE AMONG COUNTY GOVERNMENTS

Hon. Speaker: Hon. Members, Standing Order No.41 requires the Speaker to expeditiously report to the House any Messages received from the Senate. In this regard, I wish to report to the House that on Friday, 18th September 2020, I received a Message from the Senate regarding the approval of the third basis for allocation of the share of national revenue among county governments in accordance with Article 217(3) of the Constitution.

The Message states that the Senate resolved inter alia:

“That the third basis for allocating among counties the share of national revenue that is annually allocated to the county level of governments for the Financial Year 2020/2021 to 2024/2025 shall consist of the allocation ratio and the formula”.

The allocation ratio refers to the sharable revenue allocated to the counties in the Financial Year 2019/2020 and the formula contains parameters and the respective various thresholds to be considered in determining the criteria for the horizontal distribution of the sharable revenue among the 47 county governments. The parameters contained in the formula include population, health, agriculture, urban, poverty, land area, roads and the basic share.

The Message containing the specific formula is as published by the Clerk on the parliamentary website and circulated to all Members. As you will appreciate, the basis for revenue sharing among county governments is a very critical element in facilitating the seamless execution of the devolved functions of our county governments. It is for this reason that, as soon as I received the Message, I thereupon invoked the provisions of Standing Order No.1 and existing precedents. This resulted in my immediate forwarding and committal of the Message, together with accompanying third basis for revenue allocation formula, to the Budget and Appropriations Committee for consideration. I am aware that the Clerk of the National Assembly has since published the formula in local dailies and sought submissions of public views by a way of a memoranda in keeping with requirements of Article 118 of the Constitution.

As the Chairperson of the House Business Committee, I reiterate my undertaking which I made through my Communication No.53 of 2020 on unlocking funds transfer to the county

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governments for the Financial Year 2020/2021 on 8th September 2020 and the Committee will prioritise this matter due to its urgent nature. As such, debate on the formula is scheduled to commence in the Morning Sitting of Thursday, 24th September 2020. To facilitate this, I direct as follows:

- (i) That the Clerk of the National Assembly publicises the Report of the Budget and Appropriations Committee immediately upon its conclusion, preferably before end of day tomorrow, Wednesday, 23rd September 2020.
- (ii) That the Committee tables its Report during the Morning Sitting of Thursday, 24th September 2020, to enable debate on the Senate's resolution to proceed in the same Sitting.
- (iii) Any Member with further views or proposed amendments to the formula should submit the same to the Committee as soon as possible.

Having said that, it is instructive to note that Article 217(4) of the Constitution provides that the National Assembly may, within 60 days, consider the resolution of the Senate in its determination and the basis for allocating the share of national revenue among the counties and may approve, amend or reject the resolution as passed by the Senate. An amendment or veto of the Senate's resolution will, however, require the support of at least two-thirds of the Members of the National Assembly, being not less than 233 Members of this House.

In conclusion, the approval of the third basis for revenue allocation will pave way for the Chairperson of the Budget and Appropriations Committee to move consideration of the County Allocation of Revenue Bill, 2020, soonest thereafter. I, therefore, encourage Members to make themselves available during the consideration of these businesses so as to facilitate their timely conclusion and the unlocking of funding to our county governments.

I thank you, Hon. Members.

PAPERS LAID

Hon. Speaker: Leader of the Majority Party or the Whip of the Majority Party, you have the Floor.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Legal Notice No.172 on the exemption from the provisions of Stamp Duty Act on instruments executed for the transfer of LR. No. 209/3869 and the Explanatory Memorandum from the National Treasury

Agreement between the Kingdom of Denmark and the Republic of Kenya on Defence Cooperation and the Explanatory Memorandum from the Ministry of Defence

Annual Report and Financial Statements of the National Police Service Commission for the Financial Year 2018/2019

Reports of the Auditor-General and Financial Statements in respect of the following Institutions for the year ended 30th June, 2019 and the certificates therein: -

- (i) National Safety Net Programme for Results - Project No.P131305 (State Department for Social Protection); and,
- (ii) Kenya Youth Employment and Opportunities Project - Credit No. 58120-KE (State Department for Labour).

Hon. Speaker: Let us have Hon. Tom Mboya Odege, on behalf of the Chairman of the Departmental Committee on Transport, Public Works and Housing.

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Hon. Tom Odege (Nyatike, ODM): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Transport, Public Works and Housing on its Inquiry into the use of the Standard Gauge Railway

Hon. Speaker: Next Order!

NOTICE OF MOTION

ADOPTION OF REPORT OF INQUIRY INTO THE USE OF STANDARD GAUGE RAILWAY

Hon. Tom Odege (Nyatike, ODM): Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Transport, Public Works and Housing on its Inquiry into the use of the Standard Gauge Railway, laid on the Table of the House on Tuesday, September 22, 2020.

Hon. Speaker: Next Order!

QUESTION BY PRIVATE NOTICE

Hon. Speaker: The first segment of Questions is a Question by Private Notice by the Member for Endebess, Hon. Pukose.

QPN 24/2020

INVESTIGATION INTO MURDER OF TOM WEKESA SIRENGO AT MOWLEM CENTRE

Hon. (Dr.) Robert Pukose (Endebess, JP): Hon. Speaker, I would like to ask the Cabinet Secretary for Interior and Coordination and National Government the following Question by Private Notice:

- (i) Could the Cabinet Secretary provide the status of investigation into the killing of the late Tom Wekesa Sirengo of ID No.9838943 on 11th September 2020 at around 9.00 a.m at Mowlem Centre, Endebess Constituency and subsequent injury to three other persons among them Abubakar Wekesa Barasa of ID No.11575672, a brother to the deceased, who is still recuperating in hospital?
- (ii) What steps have been taken to apprehend the perpetrators of the heinous act?
- (iii) What action has been taken against the police officers at Endebess Police Station who, on 11th September 2020 at around 1.30 p.m, declined to avail the statutory P3 Forms to the other injured persons, namely; Wanyonyi Mwachawa Nafula of ID No.9838943 and Saum Naliaka Wanyonyi?
- (iv) What urgent steps is the Ministry taking to curb increased insecurity in Endebess Constituency and in particular in Mowlem area?

Hon. Speaker: The Question will be replied to before the Departmental Committee on Administration and National Security. The Committee is advised to note that this is a Question by Private Notice and, therefore, requires a response, if possible, in the course of the week.

We now move on to Ordinary Questions. The First Question is by the Member for Lamu East, Hon. Sharif Athman. Please, press the intervention button.

ORDINARY QUESTIONS

Question No.176/2020

RESUMPTION OF CONSTRUCTION OF KIZINGITINI, NDAU,
FAZA AND MBWAJUMWALI SEA WALLS IN LAMU EAST

Hon. Ali Sharif (Lamu East, JP): Hon. Speaker, I rise to ask the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works the following Question:

- (i) Could the Cabinet Secretary explain when the Ministry intends to resume the construction of the Kizingitini, Ndaau, Faza and Mbwajumwali sea walls in Lamu East Constituency which stalled?
- (ii) When will the labourers who were engaged in the construction of the First Phase of the sea wall be paid?

Hon. Speaker: The Question will be replied to before the Departmental Committee on Transport, Public Works and Housing.

The next Question is by the Member for Kathiani.

Question No.180/2020

RE-ROUTING ELECTRICITY POWER LINES
PASSING THROUGH KAIANI SECONDARY SCHOOL

Hon. Robert Mbui (Kathiani, WDM-K): Hon. Speaker, I rise to ask the Cabinet Secretary for Energy the following Question:

- (i) When will the Ministry address the dangers posed by the main electricity power line passing through Kaiani Secondary School in Kathiani Constituency, which is endangering the lives of learners, teachers, staff and parents and further hindering infrastructure development in the school?
- (ii) Could the Ministry consider re-routing the power lines away from the school?

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

The next Question is by the Member for Moyale, Hon. Qufu, who has requested for deferment. His request is acceded to. We will move to the...

Hon. Qalicha Wario (Moyale, JP): Hon. Speaker, I am here.

Hon. Speaker: But you requested for it to be deferred. Did you assume that you had been sent home?

(Laughter)

Proceed, Hon. Qufu.

Question No.193/2020

MEASURES TO ENHANCE BILATERAL COOPERATION AND TRADE

Hon. Qalicha Wario (Moyale, JP): Hon. Speaker, I rise to ask the Cabinet Secretary for Foreign Affairs the following Question:

- (i) What measures has the Ministry put in place to enhance bilateral cooperation and trade with the Federal Republic of Ethiopia and to also foster trade and cohesion among the communities residing along the Kenya-Ethiopia border in Moyale?
- (ii) Could the Government consider operationalisation of the One-Stop Border Point (OSBP) along the Kenya-Ethiopia border in Moyale?

Hon. Speaker: The Question will be replied to before the Departmental Committee on Defence and Foreign Relations. The next Question is by the Member for Mandera West, Hon. Haji.

*Question No.195/2020*ENHANCEMENT OF SERVICE DELIVERY AT MANDERA
WEST SUB COUNTY EDUCATION HEADQUARTERS

Hon. Yussuf Adan (Mandera West, JP): Hon. Speaker, I rise to ask the Cabinet Secretary for Education the following Question:

- (i) What steps is the Ministry taking to improve and enhance service delivery in the Ministry of Education offices at the Mandera West Sub-County Headquarters that serve teachers from more than 78 primary schools and 9 secondary schools in the area?
- (ii) When will the Ministry create administrative units to be designated as educational zones and deploy Curriculum Support Officers?
- (iii) Could the Ministry consider providing suitable motor vehicle to the Sub-county office to facilitate transport of officers in the sub-county for effective monitoring and evaluation of educational programmes?

Hon. Speaker: The Question will be responded to before the Departmental Committee on Education and Research.

Question No.198/2020

STATE OF THE RAVINE–SIGORO -OCHI ROAD

Hon. Speaker: The next Question is by the Member for Baringo, Hon. Gladwell Cheruiyot. According to the paper presented to me, she has requested for deferment of the Question. She is not in the House. Her request is acceded to.

(Question deferred)

Hon. Speaker: The next Question is by the Member for Ainabkoi.

Question No.202/2020

ISSUE OF TITLE DEEDS OF LAND REFERENCE NO.77/505 AT MUNYAKA AREA

Hon. William Chepkut (Anaibkoi, Independent): Thank you, Hon. Speaker. I rise to ask Question No.012/2020 to the Cabinet Secretary for Lands and Physical Planning:

When will the Ministry issue title deeds to the owners of Land Reference No 77/505 in Munyaka area of Ainabkoi Constituency in Uasin Gishu County?

Thank you, Hon. Speaker. You are a gentle giant.

(Laughter)

Hon. Speaker: Very well. The Question will be replied to before the Departmental Committee on Lands and Physical Planning. Next Question is by the Member for Keiyo North, Hon. (Dr.) James Murgor.

*Question No.203/2020*COMPENSATION TO PERSONS AFFECTED BY
REHABILITATION OF ITEN-BURGAR ROAD

Hon. James Murgor (Keiyo North, JP): Thank you, Hon. Speaker. I rise to ask Question No.203/2020 to the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development:

- (i) When will the Ministry compensate persons affected by the expansion and rehabilitation of a 12-kilometre section of the Iten-Burgar Road to bitumen standards that was undertaken in December 2016?
- (ii) What has caused the delay in the payment of compensation despite the payments expected to have been completed by end of June 2019?

Thank you.

Hon. Speaker: Very well. The Question will be replied before the Departmental Committee on Transport, Public Works and Housing. Next Question is by the Member for Lafey, Hon. Ibrahim Mude.

Question No.207/2020

DELAY BY TSC TO ESTABLISH A SUB-COUNTY OFFICE IN LAFEY

Hon. Ibrahim Abdi (Lafey, EFP): Thank you, Hon. Speaker. I rise to ask the Teachers Service Commission the following Question:

- (i) Why has the Teachers Service Commission Office taken inordinately long to establish a Sub-county office in Lafey?
- (ii) When will the Commission establish the Lafey Sub-county office and have it staffed with requisite personnel to facilitate efficient administration of teachers' services in the area?

Thank you.

Hon. Speaker: You indicate that you need a written reply. The Question will be appropriately directed for the same.

Question No.211/2020

PROGRESS OF THE ON-GOING TRANSFER OF DEPUTY HEAD TEACHERS

Next Question is by the Member for Kitui West, Hon. Edith Nyenze who has requested for deferment. The request has been acceded to. The Question is deferred.

(Question deferred)

Hon. Speaker: The last Question is by the Member for Starehe, Hon. Charles Njagua.

Question No.240/2020

STATUS OF INVESTIGATIONS INTO THE DEATHS OF FOUR PERSONS

Hon. Charles Njagua (Starehe, JP): Thank you, Hon. Speaker. I rise to ask Question No.240 of 2020, directed to the CS for of Interior and Coordination of National Government:

- (i) Could the Cabinet Secretary explain the status of investigations into the deaths of four persons namely Melissa Okwemba (ID No. 26605088) and her unborn baby, James Otieno (ID No.27411976), and Asili Sophia (minor), and injuries to eight persons namely Benedetta Katungwa (ID No.30333697), Collins Kiprop (ID No.37431323), Beatrice Kwamboka (ID No. 28561288), Albert Nyareru (ID No.20576972), Elizabeth Nyaboke, Robinson Valid (minor), Dominic Kyoyo (minor) and David Nyakundi (minor), and damage of properties that occurred as a result of collapse of a perimeter wall in Kamongo area in Landmawe Ward, Starehe Constituency on 12th September 2019?
- (ii) What action has been taken against M/s Giloil Company Limited for negligence that led to the loss of lives of the four named persons, injuries to the eight people mentioned and damage to 38 structures that adversely affected 32 tenants in addition to action taken against the company for constant harassment of residents living in the area including threats of evicting them from their homes?

Thank you.

Hon. Speaker: The Question will be replied before the Departmental Committee on Administration and National Security.

The second segment is request for statements. The Member for Embakasi West, Hon. George Theuri, you have the Floor.

REQUESTS FOR STATEMENTS

OVERDUE EXPANSION OF KANGUNDO ROAD.

Hon. George Theuri (Embakasi West, JP): Thank you, Hon. Speaker. Pursuant to Standing Order No.44(2) (c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Transport, Public Works and Housing on overdue expansion of Kangundo Road. Kangundo Road is a major road traversing through Embakasi West Constituency and whose importance has significantly increased following the exponential increase of population living and working along the extensive road as well as motorists using the road on a daily basis.

However, the 3.9 kilometres road is currently congested and it is used by motorists heading to and from Komarock, Kayole, Njiru and other satellite estates thereby causing massive traffic gridlocks.

In addition, the Kangundo Road Fire Station and the new Wakulima Market, which will serve over 2000 traders are both located along the road, which is primarily one of the reasons that led the National Transport and Safety Authority to label Kangundo Road as one of the city's top five high risk roads.

Recently, expansion works on the road that commenced in 2019 have been below the expected standards and have done little to reduce road congestion thus necessitating comprehensive expansion commensurate to the road traffic. It is on account of these concerns that I seek for a Statement from the Chairperson of the Departmental Committee on Transport, Public Works and Housing on:

- (i) How much money was spent on the recent expansion works on Kangundo Road?
- (ii) What are the specific designs of the dual carriageway, its projected cost and scheduled timelines for expansion and improvement?

Thank you.

Hon. Speaker: Is the Chairperson of the Departmental Committee on Transport, Public Works and Housing in the Chamber or is it the case that today, Hon. Tom Mboya Odege is the one holding brief? How long will you take to respond? The Vice-Chair is here? Hon. Tom Mboya was the one who laid the papers. Hon. Wamuchomba, how long do you think it will take you?

Hon. (Ms.) Gathoni Wamuchomba (Kiambu CWR, JP): Thank you, Hon. Speaker for giving me the opportunity to respond. Unfortunately, we did not have adequate time to prepare this morning because we thought that Parliament was going to be dissolved.

(Laughter)

Therefore, allow us to have two weeks so that we can handle the matter. We are happy that you have given a statement that we are safe. We will make sure that we do what is supposed to be done.

Thank you.

Hon. Speaker: Very well. Hon. Theuri, two weeks. The Next request is by the Member for Nairobi, Hon. Esther Muthoni Passaris.

LINDA MAMA PROGRAMME

Hon. (Ms.) Esther Passaris (Nairobi CWR, ODM): Thank you, Hon. Speaker. Pursuant to Standing Order No.44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Health regarding the implementation of the free maternity care Programme commonly referred to Linda Mama.

Hon. Speaker, Linda Mama Programme rolled out by NHIF was established to primarily address challenges of high maternal mortality rate and increase access to skills, delivery services for mothers thereby, improving maternal and child health.

Through the ruling of the High Court sitting in Milimani Courts, Nairobi, Petition No.562 of 2012 granted orders in favor of a petitioner who claimed violation of their rights to health, dignity, liberty and their freedom from cruel inhuman and degrading treatment after unlawful detention at the Pumwani Maternal Hospital.

In the Orders, the Court declared that the detention of the Petitioner by Pumwani Hospital was unlawful and awarded them. The court also declared that the Government ought to take steps

including enactment of laws and policies to protect all patients from arbitrary detention in health centres in future. That, clear guidelines and procedures for implementing and waiver system in all public systems should be developed and the necessary administrative, legislative and policy measures be taken to eradicate the practice of detaining patients who cannot pay their medical bills.

While women can now access free maternity health services through the Linda Mama Programme, the Ministry of Health has failed to oversee the full implementation of the programme leading to compromise of quality medical services.

In addition, there is still no guidelines and procedures for a waiver system in public hospitals with instances of mothers being required to pay for items used during delivery and detention when they fail to pay these medical bills.

It is against this background that I seek a Statement from the Chairperson of the Departmental Committee on Health. In the Statement, the Chairperson should address the following issues:

- i. what measures has the Ministry put in place to publicize the Linda Mama Programme across the country; given that the section of the intended beneficiaries come from informal settlements, some of whom many not have requisite documentation for registration into the programme, such as identification cards or NHIF cards?
- ii. what is the Ministry doing to facilitate registration of such mothers?
- iii. what policy measures has the Ministry put in place to prohibit the detention of persons in public health facilities for non-payments of medical fees and to impose obligations on duty burials to ensure that the rights of persons seeking medical treatments are upheld.

I thank you, Hon. Speaker

Hon. Speaker: The Chairperson for the relevant Committee kindly have the Floor. Is it Hon. Mwathi? The Appropriate Chair for the Departmental Committee on Health is the Hon. Member for Muranga County. Does she have a deputy? Hon. Joshua Kutunny, the Member for Cherangany...

(Loud consultations)

They should not go round too much. Hon. Passaris, the request would be channeled through the Office of the Leader of the Majority Party to be communicated to the Committee to give the response.

Part II of this segment is some four Statements to be issued by the Chairperson, Departmental Committee on Finance and National Planning, Hon. Wang. Kindly have the Floor.

STATEMENTS

UTILISATION OF COVID-19 FUNDS, TAXES CHARGED ON PPEs, TAX EVASION AND EQUALISATION FUND

Hon. (Ms.) Gladys Wang (Homa Bay CWR, ODM): Thank you, Hon. Speaker. The Departmental Committee on Finance and National Planning received four requests for Statements from the following Hon. Members.

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Hon. Caleb Kositany, M.P., regarding utilisation of COVID-19 funds raised on Wednesday, 29th April 2020; Hon. Jude Njomo, M.P. regarding the taxes allegedly being charged on PPEs raised on Wednesday 6th May 2020; Hon. T.J. Kajwang' M.P. regarding tax evasion and repackaging of alcoholic beverages by several companies in the country raised on 6th May 2020 and Hon. Owen Baya, regarding disbursement of Equalisation Fund pursuant to Article 204 of the Constitution.

Hon. Speaker, we have provided the Members with these answers. Therefore, I will not go through every detail. I will only highlight a few points. I will also be tabling these answers so that other Members can also get an opportunity to look at them. On the response to the Statement by Hon. Caleb Kositany regarding utilisation of COVID-19 funds, this is now being tackled adequately by the Departmental Committee on Health. I know that the Public Accounts Committee has also requested the Auditor-General to do a special audit of these funds. Therefore, we might even say to an extent, it has been overtaken by events.

However, Hon. Kositany asked how the Kshs40 billion for COVID-19 which is now much more was utilised during the period of the spread and prevention of Coronavirus, which health responses were undertaken, and how much tax refunds have been made by KRA. How many elderly persons have been paid? How much was spent by the NIS during the said period and the reasons for giving out extra allocations to NIS? How much has been paid to SMEs to cushion their businesses during the pandemic? What criteria was used to identify the beneficiaries, and how many medical personnel have been recruited?

The National Treasury responded that it presented a budget of Kshs44.8 billion to cover for COVID-19 interventions in the 2019/2020 Supplementary Estimates that were approved by the National Assembly. There is a whole chart which has a breakdown of which departments were allocated how much. Hon. Kositany should have a copy of this. Therefore, I will not go through every line item because it is rather long.

The National Treasury also stated the reason this response might not actually be adequate because it is being handled by the various departments that were given this money. The National Treasury stated that, to adequately respond to the details of the issues raised by the Member, the National Treasury has requested the implementing agencies to furnish them with that information which they do not have at the moment. However, they ended up saying that on the item on MSMEs, the National Treasury was considering the comments from the Public participation for the draft PFM Credit guarantee scheme regulations 2020 for operationalisation of the credit guarantee scheme for MSMEs. The beneficiaries of the guarantee would be identified through the participating financial intermediaries once the regulations are issued. The process of boarding the PFIs has commenced in line with the Public Procurement and Asset Disposal Act of 2015. The National Treasury plans to roll out the credit guarantee scheme by mid-September 2020. All the details are with the Member and would also be tabled.

On the second question by Hon. Jude Njomo, regarding the taxes allegedly being charged on PPEs, again, it is a question for whose time has gone, now that buying of PPEs has really gone down. However, Hon. Njomo asked the KRA to confirm whether the PPEs are still subject to 25 percent import duty and why KRA Simba System is classifying PPEs under a new tariff code 6307.90. Therefore, calling for 0 percent VAT but 25 percent import duty on PPEs.

KRA responded as follows to the issues raised in the Statements to confirm that PPEs are still subject to 25 percent import duty:

The PPEs are different items classified in different tariff codes in The East Africa Community Common External Tariff (EAC CET) according to their material composition and function.

Different PPEs attract different rates of import duty or classification. The common external tariff specifies classification and import tariff rates of each of these items as agreed upon by the EAC region. Why is KRA SIMB, the system classifying Personal Protective Equipment (PPEs) under new tariff code? All goods traded through customs are classified in accordance to the world customs organization and World Trade Organization (WTO) harmonised system nomenclature which assigns special unique codes to goods or classes of goods. Custom administrations or custom unions apply the tariff rates to the Harmonized System (HS) Codes. In Kenya, tariff rates are determined by the East African Community Common External Tariff (EAC-CET) applicable to all EAC partner states.

In April 2020, the world customs organisation jointly with WHO issued classification guidelines for COVID-19 material medical supplies to its member states. The classifications have been provided again in a very long table and this is available to Hon. Jude Njomo.

Hon. T.J. Kajwang' had asked a question regarding tax evasion and repackaging of alcoholic beverages by several companies in the country. He raised the following issues in his statement:

- a. The total tax paid by the said firms between January 2019 and March 2020 and whether the firms are tax compliant and if not why,
- b. The correlation between the quantities of empty bottles and bottle caps supplied to or imported by the said firms and the amount of tax paid
- c. Whether the said firms and all their directors are involved in tax evasion and what actions have been taken against them
- d. What measures have been taken to ensure that all importers of such consignment pay necessary taxes

The KRA responded as follows: as for the total tax paid by the said firms between January 2019 and March 2020 and whether the firms are tax compliant, in the period under review the companies paid a total of Kshs976 million in import duties and Kshs1.889 billion in domestic taxes. Corporation taxes are paid on installment basis depending on the profit projection of the company. However, for the year 2019 the final return is expected in June 2020.

On the compliance status, the tax laws allow taxpayers to make self-assessments and paid the applicable taxes. In the case of non-compliance, KRA is empowered under the law to review such assessments and recover unpaid taxes as well as prosecute where fraud is established.

Regarding the companies under query, the KRA has identified various non-compliance issues through tax returns review, investigations, audit, and enforcement and has taken appropriate interventions including tax recovery measures and prosecution.

On the correlation between quantities of empty bottles and bottle caps, in the period under review, total imports of empty glass bottles and closures for the whole manufacturing sector was 330,726,713 pieces of empty glass bottles and 426 million pieces of plastic closures and paid taxes of Kshs1.4 billion. Out of the imports, 33 million pieces of empty glass and bottles and 16 million of closures were imported by the companies under query. The rest of details are there and Hon. Kajwang' has the statement.

On whether the said firms and their directors have been involved in tax evasion in the past, the authority is conducting an in-depth audit on the companies and their directors and the findings of the investigations and audit has indicated non-compliance. For Platinum Distillers, the tax

evaded was Kshs479 million resulting from undeclared volumes and stamp usage. The action taken is directors have been charged in court. The case is at Makadara, and the case file is indicated there. Assessment and demand of taxes done, Kshs134 million conceded and Kshs90 million paid; balance appealed. Two Cousins Distillers and Africa Spirits have the details. The details for Keroche Breweries are there as well.

On the measures that have been taken to ensure that all importers of such consignment pay necessary taxes, the authority has put in place several measures as indicated in the document. The document is very comprehensive. If I read it all we will sit here and we have much more pressing matters. Therefore, I will just ask the Hon. Kajwang' to go through the details that have been provided.

For Hon. Owen Baya's request regarding disbursement of equalisation fund, these were the responses: In terms of unutilised funds for the period 2015-2020. Disbursement of funds made from the Equalisation Fund to date is based on the first policy on marginalisation which identified 14 counties. The policy also recommended the criterion for sharing the revenue among the 14 counties.

Therefore, in Financial Year 2014/2015 Kshs400 million was disbursed, in Financial Year 2015/2016 Kshs6 billion, Financial Year 2016/2017 Kshs 6 billion bringing the total to Kshs12,400,000,000. The total amount expended for project implementation since inception of the equalisation fund is only Kshs2 billion. This means that there is a balance of Kshs9.9 billion that is yet to be expended.

Why has the National Treasury failed to disburse the Equalisation Fund? The National Treasury has not been able to disburse the funds due to High Court ruling that quashed the guidelines on administration of the Equalisation Fund.

When is the National Treasury expected to disburse the next disbursement? I think the long and short of the answer there is that, they are working on regulations as per the requirements of the court order.

Thank you Hon. Speaker, I have summarised as much as I could.

Hon. Speaker: Now, the people who sought these requests. Some of them are extremely detailed and I do not know whether the Hon. T.J...

Hon. T. J. Kajwang' (Ruaraka, ODM): Hon. Speaker, I am satisfied with the responses I have got from this chair and may I congratulate the chair of this committee. It looks like this committee was waiting for a competent chair as we now do because as we say what a man can do a woman can do better.

Hon. Chair I am impressed that because of this query, the KRA has gone back to its investigative and compliance checks and you now see that several companies have been netted to a tune of more than a billion in terms of taxes evaded. This has resulted in directors being charged before courts of law and we have details of those prosecutions and in respect of places where they have been taken and this is very laudable.

However, I think the Cabinet Secretary (CS) did not address himself sufficiently to question II: the correlation between empty bottles and caps or bottle tops. That is very novel and I was doing that very advisably because the ranker in my constituency, as I said here before in Ruaraka, this liquor that we are complaining about is often cheap liquor. The instructions which I heard from Ruaraka that I was prosecuting is that you find that distributors and distillers will use the bottles but after using them they regurgitate; they reuse the same bottles again in recycling. They sometimes use very dangerous substances including ethanol. The only way you can get these

people is when they declare themselves for tax. So, you need to know how many bottles per a company are related to the bottle tops because bottle tops...

(Hon. Mbadi gestures to Hon. T.J Kajwang')

When I talk about these issues, the Member for Suba South is unable to understand me because the man feasts on water and water alone so, he does not know how these issues sometimes affect some of us. Hon. Speaker, you and I, understand these things.

(Laughter)

Hon. Speaker, the bottle tops are the ones that draw taxes. So, if you can relate the two you can relate with the companies that are involved in prudent production. I have detailed information about the empty bottles. However, I do not have information on the bottle tops. So, I ask with a lot of respect that the Hon. Chair of the Committee asks for a clarification so that we get information on the bottle tops, so that we can relate to the empty bottles and have our issues prosecuted.

Hon. Speaker, you saw the other day at a place called Ndindiri, outside Ruaka – a place which the new Vice-Chair of that Committee knows – and in Gatundu where members of the public, particularly women, are crying about cheap liquor during the COVID-19 period. His Excellency the President cannot close some of these businesses forever. He closed them since February. During the COVID-19 period when liquor businesses have been closed you see mothers crying that there is a lot of illicit brew. I think it is also related to COVID-19, but for my purposes, I would wish that to happen in Ruaraka, where young people, men and women drink proper liquid which is certified as spirits and water which is blessed. I did not want to turn into Swahili and say maji *haramu*. I want them to drink water blessed by the Kenya Revenue Authority (KRA). This concerns us in Ruaraka. Otherwise, you get young people indulging in consumption of illicit brews, which is a big problem in our work industry.

Hon. Speaker, I am thankful for the response I have received except for those amendments that the Chair can look at.

Hon. Speaker: Let us have the Member for Soy, Hon. Kositany.

Hon. Caleb Kositany (Soy, JP): Thank you Hon. Speaker. It is very interesting. We know Hon. T.J. Kajwang as a very profound lawyer, but now he has shown that he is more informed about bottles and bottle tops more than his profession.

Hon. Speaker, I am not satisfied with the answer given. This is because as the Chair puts it, it was not conclusive. She has left out a lot of things. I am more concerned with payment to the Small and Medium Enterprises (SME's). She said that the various Departments have been asked to give their explanations on how they spend the money. This question was asked on 29th April. It is now five months down the line and I believe the information should be readily available.

Hon. Speaker, a lot of SME's are suffering. These are people with small businesses, who live from hand to mouth and we need to take care them. I have also seen on her response a case where some payments were made to the National Land Commission (NLC) for pending bills. It leaves me wondering where the issue of pending bills come in when we are dealing with COVID-19 funds. I want her to give a timeframe within which she will respond to the balance of the questions so that we can interrogate this matter conclusively.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Chairlady, would you like to say anything about what Hon. Caleb Kositany has said?

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you Hon. Speaker. On the issue of bottle tops and the bottles, we shall go back and find out more details about how many bottle tops and bottles are exactly. I did not know they had such high significance. I am learning that from him. Concerning Hon. Caleb, the House passed the Public Finance Management (Amendment) Bill to create the Credit Guarantee Scheme about two months ago. That amendment allowed the National Treasury to come up with regulations. So, it is upon us to push them. I have seen in the answer they say that we should start rolling out by mid-September. We need to push them because it is already mid-September. We will do that Hon Kositany.

Hon. Speaker: Is Hon. Jude Jomo in the House? I am first of all looking at Members who had sought Statements. Let us have Hon Owen Baya. Member for Endebess, do you have an issue? What are you raising your hand for?

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Speaker. I thank the Chair for her response. My main concern is on the issue of the Equalisation Fund. She responded that nothing has happened following the High Court ruling which quashed the regulations for the disbursement of the funds. She further said that the National Treasury is working on the regulations.

Hon. Speaker, the Equalisation Fund was disbursed only once, during which a sum of Ksh3.3 billion was given to 15 counties. In those counties many ordinary Kenyans have been doing works worth between Kshs3 million and Kshs5 million. Those people have not been paid since 2018. Such an amount is a small profit for them. So, if this Fund does not get money for a long period, these people will get out of the market. I want the Chair to give us a timeline within which the regulations will be in place.

I happen to be a Member of the Special Funds Accounts Committee. That is why I am conversant with the issues affecting the Equalisation Fund and the projects being undertaken in the counties, which have since stalled. They are projects worth billions of shillings. So, it is important that people from those areas realise the benefit of the Equalisation Fund.

Hon. Speaker, this Fund is supposed to be operational for 20 years from the date the current Constitution was promulgated. Ten years have now lapsed. We need to have money to undertake projects for the remaining 10 years. This is a very critical thing that the Chair, with all the energy she is exhibiting, must tackle and resolve so that we can have the regulations in place as soon as possible.

Thank you, Hon. Speaker.

Hon. Speaker: Member for Kathiani, you had something to comment on this?

Hon. Nimrod Mbai (Kitui East, JP): Thank you Hon. Speaker. It is about the Fund that we created through the amendment of the Public Finance Management Act. I appreciate the response by the Chair, but the regulations need to be put in place quickly.

Hon. Speaker, before implementation, the regulations have to be in place. The regulations should tell us how this money will be shared out. This is because we are talking about small, micro and medium enterprises. So, we need to know how the money will be shared out amongst the different cadres. We are also interested on how it will be shared out amongst the different regions in the country. It is, therefore, important that we get that information beforehand.

The Fund was supposed to have been implemented by mid-September. We are already passed mid-September, but it has not been implemented. People are meant to stimulate economic growth during the period of COVID-19. We are noticing that the number of infections is dropping. So, it is something that needs to be done in the shortest time possible.

Hon. Speaker: Member for Kathiani, you had something to comment on this.

Hon. Robert Mbui (Kathiani, WDM-K): Thank you, Hon. Speaker. This is about the fund we passed in the Public Finance Management (PFM) Act. My observation as I appreciate the response by the Chair, is that the regulations need to be hastened. Before implementation the regulations have to be in place, so they can show us how this money will be shared downwards.

This is because we are talking about Micro, Small and Medium Enterprises (MSMEs). We need to know how the money will be shared out among the different cadres. Again, we are also interested in knowing how it will be shared out among the different regions in the country. So, it is important that we get that information beforehand.

Finally, as the Chair has said, the fact is that this fund was supposed to have been implemented by the mid-September. We are already past mid-September so we are running late. This was meant to stimulate the economic growth within this period of COVID-19. We are noticing that the numbers seem to be dropping. So, I think this is something that needs to be done within the shortest time possible.

Thank you, Hon. Speaker.

Hon. Speaker: The Leader of the Minority Party.

Hon. John Mbadi (Suba South, ODM): Thank you, Hon. Speaker. I just wanted to also raise some concerns, as I support the answers given by the Chair. There is an issue which Hon. Kositany raised about COVID-19 funds. Hon. Kositany comes to *Bunge*, he is allocated a seat and immediately after his question is dealt with, he walks out. Then, tomorrow he will start raising many issues in funerals.

(Laughter)

My concern with the answer from the Ministry which the Chair read, is that the Ministry of Finance should take responsibility for funds dispersed to agencies. I can remember the issue of the Eurobond. The Ministry kept on using agencies as a scapegoat for not being able to account for that fund. So, I want to ask the Chair going forward to hold the National Treasury to account. When they disperse these special funds, they should retain accountability and responsibility.

So, they should not be passing the back to agencies. It is their duty to follow through and ensure the funds dispersed to various agencies are spent prudently and there is value for money. I wanted to answer Hon. Kositany if he was here, that the reason why pending bills become part of COVID-19 funds is because of spiral economic growth.

In this House, we passed a resolution after the President made a pronouncement that all pending bills must be settled to help the economy to grow. So, he was wondering what COVID-19 funds have to do with pending bills. It is because he is spending limited time in this House. That is a question that should not have been asked by a MP in the 12th Parliament, which passed amounts to pay pending bills.

Thank you.

Hon. Speaker: Well, as a Member of the Budget and Appropriations Committee, I am sure you are qualified to give that explanation. Let us quickly move to the next Order.

Hon. Speaker: Now, is that Hon. Sophia Abdi, Member for Ijara.

Hon. (Ms.) Sophia Noor (Ijara, PDR): Thank you, Hon. Speaker for giving me a chance. I want to thank the Chair for the response she has given today. I just want to comment on the Equalisation Fund which is a constitutional principle. The country or state has a mandate to implement it. The regulations were put in place and money released. The Chair said Kshs12 billion had been released and only Kshs2 billion was used because there were a lot of pending issues.

This was meant to be used within a specific period. It had a sunset clause with a specific period of 20 years. We have now wasted 10 years without using this fund. If we take an audit of development in this country and look back to see what is going on. We will not be sincere to the Constitution. We must be sincere particularly, on the Equalisation Fund. The Executive and particularly the National Treasury must be taken into account. They cannot bring legislation here yet we are being told Parliament will be dissolved. We are asking the Executive through the National Treasury to release those regulations immediately so we can access those resources.

Hon. Speaker: The Chair has heard because she explained that the original regulations were annulled by the High Court. So, the Chair should engage with the National Treasury to ensure new ones are developed which met the necessary criteria. Member for Garissa Township.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, this is just because today we are around the area of people who have not complied. Yet, they are accusing Parliament of not complying.

Article 204 of the Constitution is the one that establishes the Equalisation Fund and is very specific. It states that:

“(1) There is established an Equalisation Fund into which shall be paid one half per cent of all the revenue collected by the national government each year calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly.”

This is to particular marginalised areas in terms of roads, water and electricity. I am happy the Chair has, at least, given us how much has been disbursed. But I think 10 years down the line the National Treasury will be indicted by the Report of the Chair because of that disbursement. Chair, with your permission I request to get a copy. The Chair should give us the disbursement per county and maybe per constituency.

We need to see within the 10 years – and of course we had the court case. The court has been gagging the Legislature, Executive and many other institutions. I think, within the 10 years that the Equalisation Fund has been operationalised, the release of funds to constituencies and counties has not been very prudent. But on this one, Parliament legislated the usage of that Article on the Equalisation Fund. An Act of Parliament was passed and so, I hope the Chair will push the Cabinet Secretary to build regulations and the people in tandem must get it.

I thank the Chair for the answer. Only that we need to know which counties got the Kshs9 billion. The Act specifies which counties should be given this money so they can as well reach the other parts of the country in terms of development.

Hon. Junet Nuh (Suna East, ODM): On a point of order, Hon. Speaker.

Hon. Speaker: I see some intervention from Hon. Junet. Is it on this?

Hon. Junet Nuh (Suna East, ODM): On a point of order, Hon. Speaker. No, it is not on this issue. I had an issue I wanted to bring to your attention and the House. That a catastrophe has visited this country and specifically this House raised by the Chief Justice of the Republic of Kenya.

Yesterday in the news, I saw the Chief Justice has advised the President to dissolve Parliament. I also saw documents circulated by Parliament, with detailed information that you shared with the Chief Justice. I came to realise that either the Chief Justice did not read your detailed information or ignored it. This is because if he had looked at it, he would have advised the President otherwise and not to dissolve Parliament.

The longest arm in exercising the sovereignty of the people of this country is Parliament. It is the arm in which Kenyans directly exercise their sovereignty. When we are told that this Arm

of Government can just be dissolved at the whims of one person, it really pains people. There are many issues that need to be canvassed because this is not a decision of one person. Each of the Members you are seeing here were elected by the people of this Republic. They are all carrying the mandate of the people of this country.

Unlike the Executive or Judiciary who go through the process of appointment and some of them are even vetted in this House. This is the only organ of government that is directly vetted by the people themselves.

(Applause)

These are issues I want to raise because I felt that the Chief Justice either ignored or decided to close his eyes on them. Maybe this is because he knows he is going home and wanted to release a bombshell and then go home. So that, the person who comes after him can handle the aftermath of that bombshell. He is leaving with a bang.

When Kenyans passed the Constitution in 2010, they gave us five years to legislate on the issue of the two-thirds gender rule. The question that has been going through my mind for the last 24 hours is: Which Parliament was to do that legislation? Was it the 10th, 11th or 12th Parliament? This is because under Schedule V, it was supposed to be in five years with one extension of one year only. I am serving in the 12th Parliament. The Parliament that the Chief Justice should have dissolved is the 10th or 11th Parliament and not this one. He is mistaken. The Parliaments that should have been dissolved are parliaments that have passed and not this one. It is in the Constitution. It is the 11th Parliament that he should have dissolved. Immediately after they approved it in the 11th Parliament, the first business they should have conducted was to dissolve that Parliament and not this one. The Constitution has moved on.

Article 27 of the Constitution talks about the State providing a legislative mechanism of party action. It is not talking about Parliament. How does the State provide? They do so through a referendum. We cannot conduct a referendum as Parliament. How does he want us to increase? Article 97 says the National Assembly consists of 290 Members of Parliament from single member constituencies, 47 women county representatives and 12 nominated members. You can achieve the gender parity in the 47 women and the 12 nominations. How do you achieve gender parity in a fixed constituency of 290? If we were to accommodate more people, then that means we have to change the structure of Parliament and we require a referendum. How do we increase our numbers by bringing more women to increase the gender? Even if we were to do it, our hands are tied. Honestly speaking, I am not a lawyer, but I did not understand where the Chief Justice is coming from. Sometimes I am mistaken to think that maybe he wants to run for the governor of Nyamira and so he wants to be a very popular man in town here. Honestly speaking, it occurred in my mind. He must be up to something.

Actually, the other day, the Chief Justice appeared before the Departmental Committee on Justice and Legal Affairs. One of the issues that was discussed was his succession. A precedent was set by the President of the previous Supreme Court and the former Chief Justice, Hon. Willy Mutunga. He left office six months before the expiry of his term for good governance purposes so that the Judiciary can have time and space to go through the process of nominating, through the JSC, the new Chief Justice. The Chief Justice told the Committee in my presence: "I am going to leave on 12th January at midnight. That is when my term is ending. Before that, I am in office." He even said: "I am going to go on terminal leave on 12th December for one month, but even in that one month, I am just on leave and I will be working from home." It is on record. The *Hansard* is there. I was shocked. In fact, an issue was raised there that for the four years he has been the Chief

Justice, he has never gone on leave. They were saying that cumulatively, he has four months to go for leave. So, the four months should have begun in August. I do not know whether this advisory now is valid. This is because if you were supposed to be on leave and you are issuing an advisory at this point in time when your time has expired, how can somebody take your advice seriously? For example, when Parliament goes for the long recess for the elections in May and then you issue your communication in July, who will take your communication seriously and we are on the ground campaigning?

Hon. Speaker, so these are both constitutional and legal matters. I want to indulge Members here that this country cannot be put under constitutional or judicial activism. There are many laws we have passed here that the High Court has suspended. One time we passed the Cyber Crimes Act. It went to the President for assent. It was assented to and then the courts stopped it. Two days later, the Chief Justice was complaining that bloggers are attacking him on social media. As a House, we cannot be under siege. I have seen people outside saying: "Parliament must go home." Go home where? We are going nowhere for sure. Our term ends on 9th August 2022, the second Tuesday of August. The Constitution says elections happen the second Tuesday of the 5th year. Which election is this that Maraga is asking for now? In which constitution is it found? The Constitution is very clear that elections happen in this country on the second Tuesday of the 5th year of the parliamentary term. Which election is this? I want to ask is one question. Even if we are to go to elections within 60 days, how are we going to achieve the gender parity? This is because Kenyans will still elect more men than women. It is for a fact. These are issues that we should have discussed in a constitution amendment and processes like the BBI – the reggae. How are we going to solve this constitutional crisis by just having an advisory to the President? The President has no power to dissolve this House. We are not a creation of the President in the first place.

With those few remarks, I urge this House to stay calm. We are going nowhere. That is an advice to the President. The President is not a member of this House. We are run under the Parliamentary Service Commission under the chairmanship of the Speaker. If you dissolve this Parliament, I will go home, but anybody else outside there is just dreaming in this country.

Thank you, Hon. Speaker, but I urge you to indulge some few Members. There are some eminent lawyers here like Hon. Kaluma. Mine was not legal. Mine was *jua kali*. So, now you can look for the lawyers here.

Hon. Speaker: It is good to be calm. There is no need for panic. Let me hear a Member who was an active and foremost member of the Committee of Experts, the Member for Rarieda.

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Thank you, Hon. Speaker. This is a matter which I have agonised and I have summoned both the collective memory of the Committee of Experts, the interpretations that would abide by this and the Chief Justice's advisory to the President.

From the outset, it is true that Article 262 is clear. It is true and we have considered this before that it was possible that the Chief Justice could advise the President to dissolve Parliament. Now it is no longer a possibility. It is a fact that has happened, but the goodness with that is that the Chief Justice is now *functus officio* on that issue. Having been *functus officio*, we can now express ourselves in terms of our view on how the President should handle that issue of the advice.

The intention of Article 262 was well meaning. It was supposed to encourage Parliament to be able to facilitate those pieces of legislation that would encourage the achievement of the two-thirds gender principle. It was not contemplated, certainly not by us, that we could have a situation where the effect of that is to disrupt the entire nation. In other words, I am unable to agree with an

interpretation that would precipitate a bigger constitutional crisis while trying to solve a small constitutional crisis. It is on that reason that I believe that although the CJ has advised the President to dissolve Parliament, that particular advice should not be adopted. It should not be adopted for a number of reasons.

First of all, there is no timeline and, therefore, we can use that time to prudently examine what is to happen. The reason it should not be adopted is this. If you look carefully at our Constitution, all the elections are lumped together on the same day. The President is to be elected the same day when the governors, Members of Parliament and MCAs are being elected.

All of them are elected on the same day of the general elections. And that date is given. Any consequence in my view, of dissolving Parliament, must of necessity dissolve all those other bodies including the presidency as elected. That would then mean that we would not just be talking of a crisis of Parliament, but a crisis of all other institutions. Then we come to the second and a bigger difficulty. If that is to be solved, for the President who is serving his second term and the governors who are serving their second terms and who by the Constitution would be barred for further running, for this particular one, will they be eligible or not? That is a constitutional question that must be determined beyond just advising the President to dissolve Parliament.

We are in even other problems as we speak today, the Independent Electoral and Boundaries Commission (IEBC) is not properly constituted. The Justice and Legal Affairs Committee (JLAC) only considered the draft Bill which is yet to be presented on how to appoint other commissioners of the IEBC. Which IEBC will be able to conduct those elections in their immenseness to the satisfaction of the Constitution? Therefore, I find that we are in a situation where what was intended to be solved, ends up being a smaller constitutional issue than what will be created because we would have to determine whether they are eligible. That is why I support the Parliamentary Service Commission (PSC), I support the move to go to court for further interpretation. We must have that further interpretation clearly before we rush to the issue of dissolution.

Three weeks ago, I urged the leadership of this House that there is something else we can do in the meantime. The problem with Article 262 is the timeline. That we were unable to pass the legislation within six years. I suggested and I still want to suggest to the leadership that we can consider amending Article 262 and simply move from the six years to 10 or 15 years or whatever the case. The whole issue would have gone away. We do not even need a referendum for that.

As I close, I want to suggest that these are the kind of issues that are ideal to be considered in a referendum when you are amending the Constitution and especially when we understand from the perspective of His Excellency the President and the former Prime Minister that the Building Bridges Initiative (BBI) Report is about to be released. That would be a good occasion to consider the death of this matter. If you are to take that advice now, we will plunge into a deeper constitutional crisis. Therefore, my view is, that advice, well-meaning as it might be, is advice that should not be taken because we will be in a crisis.

Thank you, Hon. Speaker.

Hon. Speaker: Do I see Hon. Duale wants to weigh in?

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I also want to confirm after your statement of the PSC that there is no danger. Together with Hon. Keynan, Hon. Mbadi, Hon. Kioni and others, we were also in the 10th Parliament. I would like to take the country down the memory lane. In the 10th Parliament, this matter was brought to the Floor of the House by the then Minister of Justice and Constitutional Affairs, Hon. Martha Karua. It was rejected. We were only 212. Later on, in the 10th Parliament, the late Minister for Justice and Constitutional Affairs, Hon. Mutula

Kilonzo brought it to this House, it was also rejected. As the former Leader of the Majority Party, I tried twice in the 11th Parliament.

Parliaments world over, any jurisdiction at the end of every question, the Question would be put to Members, it will be either the “Nays” or the “Ayes” to have it. I look at the House of Congress, our counterparts in the presidential system. If you look at the House of the Representatives, the Congress in the US today they are at 23.7 per cent in gender representation. Before that, they were stuck at 19.1 per cent in terms of gender representation.

Based on Article 1(3) of the Constitution, I was elected by the people of Garissa Township and a Chief Justice or a President by strike of a pen cannot declare my seat vacant. It is as clear as that. It is not the Chief Justice who voted for me. Those who were in the 10th Parliament, this matter... I wish the Hon. Sophia was in that parliamentary committee. If you look at Article 1(3) of the Constitution, it delegates the sovereign power of the people to among others, Parliament.

Further if you read Article 94 (2) of the Constitution, clearly again, it indicates, that Parliament represents the will of the people. We represent the will of the people. The Chief Justice cannot become a Chief Justice without a due diligent process of this House. If you look at Article 94(1) it also confers the legislative authority on Parliament and that authority is derived from the people, the people who woke up at 5.00 a.m., to vote for all of us.

My advice to Members of this House is, a time will come when we must have a unity of purpose. Even if you do not talk to your women representative or your colleague, a time will come. The Judiciary has a unity of purpose. The Executive has a unity of purpose, but the Legislature over a period of time, does not have unity of purpose.

This is the time, in fact, Hon. Otiende Amollo, why should we bother with extension of 15/20 years, we will delete section 2...

(Loud consultations)

The effect of the advisory ...if we are talking about ...

Hon. Speaker: Order Members. Hon. Millie Odhiambo you seem to have forgotten suddenly that we are still in the House and you have not yet been sent home. Just relax.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, the effect of dissolution of Parliament as contemplated in Article 261(7) could be to prematurely cut short the term of Parliament thereby precipitating a general election. I read some lawyers including the president of the Law Society of Kenya (LSK) saying, by taking the legislature back to election, it is not a by-election, it is a general election. A general election is when the House closes full swing. If we go to a general election, the only general election contemplated in the Constitution is in Article 101(1). It says every second Tuesday of August, every fifth year there will be a general election. That applies to the President in the reading of Article 136, it applies to governors in the reading of Article 180 and it applies to county assembly members within the reading of Article 177.

There is a difference between intelligence and wisdom. That is why I tell people, the former Chief Justice, Willy Mutunga was a man who was misunderstood. He was a man with a lot of wisdom. I am sure wherever he is, he could not have done this. There are things you do that even if the Constitution is explicit on them, you must look at other factors such as public interest. There must be wisdom.

With a lot of respect, I do not want to discuss the conduct of the Chief Justice, but within the reading of Article 261(7) that he has followed, he must answer a number of questions. I am happy we are going to court to look for interpretation. He is the President of the Supreme Court,

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which is in violation of that gender principle. The other head of the Executive, the President, is in violation of the same principle. We have three arms of Government; the Legislature, Judiciary and Executive. That is why the Chief Justice should have considered whether the Constitution envisages another form of election other than the general election held on the second Tuesday of August every five years, as envisaged under Article 101 of the Constitution

Hon. Speaker, I have been elected to this august House three times. The people who elect me most, my loyal supporters, are women. Every weekend, I go to Garissa and the women of Garissa Township do not know anything about this two-third gender principle. They do not know.

(Loud consultations)

Hon. Speaker, I must be heard as the Member for Garissa Township. Even this weekend, I will go. If you listened to the vernacular media stations last night, women in my constituency asked me why is Parliament... The Member for Kisumu must know that I am a ranking Member and I am the Member for Garissa Township. I am no longer a leader.

Hon. Speaker, progressively, and you said it on television that from the 10th Parliament to the 12th Parliament, the number of women leaders has been increasing. Hon. Millie Odhiambo is a classic example. She has won elections twice. Hon. Sophia Noor is here, from the most conservative constituency, together with Hon. (Dr.) Naomi Shaban. We cannot create a Constitution that gives free seats to one gender. We cannot. Unless we agree, as a country, to change our electoral system and go on party list. If we go on the party list, the Rwanda way, then we can talk about it. But as long as you come to this House through universal suffrage, if you want to stand in Kipipiri Constituency, you must be ready to face Hon. Amos Kimunya, the Leader of the Majority Party. If you want to stand in Garissa Township and you are of the opposite gender, prepare to face me. There is nothing for free.

The other thing that I want to raise which is very important, as I conclude is that we need unity of purpose as the Legislature. What the Chief Justice has done to the President was described very well by an economist by the name Mr. David Ndi, one of the many people who were tweeting last night. He said, "Justice Maraga has given the President a grenade when he has removed the pin". That is what Mr. David Ndi tweeted. This morning when I said my 5.30 a.m. prayers, I decided to watch television. I listened to - I do not know whether she is around, she was somewhere here - Hon. Gladys Boss Shollei. I want to tell my colleagues here that you cannot blame this matter on the 12th Parliament. If you were in the 11th Parliament, you saw what I went through, myself, as the Leader of the Majority Party. In the 10th Parliament, Hon. Adan Keynan, Hon. John Mbadi, Hon. Jeremiah Kioni and Hon. Amos Kimunya will tell me what the late Hon. Mutula Kilonzo went through, may his soul rest in eternal peace. In fact, every time we were discussing the Bill, the women went to New York. At one time in 2008, there were over 32 women who were missing.

Hon. Speaker, we should not be bothered by an advisory opinion. We will deal with it the way the Parliamentary Service Commission has done. Let us continue with our function, but when we enter the precincts of Parliament, let us behave the way judges and magistrates do when they enter within the precincts of the Judiciary. There is unity of purpose. I can tell you, and I am not a lawyer, but my tweets last night, and Hon. Junet - in fact, the only legal mind in this country who spoke for this Parliament is Grand Mullah. We were waiting for Grand Mullah to tweet until 9.00 p.m. I do not know what he was planning.

(An Hon. Member spoke off record)

Was he researching? Where I come from, Grand Mullah is an authority. The word “mullah” is in the Islamic jurisprudence. When there is a contention you go to that man. So, those of us who are Members of Parliament from the Muslim areas were waiting for the Grand Mullah and he has put it very well.

I think Hon. Otiende Amollo does not want to offend the Judiciary because he is a customer. I am not a customer. I do not do business there. When your job is at stake, you must stand up. Our job is at stake. Somebody wants to cut our five-year term irregularly through fraudulent means without looking at the Constitution holistically. I have no problem with Article 261(7), but you must tell me and interpret what we should do with Article 1(3), Article 94(2), Article 94 (1), Article 101(1), Article 136, Article 180 and Article 177. All these Articles must be read together for the Chief Justice to make a decision. The Chief Justice cannot just read one Article and advise the President.

With those many remarks, I want to speak for my constituency. The men and women of Garissa Township brought me here. They are not aware of what is going on and I want to confirm to them that I am their Member of Parliament until the next Member for the 13th Parliament is sworn in here. In fact, Hon. Junet is wrong. Under this system, when the next Member is sworn in is when you lose your seat. So, until another Member for Garissa Township is sworn in, in the next election, I am still their Member. I do not want to talk about Parliament, but I want to speak to the people of Garissa Township. I do not want to listen to Hon. David Maraga because he did not vote for me. I have never seen him in the voters’ register of Garissa Township. In fact, the President is the person I voted for and I want to tell him, please, do not listen to the Chief Justice because we have some business to do for the Government and we will continue.

Hon. Speaker: Very well. Let us allow everybody to say their bit. There is no need of interrupting anyone. In fact, you may wish to be reminded that under Article 102, when does a term of Parliament end? What is the practice the world over? Each outgoing Parliament has to review the Standing Orders, not for itself, but for the other Parliament because it is deemed to be different. That is why in many jurisdictions, what may have been obtained in another term cannot be considered by any other Parliament.

We are discussing the issue of gender parity. You will allow me to also hear some different voice. Member for Suba North, I can see you are itching to say something. Please, do.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Speaker for giving me this opportunity.

From the outset, I agree with the decision of the Hon. Chief Justice. I speak as a lawyer and as someone who comes from a gender activism background. There is nothing wrong with being a gender activist. We are all activists for our constituents. I am an activist of Suba North, of fishermen and of gender. I have no apologies for that.

Parliament has done its bit. We have brought several Bills before this House many times in the past. Parliament has expressed itself. Parliament does not have to express itself in only one direction. Parliament can say yes or no. Parliament has said no. Parliament having said no, the matter moves to a different authority. The different authority is the Chief Justice. Nobody insulted Parliament when it made its decision. The Chief Justice has also made his decision based on Article 261(7) of the Constitution. It is nothing personal. If we really want to help this country and this House, let us depersonalise the attacks against the Chief Justice because he is doing his work. He extricated himself and has finished his work. That is why Hon. Otiende calls him a *functus officio*

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in this matter. The matter has now gone to the President who will either decide to dissolve Parliament or not, because there is that lapse in the Constitution about timelines, he can choose to dillydally. If he wanted to help Parliament, for instance, he can choose to dillydally.

Let us be very serious in the way we deal with this issue as a Parliament. The reason is that we will deal with the matter legally. The Chief Justice has also dealt with the matter legally. However, there is also politics. Once it has gone to the President, none of us can say with authority that they know how the President will deal with it. He can actually dissolve Parliament. Once he dissolves Parliament, you go home. I am not scared. I am willing to go home. I am willing to be elected or thrown out because it is not about me. One thing I am very sure about is that even if I am not elected, somebody from Suba North will be elected. The issue is about standing on principle. I stand on the principle of gender equality.

Having said that, in my view as a lawyer, people have been talking about what kind of elections we can have. There is the general election that Hon. Duale referred to. He said we need to read. I do not want to recite all the authorities that he is talking about. There is the by-election that some Members have been talking about. Each one of them has its own consequences depending on how we choose to interpret it.

This Article talks about an election *sui generis* which is neither a general election nor by-election. It would be an election *sui generis*. It is not just *sui generis* for purposes of our elections, but also in the world because there is no constitutional precedent from other countries with this provision. It is actually a provision that is very Kenyan.

Just like Hon. Otiende who sat on the committee, I also have legislative history and know why we came up with this. Legislative history will show you why we came up with this. I sat on the Constitutional Implementation Oversight Committee in the 10th Parliament as the Vice-Chair. We rushed to ensure that we passed this because of this Article in the Constitution. The reason we did that is because we were concerned about Parliament failing to pass certain laws as has been the history in the country.

Let us be sober. I urge that we come up with a team in this House to look at this matter from a very sober perspective. The only thing I agree with Hon. Duale is the issue of unity of purpose. This is not because I fear going back home, but because we need to be sober in the manner in which we deal with this issue. It is not a men-versus-women campaign or fight. It is an issue that is of interest to Kenyans. I know very many male Members have been calling me asking me not to support the two-thirds gender rule because I am elected. It is not about me as Millie Odhiambo. It is about a principle. That is why, for instance, we had the impasse at the Senate about revenue. The revenue impasse was about minorities and minority communities that felt left out. Those are the same challenges that women, persons with disabilities and the youth face. When we start using this kind of approach, we will cut them out forever. Let us be sober and give a working solution.

I do not have a problem with the Parliamentary Service Commission going to court because it is their right. However, even as the Commission goes to court, which may buy us some time, let us also be alive to political realities and get a small team from among parliamentarians with diverse views and seek a way out.

Hon. Speaker: I needed to hear Hon. Millie Odhiambo because we spent some little time arguing as to why Article 100 should not have been the first attempt before you end up with the very many attempts to amend Articles 97 and 98 of the Constitution.

Finally, this National Assembly, under the leadership of Hon. Kioni, brought the necessary legislation. Reading through the report, one can see that there was consultation across the board.

Many stakeholders were consulted when that Bill was being developed. All that we are waiting for is for the Senate to deal with the Bill. I only hope that the Senate will not put it in the coolers because we need to move. That Bill addresses the issue of representation of women, youths, persons with disabilities, minorities and the marginalised. That Bill was supposed to be enacted within a period of five years. I have said severally that that is one law that should not have taken this long. Hon. Millie Odhiambo and many of her colleagues would know that we have had arguments about whether that is the route to go or whether we should go the route of amending Articles 97 and 98 of the Constitution.

Hon. Keynan, you wanted to weigh in.

Hon. Adan Keynan (Eldas, JP): Thank you, Hon. Speaker. I agree with those who have said that we need to have unity of purpose. This issue of gender equity has been around since time immemorial.

When the Chief Justice of the Republic of Kenya issued that edict - whether it was administrative or judicial, I do not know - what came first to my mind is what happened to this very important principle called national interest? There are certain things that cannot be documented or written. In any civilised country, national interests outweigh any other interests whether written or unwritten. We just have one by-election pending in Msambweni. Even the body that is tasked with conducting elections realised that with this pandemic, holding one special election was difficult. Here, somebody comes and says that we should go back for a general election.

In many other jurisdictions, there used to be something called judicial gerrymandering. Ideally, the other two arms of Government are supposed to be off-shoots of Parliament. That is what the framers of the current Constitution had in mind under Article 1. Even the framers of the current Constitution did not want to take an explicit position on the issue of gender equity. This issue was referred to the Judiciary. The Judiciary never wanted to take a position yet they expected Parliament, which is a product of one man, one vote, to come up with a formula that none of them, whether in the civil society or the Judiciary wanted to take a position on.

Hon. Speaker, this means that the failures of the individuals in the two other arms of Government want to reduce Parliament to a punching bag. This is one thing that we should not accept. This is politics; it is politicising the institution of Parliament. I stand here and say that what you did yesterday was the right thing. Even all the other sober minded lawyers, including the Grand Mullah who have expanded their horizon of thinking outside the petty politics of their sectarian interests, have supported your position and that is the position that we, as the Parliamentary Service Commission take.

As the PSC, we had a crisis meeting today under the leadership of the Speaker, and resolved on your behalf to challenge this thing in all the possible courts. That is the mandate of the PSC. It is not something that we want to do out of the blue, but it is something that we really feel must be done. How do you just wake up one morning, without giving notice to the Speaker of the National Assembly or that of the Senate, say that you have advised the President. I know the President is also the head of a civilized nation called Kenya and there is national interest.

Hon. Speaker, I am told when you want to be celebrated and honoured by international players and in particular the international actors in the name of Non-Governmental Organisations (NGOs) you must do something so radical that you become covered sensationally in the newspapers. I think this is what they thought. I do not want to discuss the details or the content of what the Chief Justice did but if you dissect it, is it not meant to trigger something else outside the

pending retirement? That is the essence. Therefore, Parliament is the easiest institution to use as a punching bag.

I beg you. It is not about your eligibility. It is not about whether you will be reelected or not. It is about the principle of Parliament being used as a punching bag. I was there in the 10th, 11th and now in the 12th Parliament. How comes it failed the attention of all those who were there to sort this out. Why would you attribute it to Parliament? Why do you want to negate the very principle of free and fair election? If the people of Eldas decide to have a lady as their representative, they will have it. If they have decided to have Hon. Aden Keynan as their representative, then that should not be impaired at any circumstance.

For the sake of this institution, I know we will not be the last Parliament and we are not the first, Hon. Duale has alluded to this. They tried it in the 10th Parliament. Martha Karua was one of the best gender activists equivalent to Hon. Millie. She was the Minister for Justice. She had an opportunity to fix this issue because the circumstances at that time were easier; they did not do it. They left it to Parliament. It came to the 11th Parliament but it did not happen. It came to the 12th Parliament and it did not happen. Somebody wants to spoil our image. This is one thing that we must reject.

Hon. Speaker, when in a crisis like this - the whole world is now affected by the COVID-19 pandemic - where will the money to conduct a general election come from? We all know where we are right now. In conclusion, this is not a matter for so-and-so. Please, let us debate and approach it soberly, so that as a House, we address this issue with an open mind.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. (Dr.) Chris Wamalwa, you may have the Floor.

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): Thank you, Hon. Speaker, for this opportunity. It is very disturbing. I want to quote Martin Luther King Junior. He said: "The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy"- like now.

I was very affected and perplexed by the ill premature advice from the Chief Justice. Why do I say so? We are aware that on this matter of the two-third gender rule in 2017, there was an order that was given by Justice Mutivo and the Chief Justice knows that in two weeks' time, there is going to be a hearing to determine whether that order was applicable in the 11th Parliament or in this 12th Parliament. What was the hurry for? That is why I am saying it was a challenge. Is it because he is about to retire in three months' time? Is it because he wants to go down with the BBI?

Hon. Speaker, even the Supreme Court judges do not subscribe to the two-third gender rule and we know that. There is no two-third gender rule in the Cabinet itself. This Parliament has worked extra hard to achieve this. The many legislators who are shouting outside there, particularly, our female colleagues, should stop pretending. We have been in this Parliament and at the time of voting, when the Bill was here, they were in New York, to gain allowances as opposed to advancing this.

Hon. Members: No! No!

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): It is really shameful for those of you. If you push me, I will mention your names. The two-third gender rule was not achieved because of their selfish interests. This is the time we want to debate this matter soberly.

Some of you in the 12th Parliament were not there in the 11th Parliament. Hon. (Ms.) Wanga was one of the leaders who went to New York at that time and she has been shouting all over. We can go and check the itinerary of the flights. She could not stay here and debate this matter.

Hon. Speaker: Now that you have mentioned Hon. (Ms.) Wanga, it is only fair...

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): She was among those who went to New York at that time.

(Hon. (Ms.) Gladys Wanga spoke off record)

Hon. Speaker: What is it, Hon. (Ms.) Wanga?

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Speaker, I have been in the 11th and 12th Parliament. I have been in this House when Duale I, Duale II, Duale III and Duale IV were shot down. I want to challenge the Member for Kiminini that he either withdraws his assertions that I was in New York - yes, I have been in New York - but I have never been in New York at a time when this House is voting on a critical matter as the two-third gender rule. I have been here every time.

So, Hon. Speaker, for the sake of my good name, I urge that Hon. (Dr.) Chris Wamalwa either substantiates what he saying or withdraws that statement. This matter is for all of us to resolve it together. We will not get to the bottom of it by attacking, badmouthing and trying to put each other down. We will only resolve it with the unity of purpose that the Hon. Adan Duale mentioned.

I urge you to ask Members that even as we debate to try not to drag each other down because it is not by pulling each other down that we will find a solution to this very important matter. We have our views on it which might be different from Hon. (Dr.) Wamalwa's but, as you have said, you may not agree with what I say, but you will defend unto your death as I know you, my right to say it as an elected Member of this House. Even if we do not agree, let us not bring each other down because Hon. (Dr.) Wamalwa, you and I need to be somewhere after.... *Sasa unaleta nini?*

(Laughter)

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Thank you, Hon. Speaker.

Hon. Speaker: Hon. (Dr.) Wamalwa, please and any other Member, let us not try to tarnish each other's names.

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Thank you, Hon. Speaker. This is a House of records. If you allow me, I can go to the *Hansard* and prove Hon. Wanga wrong because I was here and I support the two-third gender rule and that is why I was so keen. So, you cannot go to the media shouting loudest and yet you contributed to the unsuccessful passage of this Bill. If you allow me, I can go to the *Hansard* and prove it.

As I move on...

Hon. Speaker: Hon. (Dr.) Wamalwa, it is not personal.

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Hon. Speaker, as we move forward, as you have said, this is about unity of purpose.

(Several Members spoke off record)

I cannot withdraw. I will go to the *Hansard* and substantiate.

Hon. Speaker: Hon. (Dr.) Wamalwa, if you insist on that record, then you will have to go down...

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Hon. Speaker, under our Standing Orders...

Hon. Speaker: Hon. Wamalwa, you are responsible for the accuracy of what you say. So, if you have that *Hansard*, please, table it.

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Hon. Speaker, if you allow me, I will go and look for the *Hansard* of the particular time when the matter was live on the Floor of this House. I can substantiate if you give me time.

(Hon. (Ms.) Gladys Wanga spoke off record)

We will discuss when we come to that time. Please, allow me to go and look at the *Hansard*.

Hon. Speaker: Hon Wamalwa, do you have that record?

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): The *Hansard* is there, Hon. Speaker. If you allow me, I will go and get the *Hansard*. I do not have the *Hansard* as I speak.

Hon. Speaker: So, do you stand by your statement?

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Yes, Hon. Speaker.

Hon. Speaker: You will have to stop there. Because you have been challenged, we will give you time to go and look for that *Hansard* and if you do not, other consequences will follow.

(Loud consultations)

Hon. Wamalwa, you will have to stop at that point so that you go and look for that record which you have talked about. We cannot just let you say the *Hansard* bears you out. We have had occasions where Members said that the *Hansard* would bear them out, but when it was checked it did not. So, until such a time as you bring a copy of that *Hansard*, you will have to stop. The option available is either you withdraw or substantiate.

(Loud consultations)

What is the issue that you are...

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Hon. Speaker, I brought an amendment Bill to change the election date which required a super majority. I remember, because our Standing Orders allow us...

(Loud consultations)

Why do you not give me time so that I go to the *Hansard*, Hon. Speaker...

Hon. Speaker: You are now talking about a different Bill.

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): They came at a similar time, Hon. Speaker and the requirement was similar.

Hon. Speaker: Election date and two-thirds gender rule are different things.

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Hon. Speaker, this is a House of records. I know, Hon. Wanga, we are supposed to meet somewhere, God willing. We do not know who will go through.

(Hon. (Ms.) Gladys Wanga spoke off record)

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I want to substantiate, why should you force me to withdraw? Our Standing Orders allow that.

Hon. Speaker: Then go and get the record.

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Absolutely, I will go and get the record. I am ready for the consequences. We do not want our colleagues to pretend yet they contributed to the failure of the passage of the Bill on the Floor of this House.

Hon. Speaker, as we move forward...

(Loud consultations)

Hon. Speaker: Hon. Wamalwa, unfortunately, because you do not have the record and you insist on it, you will have to stop there. Go get the record and bring it here tomorrow. Hon. Kioni.

(Loud consultations)

Hon. Jeremiah Kioni (Ndaragwa, JP): Thank you, Hon. Speaker for giving me an opportunity to contribute to this matter. I have nothing personal against the Chief Justice.

Hon. Speaker: Hon. Wamalwa, bring the record to the House on Thursday, 24th September 2020 during the afternoon sitting.

Hon. Jeremiah Kioni (Ndaragwa, JP): Hon. Speaker, I have the advisory opinion from the Chief Justice. Some of the words he has used in the statement indicate different things. In Paragraph 24 of his advisory, the Chief Justice seems to accuse us of lackadaisical attitude. That is not a phrase you would use if you do not have anything specific against this institution. In Paragraph 26, the Chief Justice again says that Kenyans desire to incentivise the political elites. Again, you can actually see something a little personal against the institution of Parliament. If we have to be taught something, as political elites, that is going beyond the advice we have been talking about.

In Paragraph 27, he has...

(Hon. David ole Sankok walked across the gangways)

Hon. Sankok, you cannot just take a walk, *bwana*.

Hon. Speaker: Hon. Sankok, you do that here? You are moving all over the House. You are not dealing with wildlife here.

(Loud consultations)

Hon. Jeremiah Kioni (Ndawagwa, JP): Hon. Speaker, the advisory opinion by the Chief Justice has a typo. It is supposed to have 28 paragraphs but he seems to have repeated Paragraph 26 twice. The second one should be Paragraph 27. Again, he has said that we must be held accountable as Members of Parliament. He then went ahead to say that we must say “no” to impunity. The choice of words from Paragraph 24 all the way to Paragraph 28, seem to indicate to me that the Chief Justice or the Judiciary has kind of taken an attitude towards us. I believe even as we think of how to resolve this issue, it is important that the Judiciary also pays attention to this third arm of Government. They need to treat us with the respect we deserve. To say that we have

been carelessly lazy, as Members of Parliament, is not a kind phrase to use on people who have been elected. To say that we must say “no” to impunity, this is not a House of impunity. We have said over and over again that it is a House of record. To say that we must be held accountable, that is what we do every day. So, I see an attitude from the Chief Justice that is not helpful in resolving this issue. I do not want to go through all the words, but you can see the way the advisory opinion addresses our Hon. Speaker, there is something to grind. I agree with Hon. Keynan that we may have to look at these things more politically than otherwise.

As the Chairman of the Constitutional Implementation Oversight Committee (CIOC), I confirm that we will soon be calling the Chief Justice - I hope before he retires - to appear before the Committee because the Judiciary has failed to implement the Constitution and specifically the two-thirds gender rule. We want him to account to Parliament why the Judiciary has failed to implement the two-thirds gender rule. That is the work of the CIOC. We will also be summoning the Executive because the Committee has been given the mandate by the Constitution to ensure that every institution, including the Office of the Chief Justice, has implemented the two-thirds gender rule. I am saying this so that we can get it clearly as Kenyans. It is not just Parliament. Narrowing the issue of the two-thirds gender rule to Parliament is looking at it in a very shallow manner. I would want us to look at it broadly because that is the intention of the Constitution. Many laws were passed by this House during the 10th Parliament and the 11th Parliament as required under the Fifth Schedule. I thought those who would care would have actually commended Parliament. I have not seen parliamentarians who have passed so many laws within such a short while. The 10th Parliament and the 11th Parliament did a commendable job but nobody out there has said that we helped in a big in implementing the Constitution. Certainly, we have some areas to work on, but if you read through many of the Acts that were passed by the 10th Parliament and the 11th Parliament, you will find specific clauses that require operationalisation so that we achieve the two-thirds gender rule. So, in my opinion, there is no one specific Act of Parliament that is required for us to pass so that we can bring to fruition the issue of two-thirds gender rule.

The other thing that is amazing, which has been mention by many Members, is that we have made four attempts. Four attempts to do what? Four attempts to amend the Constitution. So, it is like we are required to write another Constitution and implement it. I want to submit that, that is a very wrong thing for this Parliament to do. We were not called upon to amend this Constitution, but to pass laws to implement it. So, even those four attempts we were making, certainly, if anybody had gone to court to challenge those amendments, he was likely to succeed. So, even as we go through this, it is important to know that, in the future of this country, there will always be activists, leaders and politicians.

The Constitution that we have is a product, by and large, of activists. We must be very careful because the implementers of our Constitution that was brought forth by activism should not be activists, otherwise, you will burn the country. We now need political leaders who understand the country so that we can benefit from the provisions of this Constitution without putting the country into the kind of crisis that we are now in.

When this advisory opinion was given, I was in Ndaragwa. Even as we were going out, you could actually tell the anxiety. An ordinary person in Ndaragwa walking at Mairo Inne asked me: “Is that really possible?” Can you imagine a pedestrian asking me: “*Hiyo kweli inawezekana?*” So, if a pedestrian could be asking about that, what is the judicial value? What is the value in terms of public good on this kind of judgement? I understand the Chief Justice has the responsibility to

discharge, but if he has to do all these things before he retires, this is one of the things he picked that will go down the wrong way in his history. I thought he had done well.

I do not want to say much because on 11th March 2020, we passed, in this House, the Act on Article 100 which is now pending before the Senate. In the advisory opinion that I have from the CJ, he is saying that he was not advised. We are here speaking publicly. The Judiciary should also know and I do not want to say much. We avoid discussing issues that are before court not because we have received any writing from the Judiciary, but because we have taken notice of what is happening within the corridors of justice. So, they should also have taken notice of what we have discussed and passed on this Floor and are in the *Hansard*. So, to do an advisory opinion and in it say that he was not advised, where at the stage at which Article 100 is, I find it a little bit, not to use the word that he has used, that is, lazy, but something bordering on that kind of a word. This is because, ideally, even his researchers should have advised him as much.

I know the President is having this and also what it means. This is very crucial, and that is why I think CJ Maraga has made a mistake. When you pass an advisory opinion of this nature to the Executive, it may affect the independency of Parliament. We are only lucky that we have a President who will sit and look at the good of the country. If this kind of an opinion was in the hands of another lazy person, he/she would hold Parliament at ransom and we would have lost our independence. We would be told: “Pass this or I send you home.” So, you are really compromising the independence of one Arm of the Government. I do not know how many other people who advise the CJ because when you compromise the independence of this House, it is a major violation and an affront on our Constitution.

Hon. Speaker, I want to agree and thank you for the decision that you took in the Statement that you issued yesterday, and the decision that was made today by the Parliamentary Service Commission. This is a good debate because it now brings this issue of the two-thirds gender rule to another level where we will not be worried about passing laws here on the Floor, but allowing the country to know that when you talk about public bodies, it does not mean Parliament. In any case, it is even plural, that is, elective public bodies. So, unless you have something against us, why punish Parliament alone? If you have something against us, then you have something against the people of Ndaragwa who elected me. I would not be here were it not for their votes.

Finally, there is no way you can do this kind of a thing. I can see he has also said that there is a pandemic, the issue of costliness and finally, he says: “There is no gain without pain.” This is not a question of pain. He is really putting us in a crisis. Once you are in a constitutional crisis, who guarantees you that you are going to get back to normalcy? Any person can decide to become rogue and lead us the wrong way. So, when you are in that position of authority, do not look for ways of causing people pain. Look for ways of giving solutions and getting us to move forward and not putting the country into a crisis.

I know, as Members of the Constitutional Implementation Oversight Committee, as I mentioned, with your permission, because the letters must go through your office, we will be writing to the CJ so that he can also come and account as to why for 10 years he has failed to observe the two-thirds gender rule within his Arm of Government.

Thank you.

Hon. Speaker: Hon. Mbadi, you have the Floor.

Hon. John Mbadi (Suba South, ODM): Thank you, Hon. Speaker. I want to start by saying that I am happy that the CJ has invoked Article 261 of the Constitution. However, my happiness is not informed by the same reasons as Hon. Millie Odhiambo. My happiness is informed by other reasons. This is a time for this country to start clearly witnessing and seeing the inconsistencies

and contradictions in the 2010 Constitution. When we were pushing for the passage or enactment of this Constitution, both the Noes and the Ayes were in agreement that there was about 20 per cent in it that was not right. The question was: Where is this 20 per cent? In fact, I do not know how we calculated and tabulated the 20 per cent, but we all spoke about 20 per cent. You can now see the 20 per cent.

I want to give myself as an example, but before doing that, I want to say that our method of electing Members to this House apart from the 12 Members is first-past-the-post. It is not proportional representation that is being practiced in Rwanda and any other jurisdictions that have moved towards realising this principle. Let me give myself as an example. In the last election at the party primaries of the Orange Democratic Movement (ODM) Party, we were three candidates. I got 12,498 votes, the second candidate who was also a man got 10,726 votes and the third candidate, who was a woman, got 506 votes. In the general election, again, I had a female competitor who only got 273 votes. What the people of Suba South including women said is that they do not mind a man representing them. In fact, female voters are over 50 per cent in my constituency. Now an individual, through the provision of Article 261 of the Constitution, is telling the people of Suba South that they should have elected either the lady who got 506 votes or the one who got 273 votes. Actually, she got 243 votes not 273 votes. That is why I am being sent back home so that they do another election. There is nothing that can be more unjust than that.

By the way, I have been religiously supporting that we provide a solution to Articles 27 and 100 of the Constitution. However, the question that I have been asking myself, and I was keenly listening to Hon. Otiende Amollo who is here, and also Mr. Nzamba Kitonga who gave his opinion is: The drafters of the 2010 Constitution provided for Articles 177 and 178 of the Constitution clearly spelling out how the two-thirds gender principle will be respected at the county assemblies. However, when they came to the national legislation, what did they do? They looked at the Senate and created 16 seats for women. After the 47, which is left to anybody to contest, there are 16 for women and another two, one a youth who is a woman and another one a person with disability. Eighteen seats were specifically created in the Senate for women. My understanding is that this was meant to help achieve or realise the two-thirds gender principle.

When they came to the National Assembly, they created a seat no one had ever imagined, the 47 County Women Representatives. No one ever imagined that there could be a position contested only by women in the 47 counties. We thought that was to realise this principle. Now, why was it so difficult for the people of Kenya to just decide that we want the National Assembly to not have more than two-thirds of either gender and the Senate the same? Why did they come up with provisions as it is in the Constitution? That is why I think, whether we say what, this principle, I want to say it here, is difficult however we try. Even if Maraga was to succeed by persuading the President to dissolve Parliament, you will dissolve this Parliament a thousand times and not get it if you do not address it through a referendum and amendment to the Constitution. In fact, I dare say, if this Parliament is dissolved, the next election will bring more men than it is today in this House.

I have heard many of my colleagues saying we should be sober. I also want to repeat that we be sober. By the way, the reason this thing has been failing is sometimes because of the attitude of our female colleagues. They are shouting when you talk on matters gender. The truth is, I know you challenged Hon. Chris Wamalwa, but the truth is that day there were a number of women Members of Parliament who were not in this House. I remember I even challenged it. I raised it that the list should be published. Hon. Speaker, you did not agree with me. Hon. Wamalwa would not have gone to the pains of bringing that list. In fact, we supported that Motion by Duale. I am

the one who seconded him. I have been supporting this gender principle religiously. We have not been having full House of women MPs in this House. Let the truth be told. They are the ones who are failing us.

(Applause)

I have never failed to be here to vote for this amendment. Most of them have not been here, many of them. They get agitated when you say that. You should not be agitated. If you were elected to come here and represent women issues, please, do it and do it properly. Do not do it out there. It does not help. You talking and supporting Maraga will not help. This House is not going anywhere. Who is this mad man person who is going to dissolve Parliament at this point in time? It is not going to be dissolved. By the way, the only route to solving this issue is the Building Bridges Initiative. That is the only route. We will talk all the language we want to say, but the only route is again to go back to the people of Kenya.

In fact, I am looking at this Constitution and I am seeing the mischief. The drafters, Hon. Otiende Amollo, with all due respect, became mischievous. They did not want to touch it because this was a hot potato. They left it. Why did they touch the county assemblies? It is very clear. It is explicit. But what did they do for this one? It is ambiguous. In fact, Hon. Speaker, if you strictly read this Constitution, even that Article 261 we are talking about, it is addressing itself to those provisions under the Fifth Schedule to the Constitution.

By the way, we were burning midnight oil here. There are only six MPs who have served this Parliament, in this Parliament, longer than I have. I remember very clearly that we could legislate up to midnight. The Leader of the Majority Party can bear me witness. We passed almost everything that was in the Fifth Schedule. These provisions of Article 100 are not even clear that it is the two-thirds. It just talks about promoting women representation; promoting youth, representation; promoting the marginalised representation; and those living with disabilities. The only Article that talks to the two-thirds gender rule is Article 27. There is no provision in this Constitution that gave timelines. It is just the same way this same Constitution, under Article 261, has left it without setting timelines to the President.

The people of Kenya wanted to take away the power to dissolve Parliament from the President. Then, we again create, in the same Constitution, power to dissolve Parliament. These are contradictions that must be addressed. I wanted to just speak to the fact that, as MPs, we do not dwell so much on whether this House is going to be dissolved. It is because I know it is not going to be dissolved. What we need to talk to now is the inconsistencies in this Constitution. Are there issues that can be addressed before the BBI Report is out? I think something can still be changed at this time. We should change them. I am not saying that we remove the two-thirds gender rule. The two-thirds gender rule is important. We need to realise it. But the method is not provided here. Now, the solution to it is the BBI. How do you give the Chief Justice that power? If you look at the debate in America currently, it is whether the President should appoint a justice in his final year. Why are we allowing the Chief Justice to make a major decision like this in his final months? Those are questions that we need to ask.

(Applause)

By the way, Hon. Speaker, with all due respect to lawyers, I am actually asking myself. I am an accountant. We are retiring at the age of 55 years or 60 years, maximum. What is the

rationale or the wisdom behind these 70 years? I am asking for lawyers. Does it mean that lawyers live longer and their minds are still sharp than some of us?

(Laughter)

That is something I am asking. I have just asked a question. There are positions which warrant that. The way I am looking at America and I am looking at some countries, I see it is with the President where we allow wisdom, an age going to 70 years or 80 years. You can see the two leading presidential contenders in America are over 74 years old. For the Chief Justice and even the Speaker, I think you should retire if you are tending towards 70 years. That is my thinking. I think you just retire and allow young people like Otiende Amollo who are also lawyers like you to sit on that Chair.

Otherwise, how do you help others to grow? That is a question that you may need to ask. By the way, we are going to constitutional amendment. Why the Chief Justice and other judges must go up to 70 years without retire. Sorry I am using you, Hon. Speaker, as an example. You know we have treated you, the lawyers, with kid gloves in this country. The Judicial Service Commission is overpopulated by lawyers, too much lawyers. How can you hold them accountable when you have too many lawyers there? That is why. Let me stop there because I can see the Chair of the Departmental Committee on Justice and Legal Affairs is getting agitated.

My final remarks or comments is that let us, as MPs, just send a strong message that we have to go back to the people for us to realise the two-thirds gender principle. Through the BBI, let us propose a constitutional amendment. It is because we also cannot just expand this Parliament beyond 349 Members. Where are we heading? There must be a give and take. We must treat the two Houses, the Senate and the National Assembly, as one Parliament. If this House is overstretched, we can get some numbers to the Senate for us to realise the two-thirds gender principle. We have to use proportional representation as a principle of electing Members. If it is first past the post as proposed, take me back home, and even if John Mbadi will not be the next Member of Parliament for Suba South, it will be another man. I guarantee you that.

Thank you, Hon. Speaker.

Hon. Speaker: I suppose you are speaking to the provisions of Article 81(b): “The electoral system shall ensure that not more than two-thirds of either gender are represented”. I do not know whether Parliament has been vested with the power to decide the electoral system or it is a function of the sovereign to choose the electoral system.

Let us have the Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Speaker. From the outset, I want to congratulate you as the Chairman, Parliamentary Service Commission, for the statements you issued this morning and the advisory you gave Members yesterday evening, that helped bring down the temperatures and fires that were being fanned by activists almost creating a situation that Parliament is illegitimate. You helped in reasserting the legitimacy of Parliament and gave facts that people did not know.

Hon. Speaker, the clamor for the new Constitution up to 2010, was about serving the greater public interest and improvement in the governance of the country. I will come back to that later. We must ask ourselves in all these issues, where is the greater public interest? We are now debating a matter that we need not to have debated if the Chief Justice did not do what he did. We would have been passing Bills. A lot of energy is being consumed across the country with a lot of anxiety and people are not sure about what is going to happen. Each Member of the National Assembly

and Senators have about 10 members of staff, so, collectively, 400 members of staff are not sure whether they are going home or not. Their families are now full of anxiety because once a Member leaves, their constituency office is dissolved. All the 4000 families that are relying on Members will have to go home. There is a bigger picture that the CJ may not have looked at. The international community is watching. With that, there might be decisions that will be made by this House that will be illegitimate. Where do you place Kenya in terms of its predictability on policy and decision making? Those are some of the fundamental issues that a responsible CJ ought to have looked at: “If I make this decision, what is the bigger implication?” It is not just enough to say simplistically that Article 261 of the Constitution gives me the right to convey a decision to the President. If it was not simplistic, the advice would have been conveyed in 2015 or in 2017 but the CJ then realised – or the advisory he had - he could not do that yet it was perhaps the best time because the elections were just around the corner. Here we are with two years to the elections and in the middle of a pandemic and a financial crunch, and all we are thinking of is to send one Arm of the Government away. You are not thinking that if we go within the 21 days, who will appropriate the money for election because we will not be there? Who will oversee the Executive and the Judiciary when you do not have one Arm of Government in place? Let me ignore the pros and cons of his decision because I believe it will be canvassed and there will be more people talking about it.

I would like to speak to the two-thirds gender principle. We were with you at the Bomas of Kenya. I was there from 2003, but I believe you were there earlier. We were with Hon. Shakeel and others. It is a very complex situation because it was not exactly legal. It was a politically expedient decision. The genesis of it was the composition of delegates in Bomas. There were three delegates from every constituency, namely, the Member of Parliament, one woman, and one man. We also had members of the civil society respecting that kind of configuration. As we were getting close in the discussion, as part of the negotiation so that Bomas could be passed, the lady delegates said that because they were one-third in Bomas, they wanted to be one-third in all the positions. That is how the one-third principle came about. It is that simple, and that is why it was not 40 or 50 per cent. It is important that we go back to history to understand the genesis of this principle.

Hon. Speaker, in Bomas the question was how to get one-third of women. Examples about Uganda and Rwanda were proposed. However, it was noted that in Uganda, it was not democratic. I am not saying that as discussing their operation. In Rwanda, the autocratic rule determines who stands, but that is not the case in Kenya. Several options were given. A clause was included that to ensure that we have women, we will have the mixed member representation. It was proposed that we forget about constituencies, the first past the post, and go the South African route, where parties would propose who vies for the seat and they will be apportioned seats in Parliament. Parties would then nominate candidates on a zebra system. The first zebra system was first discussed in Bomas – we will have a man and a woman and at any one time, you must ensure that one-third or even 50 per cent is represented. When we were in Bomas, members rejected the same mixed member representation, which was the anchor for ensuring that this one-third is fulfilled, and on which basis it had been included in Article 27, on what basis it had been included in Article 81(b) that the electoral system shall ensure one-third representation. Members said they did not want that kind of system. They wanted to elect their person. For instance, we are electing “Amos Kimunya for Kipipiri”. They did not want to be told that, as a party, you have elected Jubilee with 206 and the people have taken them. That is the basis that was said even for chairmen of councils. Remember that the chairmen of councils and mayors used to be elected by the councilors but they said they wanted direct elections. That is how governors ended up being elected directly. They

pointed out that they wanted to feel the person they were electing. It is very important to gather history.

Two Articles had been drafted with the understanding that it is a mixed member, zebra situation. Article 27(3) and Article 81(b) had been drafted with that in mind. When the mixed member system of election was dropped, nobody bothered to harmonise Article 27(3) and Article 81(b) to reflect the new situation. At the county level, it was agreed that the 14 devolved functions were very close to the people and it was important to have the people represented in decision-making. At that point, there was no debate. Because of the sensitivity of the functions that had been devolved, people in the wards needed to be represented. This had much to do with what Jefferson called the “Ward Republic”, where people get involved in decision-making at the local authority level.

In the Senate, it was the same because it was to oversee the local authority level. That is how the names were included. Remember, in the National Assembly, it was supposed to be mixed members. There was no way you could use mixed member in the Senate because for the Senate, it was to be one Member per county. For the National Assembly, each political party was to bring its people. In the Senate, the 16 women nominees do not have voting rights on county matters, but they can vote on other matters being debated in the Senate. They were to cater for other issues affecting women in the 14 devolved functions.

Be it as it may, unfortunately, Bomas did not succeed. It was defeated in 2005. In 2010, the Committee of Experts tinkered with some things in the Harmonised Draft Constitution, but forgot to harmonise the new first-past-the-post electoral system with the provisions in Article 27(3) and Article 81(b). That is why we are in this quagmire.

Under Article 1, the sovereign power belongs to the Kenyan people. It is them to determine who to represent them. So, the absence of a voting system in the Constitution created the zebra style system and any other system you put in place will contradict Article 1. I am not a lawyer, but I was at the Bomas of Kenya. I followed that discussion ever since we brought the first amendment with Hon. Martha Karua in the 10th Parliament. I was in the Government. The second amendment was brought by the late Hon. Mutula Kilonzo. I was here and we were told that the amendment would go nowhere. The amendment contradicted Article 1.

We are now in this situation and, Hon. Members, we need to figure out how we can ensure that the 30-40 per cent women representation is actualised. The Supreme Court advisory that was given in 2015 said the implementation of the two-thirds gender rule was to be progressive. It is just not about laws. It is about affirmative action. How do you empower the women out there to have the power to run for political office? It is a big issue we cannot achieve here by saying that we pass a law to actualise the two-thirds gender rule. You cannot do that without contravening the Constitution.

As Hon. John Mbadi said, this is an opportunity to do a comprehensive review of the Constitution and see if we need a mixed member arrangement, so that we can have the zebra situation or if Kenyans can afford a bigger Parliament with 80 extra women being voted in without people feeling that it is a wrong thing, so that we can get the parity that we want. That will happen at some point.

As we debate on this matter, we have 70 plus Members of Parliament who are ladies. I would like to start a conversation with them so that we can take them to a retreat somewhere for one to three weeks. We lock them up there and ask them to give us a solution on how we are going to sort out the two-thirds gender rule.

(An Hon. Member spoke off-record)

No! No! That is my proposal. At the end of the day, the question that we are asked, as men, when we say we need more women in Parliament is, those who are there, what have they done? It is me who is asked that question.

(Hon. (Ms.) Odhiambo-Mabona Spoke off-record)

I know you have done a lot. That is relative. Be that as it may, as Parliament, we have gone through this before. The Committee on implementation of the Constitution has gone through all the laws that we were supposed to pass. The only law that is outstanding is the law to actualise Article 100, which this House passed in March. So, as far as I am concerned, there was nothing that was anticipated in Article 261(7) that this House has not done. However, that is something the Chief Justice obviously ignored. He quoted a law we had passed and said that we had not informed him that we had passed it although we know that we passed it.

So that I do not talk forever, the most important thing is what we need to look at going forward. On the issue of two-thirds gender rule, we have legislated on Article 100. People will see if it is a good legislation or not when the Bill comes from the Senate. In terms of the constitutional changes, I believe there is a framework that is already at works through the BBI. Perhaps we need to revisit it by pulling together. We should not just think of BBI as a political thing, but as a vehicle of changing the laws of this country to actualise the desires of the people.

As a House, we know we are under threat. I started by congratulating you, Hon. Speaker, for what you did. However, even as you go to court, this matter is in the hands of his Excellency President Uhuru Muigai Kenyatta. I know we are pushing our efforts on the Chief Justice, but we are forgetting that the only person who can ensure sanity in this country for the next two years is the President. I would like, as a House, we join hands in appealing to the President to consider - as he has always done - the bigger public interest as he reads that advisory and makes that decision. I am sure it was sent to him via twitter or email. As he considers that decision, he should apply his conscience to the bigger public interest and the special circumstances that the country is in, and avoid giving in to activism. We know he respected the decision of the Chief Justice in 2017 on the annulment of the presidential elections and agreed to a repeat of the election to demonstrate respect for the rule of law. However, in this case, we are not sure of the rule of law that is being applied. So, we appeal to him to ignore the activism.

Hon. Speaker, we appeal to him to ignore the activism that has been shown and act in that bigger interest and save this country from chaos. There is no way a solution to a problem can be worse than the problem. Like the Biblical Solomon, it is time for the President to decide, whether to kill or to save the baby. That is the situation we are in. As a House, if we are all committed towards that, then we will be safe as a House so that we can save this nation and move together.

Thank you.

Hon. Speaker: Member for Kisumu Town West, kindly have the Floor.

Hon. Olago Aluoch (Kisumu West, FORD-K): Hon. Speaker, I need not to remind you that it is Kisumu West and not Kisumu Town West.

As we debate this issue, I would like the Members who are listening to know that we need to listen to each other. We should also make sure that His Excellency the President gets the advice that he needs from this House.

Before I address that issue, I want to ponder several questions. Since 2015, the Chief Justice has been quite silent on this issue and suddenly, he has come up with this advisory. Is it possible that he could be acting at the behest of certain persons who are not in the House? Is it possible that he is acting on behalf of persons who would like to scuttle the BBI process? Is it possible that he is not acting alone? I brought up these three questions and I want to address this issue now; not just as a ranking Member of this House, but also as a ranking Member of the LSK and the contemporary of the CJ.

What we have and are discussing today is not a judicial decision of the Supreme Court collectively or the CJ alone. It is simply an advisory and not a judicial decision. Advisory in legal interpretation means consultations. Such momentous decisions cannot be made without consulting the heads of the two other Arms of Government.

The CJ acted recklessly and I have no qualms of saying so. However, now that he has already done so, it is upon us to tell the CJ that his advice is erroneous and wrong. We should also tell His Excellency the President why he must ignore that advice. If we do not do that, we would be failing in our duty as Members of this House.

Article 261(7) uses the word “advise.” However, Sub-Article (7) also says that His Excellency shall dissolve the House. That Article 7 and Sub-Article (7) is self-contradictory. In legal terms, when we have such contradictions in the law, then you look at what is more convenient.

As Hon. Kimunya said, are you going to solve a problem by creating a bigger one? Have we addressed that issue? I find it strange that we have not considered that in the absence of this Parliament, and when I say Parliament, I mean the National Assembly and the Senate, in their absence, whether an election can be conducted in this country. Is the IEBC properly constituted to conduct an election? Do we have the finances for IEBC to do so? If we are going to do that, who is going to appropriate finances to IEBC in the absence of Parliament? The decision of the CJ cannot be implemented - it is wrong.

However, and most importantly, Hon. Kimunya has explained the background of how we ended up with what we have in the Constitution. Every cloud has a silver lining. The silver lining on this cloud is that now the Members of this House have a chance to look at the various contradictions that we have in our Constitution and see how best we can resolve them. The only way to resolve these contradictions that we have in the Constitution is through the BBI process and not this advisory to the President.

Look at Article 267 of the Constitution that gives the CJ the authority to give that advisory. Let us not forget that it is an advisory. It is not a decision and neither is it an order. Let us look at that Article in relation to Article 38(2) of the Constitution. Article 38(2) says as follows, and I know you are familiar with it.

On political rights, Article 38(2) says that every citizen has got the right to free, fair and regular elections based on universal suffrage and free expression of the will of the electors. Clearly, this is one Article that contradicts Article 267 under the same Constitution. We have the chance now to look at these various contradictions and see how best to resolve them.

Article 259 is on how we construe the various provisions of the Constitution. Has the CJ complied with that? Did he address his mind to Article 259 before he issued the advisory? If you are going to construe the Constitution, then these are the tenets on which that interpretation must be based. Article 259 is construing this Constitution. Article 259(1) says:

“This Constitution shall be interpreted in a manner that:

- a. promotes its purposes, values and principles;

- b. advances the rule of law and the human rights and fundamental freedoms in the Bill of Rights;
- c. permits the development of the law; and
- d. contributes to good governance.”

Does that advisory help Kenya to contribute to good governance? It is going to create chaos. When I started, I said that as we debate this issue, let us listen to each other. If we do not, we are going to miss the points in each other's issues. Whether we agree or not, as we speak here, Kenyans must understand that we are not arguing the way we are doing because of our interest as Members of this House. No, we are agreeing to this because of posterity. We want it because it will go down with the legal political history of Kenya. It should be said by those who come after us that Members of the 12th Parliament addressed this issue soberly and not in their own interest. We must make it clear to the CJ that he is wrong. We must also make it clear to His Excellency the President that he must not comply with that advisory. Not all is lost for this House.

Article 261 that Hon. Otiende Amolo earlier on alluded to, gives us the chance with the agreement of the Speaker to extend the period if necessary. If we are able to garner two-thirds majority of Members of this House, all we need or what Hon. Wangwe needs or somebody else, is to raise an amendment based on Article 261 to extend the period and pass the two-thirds majority. With that, we would be home and dry and there would be no crisis in the country. Let us not discuss this issue as if we do not know the way out.

Lastly, I am happy that the Parliamentary Service Commission has decided that the matter be contested in court. It is only there that these various contradictions will be properly illustrated and dealt with.

Thank you, Hon. Speaker for giving me this chance.

Hon. Speaker: Hon. Naomi Shaban, kindly have the Floor.

Hon. (Dr.) Naomi Shaban (Taveta, JP): Asante sana Mheshimiwa Spika kwa kunipa nafasi hii pia kuzungumzia suala hili ambalo ni la kikatiba na ambalo tayari limeweka nchi hii kwenye hali ya wasiwasi. Katiba ya mwaka wa 2010 - Katiba yetu mpya- ilivyokuwa inatengenezwa ilikuwa kwa sababu ya matatizo yale ambayo tulikuwa tumeyapata wakati watu walikosana. Pia vile, wananchi mara nyingi walisema kuwa kwa sababu ya yale makosa yaliyokuwemo ni vizuri kuwa na Katiba mpya. Mheshimiwa Spika, Wakenya wengi walitaka kuwa Katiba mpya ije ili mamlaka mengine yapunguzwe yaende kwenye ugatuzi ili hapa juu tubaki tukiangalia maswala ambayo yanaweza kuendeleza nchi hii mbele wakati ugatuzi nao pia unaendeleza kaunti zetu mbele.

Mheshimiwa Spika, nilikuwa Waziri wa Jinsia baada ya Katiba hii kupitishwa mwaka wa 2010, mwezi wa Agosti. Mheshimiwa Spika, swala hili la Kipengele cha 27 (8), limetutatiza mno maanake tayari kiko kwenye ukurasa wa haki zetu na vile ni kuwa huwezi kukigusa kipengele hiki kama hutarudi kwenye kielelezo, yani *referendum*. Mheshimiwa Spika, jambo linalonisikitisha ni kuwa mtu akipatiwa kazi ya uongozi kuna umuhimu wa huyo mtu kufahamu kuwa Kenya si ya mtu mmoja ama watu wawili bali Kenya ni watu karibu milioni hamsini.

Mheshimiwa Spika, Kipengele hiki cha 27 (8) ambacho kinatumika kinahakikisha kwamba Bunge hili la kitaifa halina watu wa jinsia moja, haswa wanawake. Tungependa kuona wanawake wakichaguliwa nchi hii lakini Wakenya wana haki- kama vile mwenzangu alivyotaja, Mheshimiwa Olago Aluoch- kuchagua katika kipengele cha 38. Wana haki ya kuchagua mtu yeyote aliye jinsia ya kike ama ya kiume katika maeneo bunge 290. Mheshimiwa Spika, hatuko hapa kubahatisha. Wakenya waliamua kutuleta hapa na walivyotuleta sisi hawakujua kuwa eti kuna wanawake na wanaume hapa nchini. Mara kwa mara mimi husikia watu wakiuliza ni kwa

nini hatufanani na Rwanda, ama Afrika Kusini. Mheshimiwa Spika, haiwezekani kwa sababu wale wanachaguliwa kupitia orodha ya vyama vya kisiasa. Sisi hapa Kenya kuna tofauti kubwa sana. Kupitia Kipengele cha 38 Wakenya hupiga kura kuamua ni nani atakayewawakilisha hapa Bungeni.

Mheshimiwa Spika, nilivokuwa Waziri wa Jinsia, tulijaribu tukaongea na Mheshimiwa Rais akamtuma Mkuu wa Sheria kwenye Mahakama Kuu ili tuweze kupata njia mwafaka vile tutaweza kuongeza idadi ya kina mama hapa nchini. Wakatuelezea kuwa wanatupatia miaka mitano ili tuweze kupata njia mwafaka lakini Mahakama Kuu haikusema kinaga-ubaga swala hili litatatuliwa vipi. Walitaja kuwa swala hili ni lazima lipatiwe muda hadi hapo tutakapofikia idadi ya kina mama jinsi inavyotakikana.

Mheshimiwa Spika, mwenzetu Mheshimiwa Otiende Amollo alikuwa na bahati ya kuwa kwenye wale ambao walikuwa wataalam wa kuandika Katiba. Jambo ambalo hawataki kusema wazi ni kuwa waliangalia wakajua kuwa katika Bunge la Kitaifa ukisema utaongezea idadi jinsi wanavyofikiria, haitawezekana. Ndio ukaona kuwa kwenye Kipengele cha 177- kwa ugatuzi, kwenye Bunge za Ugatuzi- waliamua kuweka kipengele ambacho kitaweza kuongezea jinsia hiyo nyingine. Waliweka bayana na kila mtu akisoma anajua kuwa wanapatikana vipi. Japo kuwa vile ningependa kusema kuwa walivyokiweka kile kipengele kimechezewa. Huwezi kuwa maeneo yetu ya Bunge za Ugatuzi ni 1450 lakini wanaochaguliwa kupitia njia ile wanafika nafikiria Wabunge 800. Mheshimiwa Spika, ukiangalia hesabu tayari inakuchanganya. Bila shaka, Bunge la Senate waliona kuwa walipatie Kipengele cha 98 kinachoeleza akina mama ama wabunge wa jinsia nyingine watapatikana vipi lakini kwenye Bunge la Kitaifa ilishindikana. Mheshimiwa Spika, Kipengele cha 27 (8) kinasema kuwa watu wote ambao ni Wakenya, haswa wale ambao wamepatiwa nafasi za uongozi hapa nchini, na sio Wabunge peke yake, ndio wako na nafasi ya uongozi.

Uongozi upo katika mahakama, na hata Ofisi ya Rais kupitia kwa Baraza lake la Mawaziri. Nafasi hizo ziko. Kipengele cha 27 kinataja kuwa sio wenye kuchaguliwa peke yake kwenye Bunge la Kenya ndio lazima wawe thuluthi zisizo pita mbili katika jinsia moja. Inataja hata wale wanaopatiwa kazi upande huo mwingine kwa hiyo mikono miwili ya kiserikali wawe pia wana idadi ya kutosha ambayo haitapita thuluthi mbili.

Mheshimiwa Spika, kwa nini liwe Bunge ndilo litabeba kashfa hii ambayo inatakikana kubebwa na Kenya nzima? Inatakikana kubebwa na uongozi wote hapa nchini. Nilikuwa na wasiwasi ya kwamba siku moja tutakuja kuwa na Jaji Mkuu ambaye atafanya vitu bila kuuliza na kuweza kuzungumza na washikadau wote ili kuweza kutatua tatizo hili. Mheshimiwa Spika, Bunge la Kumi na Moja lilijaribu sana. Bunge hili limejaribu kufikiria kuwa sheria hii tutaiteta vipi na sio rahisi manake huwezi kulazimisha mtu kupiga kura kwa njia fulani. Halafu isitoshe, hupigi kura tu. Ni lazima tufikirie upigaji wetu kura hapa je unaleta faida gani ama unaleta nini hapa nchini. Kwa mfano, ikiwa tutaongezea Wabunge 80, je watakaa wapi? Huo ndio ukweli wa maneno jamani na mficha uchi hazai! Napenda kusema wazi kuwa hayo yote tumeyafikiria. Ndio ningependa kuona wanawake wanaongezeka. Ningependa tutafute njia ya kuleta akina mama zaidi lakini je, Wakenya wenyewe watatupatia hiyo njia? Tunashukuru kuwa Katiba hiyo imetupatia akina mama 47 kupitia njia ya Wawakilishi wa Kina Mama. Lakini juu ya hapo, tukumbuke hata Bunge la Seneti la Kwanza hakuna mama hata mmoja alikuwa amechaguliwa. Sasa hivi Wakenya wamejaribu wakaleta akina mama watatu. Wakichanganya na wale 20 ambao wako pale unakuta Bunge la Seneti tayari limefikisha idadi inayohitajika. Shida kubwa tuliyoko nayo ni hapa kwenye Bunge la Kitaifa. Nataka kina mama waongezeke lakini je, tutaongeza kupita kinyume na vile wananchi wanavyotaka? Tutaongeza bila kurudi kwa wananchi kuwauliza? Mheshimiwa Spika,

Kipengele cha 27 (8) huwezi kukigusa bila kurudi kwa Wananchi. Tuuseme ukweli wa mambo. Naomba Mwenyezi Mungu amguse Mheshimiwa Rais asikubaliane na Jaji Mkuu kwa jambo hilo ambalo litakaloleta mtafaruku kwa nchi yetu hii tukufu.

Asante sana, Mheshimiwa Spika.

Hon. Speaker: Let us have Hon. Member for Mvita.

Hon. Abdullswamad Nassir (Mvita, ODM): Thank you, Hon. Speaker. I want to go not necessarily against the grain. My colleagues are requesting me in the background to speak in Kiswahili but I think for the right ears to hear me, it is important that they understand what I am going to say.

Hon. Speaker, Article 259 of the Constitution of Kenya stipulates that the Constitution should be interpreted in a manner that contributes to good governance. When you look at the way the Chief Justice has interpreted this particular advisory to the President, I do not know whether it is in a demeaning manner, but I am informed that the President received a heavy level of communication via e-mail.

The wording in Article 261 (7) and (8) uses the word “shall”. I want to indulge my colleagues to read Article 159(2) of the Constitution which states:

“(2) in exercising judicial authority, the courts and tribunals shall be guided by the following principles –

(a) justice shall be done to all, irrespective of the status”, and the question that beckons is: Has justice been done to all, despite the Constitution of Kenya saying it shall?

“(b) justice shall not be delayed.” How many of us here have constituents who have had cases going for years on end? The same Constitution says: “(d) justice shall be administered without undue regard to procedural technicalities;

(e) the purpose and principles of this Constitution shall be protected and promoted.”

Hon. Speaker, in the same Articles, they talk about the Judiciary. It is stated that the purpose and principles of the Constitution shall be protected and promoted. It beckons to ask the Chief Justice of this country whether that has been achieved. The first Article of this Constitution talks about the sovereignty of this country, where that sovereign power has been delegated to duly elected representatives. When we try to enforce something then we are negating the same Constitution that we have taken an oath to uphold. What surprises me is that the Fifth Schedule does not talk about just Parliament enacting laws regarding two-thirds rule or rather a third, it talks about 50 laws that Parliament is supposed to enact, not one and there are people who have taken Parliament to court on these matters.

Article 27 (6) and (8) which talks about freedom from discrimination is so clear. The operative word here that is being used is the “state shall ensure” - not Parliament. We are now in a situation where the Constitution of this country is being read one-sided. I will not take much time, but I congratulate the Parliamentary Service Commission for the wise action that you have taken. I do not know whether the Chief Justice is aware that Article 25 (c) of the Constitution of Kenya gives anyone, that being an institution or an individual, the right to a fair trial and hearing. The question is: Was this House given this opportunity?

I want us to go back again, when we talk about “shall” and there is a time lapse of five years, where does it say that those five years shall commence from a particular Parliament? Where does it say that when we are now talking about enacting, we looking at the period by which a Bill is published and we reached its pinnacle? Are we looking at five more Parliaments to come? Previously, the Supreme Court held in a majority opinion, that the application of the gender rule should be progressive. This is the opinion of the Supreme Court which was then headed by the

predecessor of the current Chief Justice. So, I wish to urge my colleagues that this is not just an issue of gender rule. There are other laws that are going to be used to tackle us. We need to speak with one voice and one understanding. The principles of the Constitution are that the Constitution should be interpreted in a manner that contributes to good governance. Holding election for all constituencies in this country at this time and moment is not good governance. Who is going to pay for the elections? It is possible to hold elections now when the country is preparing for a referendum through the BBI? I want to plead with the naysayers who are against constitutional change in this country. As Parliament, we need to ensure that every single thing that has affected this House will be changed through the BBI initiative before the next election.

Hon. Speaker, this is not an issue of who was here. I remember being with my sister, Hon. Gladys here sharing red roses at a time when we were trying to ensure that the two-thirds Bill was enacted but, there are Members who were not here. I want to remind my colleagues that when a man speaks up on behalf of a woman, it does not show his weakness. When a man speaks up and ensures that woman's rights are defended, that shows the quality of a man he is. Our job is not to put down these women but to lift them up. Where they are wrong, we rectify each other and where men have erred, they correct us.

Hon. Speaker: Hon. Members, there are still 43 of you who have indicated interest to contribute to this debate. I do not want to deny anyone a chance to speak. So, for the convenience of the House and in order to allow us to come back to what we are debating now, I will reorganise the Order Paper. I will make the following orders; that business appearing as Order No.11 be removed from the Order Paper. This is at the request of the Leader of the Majority Party to allow the Committee to consider afresh proposed amendments that came in yesterday. It will be considered on Thursday afternoon.

I know, Hon. Millie Odhiambo, you are the guilty party. Not guilty in the sense that it is wrong to bring amendments. But the Committee just got your amendments this morning and they have requested to reconsider them. In fact, I think they should invite you so that you can discuss with them so that by Thursday we move a little faster. Also, I order that Order Nos. 8, 9 and 10 be read out so we dispose of them.

BILL

Second Reading

THE COUNTY WARDS (EQUITABLE DEVELOPMENT) BILL

(Hon. Omar Mohamed on 17.9.2020)

(Debate concluded on 17.9.2020 – Afternoon Sitting)

Hon. Speaker: Hon. Members, I can tell that the Member for Emuhaya still remembers the debate. Debate on this Bill was concluded and what remained was for the Question to be put which, I hereby do. Just a minute Hon. Members, let me repeat the Question in order to get clearer results.

(Question put and negatived)

Next!

MOTION

REPORT ON AUDITED FINANCIAL STATEMENTS FOR CONSTITUENCIES IN KIAMBU COUNTY

THAT, this House adopts the Ninth Report of the Special Funds Accounts Committee on the Audited Financial Statements for the National Government Constituencies Development Fund (NG-CDF) for the constituencies in Kiambu County, laid on the Table of the House on Tuesday, 25th February 2020.

(Hon. Kathuri Murungi on 17.9.2020)

(Debate concluded on 17.9.2020 – Afternoon Sitting)

Hon. Speaker: Once again Hon. Members, debate on this Motion was concluded and what remained is for the Question to be put, which I put.

(Question put and agreed to)

Hon. Members, very quickly the Chair of the Departmental Committee on Environment and Natural Resources will move his Motion.

PROCEDURAL MOTION

EXTENSION OF PERIOD FOR CONSIDERATION OF SPECIFIED PETITIONS

Hon. Kareke Mbiuki (Maara, JP): Hon. Speaker, I beg to move the following Procedural Motion:

THAT, notwithstanding the provisions of Standing Order 227(2) (Committal of petitions), and aware of the challenges posed by the COVID-19 pandemic in hindering House Committee sittings, cognizant of the requests by the relevant Ministries to have additional time to make submissions on the petitions before the Committee and recognising the need to engage other stakeholders for detailed information, this House resolves to extend the period for consideration of the public petitions before the Departmental Committee on Environment and Natural Resources specified hereunder by a further period of sixty (60) days-

1. Public petition regarding an alleged Demolition of Houses and Repossession of Land within Langata Constituency by Hon. Nixon Korir, MP presented on 30th June, 2020;
2. Public petition regarding the Encroachment of Nairobi National Park presented on 2nd July, 2020; and
3. Public petition regarding Mitigation of Perennial Flooding by River Sondu Miriu in Homa Bay and Kisumu counties presented on 12th August, 2020.

We are aware of the challenges the country is facing due to COVID-19. Hence, the Departmental Committee of Environment and Natural Resources consulted the relevant Ministries

and they requested the Committee to extend time so that they can present their views within 30 days or thereabout.

That is why the Committee could not expedite these matters. We are requesting consideration of this House so that the petitions can be submitted within the next 60 days. Having said that, I beg to move and call upon the Vice-Chair of the Committee, Sophia Abdi Noor to second the Motion.

Hon. Speaker: Hon. Sophia Abdi.

Hon. (Ms.) Sophia Noor (Ijara, PDR): Thank you, Hon. Speaker. I beg to second the Procedural Motion on extension of the period for consideration of specified petitions before the Departmental Committee on Environment and Natural Resources.

The matters that are before this Committee are very heavy. They require a lot of public participation and stakeholders' engagement. We have so far done several, but some stakeholders have requested the Committee for time due to COVID-19 and the many challenges we are facing. Many times, we could not complete the exercises we gave ourselves. With that in mind, we are asking the indulgence of the House to give us extension of period for consideration of the petitions by a further 60 days. I beg to second.

(Question proposed)

(Question put and agreed to)

(Resumption of Debate)

Hon. Speaker: With that, Hon. Members, we go back to the debate. I see there is still immense interest. Let me now hear from the Chair of the Justice and Legal Affairs Committee.

Hon. Clement Kigano (Kangema, JP): Thank you, Hon. Speaker. First, I would like to congratulate you and the Members of the Parliamentary Service Commission for deciding to take this matter to court. I can assure you that we support you and expect you to get conservatory orders so that we can have sufficient time to amend the offending provisions in Article 261.

This is a matter where a party acts in bad faith and decides to revisit what was purportedly revisited. I would like to fault the Chief Justice. First is what in legal parlance we call *pari delicto*. He himself has slumbered. He has slumbered in action. For two years when this matter was taken to him, he never acted. He has now faulted Parliament and he wants it dissolved because it has not acted. When a situation like this arises, no party is entitled to take advantage. Secondly, I looked at the definition of the word "advice". I took time to call my office while seated here and asked them to give me the legal meaning of the word "advice". They went to an eminent dictionary in law called Stroud's Judicial Dictionary. It is an acknowledged authority on legal terms. It says the word "advice" means guidance or recommendation offered to a client with regard to a future action. In this instance, Maraga has no client. If you do an analogy, he has no client. He has acted unilaterally.

Thirdly, I want to use the analogy of *Wanjiku* to represent the people as spelt out in Article 1 of the Constitution. *Wanjiku* had suffered through a system of impromptu roadside election declarations in the previous constitutional dispensation. So, *Wanjiku* decided that the time for general elections must be made public and pronounced in Article 101 of the Constitution. That is the only clause that gives leave for general elections. There is no other clause in the Constitution. As you interpret the law, one of the guiding principles is that when there are two conflicting

provisions in the same law, the first one takes precedence over the other. One would say that the advisory note contradicts Article 101 of the Constitution because the import of Maraga's advisory is to dissolve Parliament. Article 101 provides for dissolution of Parliament and calling for general elections. I stand to be challenged by any lawyer here. Where there are two conflicting provisions in law, the first provision takes precedence. Article 101 comes first in the Constitution. So, if we take it that it takes precedence, Article 261 (7) flops.

Fourth, *Wanjiku* has sovereignty over this country. *Wanjiku* is the mother and father of the Constitution. The only person who is recognised to be the attorney of *Wanjiku* in matters of the Constitution is Parliament through *Wanjiku's* duly and democratically elected representatives. Would you say that Maraga is a democratically elected attorney? Maraga cannot usurp the powers of *Wanjiku* as provided under Article 101 and decide to dissolve Parliament.

Again, I want to allude to what my colleague, Hon. Aluoch, referred to; Article 259. The word "shall" is employed in Article 259. I want to emphasise that whenever you interpret the Constitution, you must do so in a manner that contributes to good governance. Would you say that the effect of this advisory is going to contribute to good governance? *Wanjiku* is already overburdened by the effects of the slump in the economy that arose from the COVID-19 pandemic and you are telling her to go for impromptu elections and spend Kshs30 billion and then two years later spend another Kshs10 billion on a general election. That is unwise. I say this emphatically, this action by the Chief Justice demonstrates clearly that he lacks rudimentary tenets of the law. I say this with a lot of respect. I know we should not be discussing the conduct of the Chief Justice but the matters I am alluding to are in the public knowledge. I think he has invited it.

Firstly, I want to say this is a Chief Justice who notoriously acquitted the Kiambaa victims when he was a High Court Judge in Nakuru, on very flimsy grounds.

Secondly, some other knowledge that you may not know, this Chief Justice was number four in the interview. I do not think it was a question of regional balance, he had a godfather somewhere, and he is still serving and I think there is someone who alluded to bad faith. Looking at the way this advisory is crafted, and the story behind it, you cannot slumber for two years and promptly one day wake up and say you are now advising the President. Even the manner in which this advisory was transmitted... it is now public knowledge that it was transmitted through an email to His Excellency. *Hiyo ni madharau!* It demonstrates he was in a hurry to execute the mandate in the best of his master. Indeed, the effect of this if it takes effect, and this House is dissolved, just like the Leader of Minority said, it is a mischievous way of killing the BBI. So, in unison, my colleagues, let us support court action, get conservatory orders, and as soon as we can, I would seek and request the Leader of the Majority Party to guide us so that we get a Bill here to amend or repeal Article 261. I am talking about the provision that talks of timelines so that once we remove the timelines, Article 27 will be as is until cows go back home, *ng'ombe zirudi nyumbani...*

(Laughter)

Thank you very much, Hon. Speaker for giving me this opportunity. I hope that in future, proper emphasis will be afforded to Article 259 as the guiding Article to any interpretation, whether it is advisory or constitutional and that *Wanjiku* is the supreme authority not Maraga in as far as the Constitution is concerned.

Hon. Speaker: Member for Kisumu County

Hon. Rozaah Buyu (Kisumu CWR, ODM): Thank you, Hon. Speaker for this opportunity. Right from the outset I would like to say I support Justice Maraga's action. Long before I came to this Parliament, as the Chair of the *Thuluthi Mbili za Akina Mama* I interacted with you on several occasions regarding this issue. I would like to say it out clearly that you listened to us, engaged and helped us work through lobbying so that we would ensure we do not get to where we are currently.

As I stand up to speak, I am not speaking as a woman, I am speaking as a member of the Kenyan society who would wish to see the rule of law govern Kenya. I speak as a politician who after 12 years of struggle, was eventually elected to this House. The day I was sworn in Parliament, I swore that I would protect and uphold the Constitution. That is what I am doing now. This is not about women, this is about the Constitution. It does not mean that if Members of Parliament fail in carrying out their mandate, the Chief Justice must also fail. In Article 261, the Chief Justice has the mandate to advise the President on what to do to dissolve Parliament if an issue such as this, has not taken effect. So, the Chief Justice is right. This debate is not about the character of the Chief Justice or whether the Chief Justice is trying to give the last kicks of a dying horse because he is supposed to go home. It is about Kenya. Are we ready to allow the Constitution of Kenya to actually be regarded as the supreme law of the land, or when it comes to some issues, are we ready to throw the Constitution away? That is what we are discussing.

It is getting a little hot so I will remove my spectacles.

(Hon. (Ms.) Rozaa Buyu removed her spectacles)

It is not enough to say that because women Members of Parliament do not work hard, then this should be thrown out. Who said women Members of Parliament do not work hard? As I stand here today, I have been called and voted in as the best woman representative in the whole country by Infotrack in the latest polls. Does that not show that I work hard? This is not about women and women's performance. I would like to say that, indeed, when we talk about Article 100...

Hon. Omboko Milemba (Emuhaya, ANC): On a point of order, Hon. Speaker.

Hon. Speaker: Member for Emuhaya has a point of order.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you very much, Hon. Speaker. I want to bring to order and ask the Member who is speaking, what is this Infotrack that she is talking about? We have known of fake people walking around and ranking Members of Parliament. Usually, they are sponsored by people who become number one. So, what is it and where did you get it from?

Hon. Rozaah Buyu (Kisumu CWR, ODM): Hon. Speaker, I will not let that derail me but if it is a problem, I will take it back so that I can have an opportunity to move on.

Article 27 does not in any way force citizens to vote in a particular way. We already have a similar situation in the county assembly. We are not saying that any Kenyan is forced to vote in a particular way for the Members of the county assembly but if and only if, the voting does not adhere to Article 27, you will find that there is a mechanism to ensure that that is achieved. That is a mechanism that this House was supposed to come up with. That is not because Mr. Maraga failed, it is because the House failed.

Hon. Ngujiri Wambugu (Nyeri Town, JP): On a point of order, Hon. Speaker.

Hon. Speaker: Member for Nyeri Town, what is your point of order?

Hon. Ngujiri Wambugu (Nyeri Town, JP): Thank you very much, Hon. Speaker. I am just trying to ask whether the Member who is speaking understands that in the county assembly

the structure that is used allows them to nominate the difference in terms of the MCAs so as to get to the 30 per cent. Our Constitution disallows Members of Parliament from doing that, so for us to do that, we would have to amend the Constitution.

Thank you very much, Hon. Speaker.

Hon. Rozaah Buyu (Kisumu CWR, ODM): Thank you, Hon. Speaker. In effect what the Member has done is move my point. Article 177 already gives us that mechanism for the county assembly. Although we do not have a mechanism as the National Assembly, that is what we as Members of the National Assembly were expected to come up with.

Hon. Peter Kaluma (Homa Bay Town, ODM): On a point of order, Hon. Speaker.

Hon. Speaker: Hon. Kaluma.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Speaker, let me rise to help. It is not the business of this House to make the Constitution or to amend it. The two-thirds gender principle springs from Article 27 (7) of the Constitution, in particular, which is a Bill of Rights. It is a fundamental human rights provision requiring referendum under Article 255 of the Constitution. So, you may wish that it were done, but the question we are asking is: If Kenyans did not do it and it requires Kenyans to do, why punish Parliament for it?

Hon. (Ms.) Rozaah Buyu (Kisumu CWR, ODM): Hon. Speaker, I would like to inform the speaker who has just spoken that, indeed, the members of the public already passed that Article 27. It was part of the Constitution that was passed and promulgated in 2010.

Hon. Speaker, I hear a lot of people saying that we must ensure that we have good governance and that the actions of Justice David Maraga do not promote good governance. What is good governance if it is not inclusivity? What Justice Maraga has done is a way to ensure that we have inclusivity, which is part of good governance. I am a proponent of BBI, but we will not use BBI to erode the gains that are already in this Constitution. The BBI is supposed to improve our lives by enhancing inclusivity. So, why would you take away the inclusivity that is already in this Constitution in the name of BBI?

I know I sound angry but the reason why I am so is because for 12 years, I fought to get here. I cannot imagine that now that I am here, I am one of the people who cannot ensure that good governance, including inclusivity, is passed in this House. I support Justice Maraga and I pray that our President will be bold enough to dissolve this Parliament so that we can go back to the people and seek fresh mandate. The two-thirds gender rule is the only area that has not been effected ever since this Constitution was passed 10 years ago. I am not surprised, going by what has been said in this House, but I am hopeful that if we move together, we can find a way to ensure that we solve this issue and there is an opportunity.

I thank you.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM) (*Off-record*)

Hon. Speaker: Hon. Millie, do not become a prefect. Hon. Rozaah Buyu has done very well. She has made her point. It is not for me to quarrel with her. She has been very eloquent. She even does not require the assistance of Hon. Millie Odhiambo, who I am sure is aware of the Latin maxim: *expressio unius est exclusion alterius*. I am sure that you are aware of that.

Hon. Kanini Kega.

Hon. Kanini Kega (Kieni, JP): Thank you, Hon. Speaker. You have completely lost us, especially for those of us who are not lawyers. I want to associate myself with most of the sentiments that have been expressed here. Mostly, with what has been said by Hon. Junet and Hon. Clement Kigano, Chairperson of the Departmental Committee on Justice and Legal Affairs.

Hon. Speaker, I do not want to dwell on the merits or demerits of the advice. I want to dwell on the aspect of how that message was relayed. The Chief Justice of the Republic of Kenya was supposed to proceed on terminal leave last month, but he decided not to go and instead cashed the leave days. In law, it might not have a lot of issues but you clearly know why you are supposed to go on leave, from the people who came up with work ethics and all that. Even here in Parliament we go on recess because we know for sure that your productivity diminishes the more you stay in a workplace without going on leave. Some of the results of fatigue is sometimes making irrational decisions. I do not want to say that this could be an irrational decision, but I am saying this as the Chairman of the Budget and Appropriations Committee. Each and every day, the Judiciary claims that we are not giving them enough money. They are saying that we are not giving them enough money, yet they have enough money to pay for leave days. I have an issue with that and it is an issue that we need to consider. If you lead by example, and instead of proceeding on your leave you decide to cash that money — and you know the salary of the Chief Justice is not 100,000 but in millions — for me, that is a concern.

Secondly, this House is the one that vets the Chief Justice. If he makes good his promise that he will leave by January — though he said that he will still be in-charge — and in the unlikely event that this Parliament is dissolved, there will be no assembly to vet the Chief Justice. In essence, it means that the Chief Justice will continue serving. Could it be a ploy to extend his term by taking us home?

But far from that, the import of what he said means that we will go for another general election, so to speak. The lawyers might say that it is not a general election but in essence, it is a general election because elections will be held in each and every polling station and stream. It calls for a budget and to be modest, it is about Ksh20 billion to Ksh30 billion. As the Chairman of the Budget and Appropriations Committee and based on the budget that I have seen, there is absolutely no provision for that allocation. So, where is that money going to come from? It has been said here that the Independent Electoral and Boundaries Commission (IEBC) is not properly constituted. So, who is going to undertake this election? Could it be that somebody somewhere wants to plunge this country into crisis? Some of the small things that we are saying might create a crisis in the country.

Hon. Speaker, the Chairperson of Justice and Legal Affairs Committee and I took time and went to see the Chief Justice. We told him that we do not want to see him again in those stairs lamenting that they do not have money. If they have any issue, we told them to come to us. In essence, we were telling him — maybe we had foreseen this kind of situation — if he has issues with Hon. Members or the National Assembly, he should take time and come to see you. You are a head of an institution. In future, we need to change these titles because I think that is where the problem is. The Chief Justice is the president of the Judiciary or the Supreme Court. These are some of the things that we need to change because we give ourselves titles that give us some levels. We only have one President. You are the head here and you are the Chairperson of PSC. If the Chief Justice had issues, he should have consulted you. He should also have consulted his junior officers, like the other judges, because there are cases in court that have effect on this.

So, from where I sit, I read malice. This advisory should be taken with the contempt it deserves and should be ignored. But we thank you, Hon. Speaker, for what you have done, taking that bold step and appealing to the same courts. I believe that the High Court will declare that opinion null and void.

I thank you.

Hon. Speaker: Let us have the Member for Makueni.

Hon. Daniel Maanzo (Makueni, WDM – K): Thank you, Hon. Speaker for giving me an opportunity to contribute to this very important matter.

I will start by quoting what the former Chief Justice, Willy Mutunga, said in a recent television interview on his experiences as the Chief Justice of the country. He stated that he discovered that the Office of the Chief Justice is very political. When you look at his experiences and what the current Chief Justice has done through his advisory to the President, you can read a lot of politics in that particular advisory. The decision to dissolve Parliament has many political implications in the country. It can be used for several reasons by different people to achieve different ends. One thing that is clear is that the moment you dissolve Parliament, you dissolve the Government. That means that whether we like it or not, without Parliament, we cannot have a budget and, therefore, we cannot run the Government or the Judiciary. The moment the House is absent, it is clear.

Looking at the Constitution, Members have contributed on many Articles. I do not want to repeat them so that other Hon. Members can also contribute. You must look at what is best for the country. What are the best interests of the country? That is where decisions should originate from. His decision is not the best for the country looking at the current status or the advice that has just been given by Hon. Kanini Kega as he consulted on the budget. Therefore, as Hon. Amollo Otiende said, the Chief Justice is *functus officio* meaning the bullet has left the barrel. Once the bullet has left the barrel, we thank the Speaker for making a quick decision so that the bullet may not hit its desired target. I believe we will get justice when we go to court. We will look at the conflicting Articles of the Constitution. The most important Article which takes precedence is the one on the sovereignty of the people. At the end of the day, it is the decision of the people and their decision is clear. It has put us here for five years.

There are many other Articles that support that basis so that we do not end up in a situation whereby we close down the country. It is a sad situation. It is a wrong interpretation of the law. It must be revisited in one way or another, either through review or even a constitutional application to analyse its constitutionality.

It would be important for all the lawyers in this House who have followed the debate this afternoon and gathered a lot of ideas to pass this *Hansard* to the lawyers acting on our behalf. Some of us should also volunteer to support that cause so that justice is done in this country and there will be no ideas. The President can still make decisions if this target is not moved as we had done through the courts. The *Hansard* of this afternoon is so useful to the lawyers. All ideas have been put forward and the best position has already come out of this House.

We look forward to a situation where our Constitution is adhered to with regard to the sovereignty of the people.

Hon. David ole Sankok (Nominated, JP): Thank you very much, Hon. Speaker for giving me the opportunity to contribute to this particular Motion.

From the outset, I remind the House that we respected the nullification of the election although most of us did not agree with it while others were singing up and down that we should respect the courts. They are now the ones shouting the loudest that Maraga has erred and that we should not respect his decision. We should respect the courts. The Judiciary is an arm of Government. We are another arm of Government. The Executive is another arm of Government. Let us allow the President to make that decision. I advise him to dissolve Parliament so that we can go back to the people.

(Loud consultations)

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Hon. Speaker, protect me from Hon. Members because they are shouting that I am nominated. Do not think that being nominated is very easy. I represent 6.5 million Kenyans. Some of you only represent 30,000 people. Do not shout up and down. I am specially elected. If anything, when we go back to the people, I still have my broken leg. I will table it and come back. If you are not sure that you will come back, do not start shouting up and down.

I say this because sometimes it is us who fail. I had brought an amendment to Article 27 to exempt the two-thirds gender rule on elective positions. That totally contradicts Article 1 which places the sovereignty of our country on the citizens who then can donate that sovereignty to the elected leaders.

Hon. Speaker: Hon. Sankok, just in case that is what you proposed, it is good to take free advice. Read Article 255 to realise that any proposed amendment to any provisions in the bill of rights, including Article 38 (2) on political rights, is a referendum matter. Do not do it within Parliament. You should be collecting signatures out there. Even amending that word “elective” requires a referendum.

Hon. Sankok, this is just advice to help you. It is a good proposal but if you had brought it here, it would be the wrong place. You should be out there collecting signatures.

Hon. David ole Sankok (Nominated, JP): Thank you very much Hon. Speaker. You are a mobile encyclopaedia when it comes to the law and the Constitution of this country. I have taken your advice very keenly. When I brought that amendment, I did not know why it died. I went to the Committee responsible and presented my case but they never came back to me to advise me on the same. Today, I have gotten that advice.

Why are we always talking about one particular Article in our Constitution? Why should we allow one Article to have a massive impact on our governance system? Article 54 of the Constitution talks about employment of persons with disabilities. We have not implemented that. The Judiciary itself is not well-constituted in terms of the two-thirds gender rule. It was easier from that direction. We have never as a House called Maraga or those responsible and even castigated them.

The President has appointed Cabinet Secretaries. We know that the two-thirds gender rule is in our Constitution. Have we ever called the President and threatened to impeach him - because we have the powers - because he has not rightly followed our Constitution? We have not. Protect me from my party Majority Whip because I respect him so much. He is my friend and will remain my friend forever.

Sometimes we fail as a House because if we had used the teeth that the Constitution has given us, those other arms of Government would have known that we exist and have the teeth to bite. Now, they have the teeth to bite us. I urge them to bite us so that the pinch will ensure that we also call them out in the next Parliament. Why have we as a House never tabled a Motion or a Bill because of lack of gender representation in the Executive?

Looking at our political parties, the Jubilee party leader is a man. The deputy leader is a man. The Secretary-General is a man. We have never called them here. It is the same in the Orange Democratic Movement. We have never called them here. We vet Cabinet Secretaries yet the Cabinet is not properly constituted. We approve them because we rubber stamp the decisions of the Executive. Let them bite us this time round because we have failed to bite them. *Na ukiamsha mbwa alalaye, atakuuma.*

With those very many remarks, probably in the next one week, we shall be former Members of Parliament and we shall go back to the people. Thank you very much, Hon. Speaker.

Hon. Speaker: Do not wish that for yourself. Actually, you will not. Let us have the Member for Ruaraka.

Hon. T.J. Kajwang' (Ruaraka, ODM): Thank you. I am not going to take long because Members must speak before they rise.

Hon. Speaker, this is a matter which we should not be testing our testosterone levels between the Judiciary and the Legislature. I wish that the people who are managing various departments of governance would have seen that the interest of we, the Kenyan people, is sovereign. Every decision you make must consider what we, the people are saying.

I do not want to say so much about the Chief Justice because so many people have said things about him. He is a man I have a lot of respect for but I must say that he disappointed me on this. Where he is, he knows that he has disappointed me. This is because, when you are a man who has escaped unscathed and when you are just about to leave the scene and enjoy the good name that you have enjoyed as a result of wise decision, then you decide that with the one bullet you are left with, you fire and then run, it is like a king abdicating his seat.

I can see what is interesting on paragraph 21 of Hon. Chief Justice's advisory. He says things which I do not know how one would ever say. He says that when he looks at the Articles of the Constitution, allow me to read it-

“A purposive reading of Article 261 of the Constitution leaves no doubt that the Chief Justice's role under Clause 7 therefore is simply to ascertain if Parliament has satisfied...”

He goes on and on. I sympathise with him. You cannot be simplistic and even if you are, do not say it. This is not just a constitutional crisis; this is a judicial coup in the country. This group of people are those who are between the *wananchi* and the Government. If we were to have war today, what would happen if this Chamber is not there? If there was an emergency, what would happen if this Chamber is not here? Where is the interaction between the Executive and the people if it is not the Legislature? So, you make the decision and you will regret if the fulcrum between *wananchi* and their hard-earned democratic space... and then you express yourself that your role is simply to see. How simple can you be simple?

At the end of that discourse he says that we have to enjoy this peace together. That there is no gain without pain and that we should endure the pain together if this is going to lead us to a transformation agenda. Well, if you have to enjoy the pain, you are going on terminal leave, go and enjoy that pain but do not bring Kenyans as a country, into this type of pain. This is not pain; this is a judicial coup.

The only thing I am happy about is that he has set the stage where everybody is now convinced, I do not think that my colleagues- whichever shade of opinion- can now rise to think that there is anything left for someone to convince them about the referendum. There are a lot of issues that we must discuss. I remember Hon. Jakoyo Midiwo, the Member for Gem, stood here and said that we will one day have to meet eye-to-eye because of this 20 per cent. Time has come when now Kenyans must agree that this Constitution is ripe enough for refixing so that it can be repaired.

One of the things that I hear people talking a lot about is Article 27. Article 27 is very interesting. I do not see anything called gender parity in it; there is nothing. The only language I see there is a form of an affirmative action. There is nothing about two-thirds or one-third. But what is interesting about Article 27 is that it is inherently contradictory because it begins with saying-

“(1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.

(3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, color, age, disability, religion, conscience, belief, culture, dress, language or birth.”

But when you turn the page, it says different things. It says-

“(5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).

(6) To give full effect to the realisation of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.”

Now, then we have Article 81 (b). What is the point if this Constitution has spoken so closely about equal rights, that everyone is the same, it is a beautiful world, we were all born equal and we are all awesome? Then Article 80 (1) (b) starts talking differently. It now says that some people should be elected in a different way which is now different from what has been expressed in Article 27. We had started with Article 1 that says that we the people are equal before the face of the law and before God. This is now the discussion that we must make: the contradiction which the Constitution has imposed on itself.

Hon. Speaker, everyone has said, if there was an intention that gender parity had to be ingrained in the Constitution, nothing would have been more difficult for Hon. (Dr.) Otiende’s group and the rest to say so very clearly. This is why, for example, Article 101 is what kicks out the general election. Article 102 talks about ‘term’ which is tied to the ‘general election.’ It must be a general election then when you go to Article 103 which I did not hear anybody quoting, it is the only Article that talks about how a Member vacates office.

It says-

“(1) The office of a Member of Parliament becomes vacant—

- (a) if the member dies;
- (b) if, during any session of Parliament, the member is absent from eight sittings of the relevant House without permission, in writing, from the Speaker, and is unable to offer a satisfactory explanation for the absence to the relevant committee;
- (c) if the member is otherwise removed from office under this Constitution or legislation enacted under Article 80.”

What Chief Justice Maraga did is not removal, it is dissolving. He is not removing anybody anywhere. You can only be removed here on the basis of Chapter Six, for example. You can only be removed if you have, for example, abdicated your responsibilities in your political party. It is removal not dissolution. So, this Article does not apply to what the Hon. Chief Justice is talking about. It then says that if a Member resigns, you have to resign and write a letter to Hon. Speaker, then you have left party or you are an Independent candidate and among other provisions. Nothing in this Constitution anticipates what Article 261 of the Constitution is talking about. If the drafters of the Constitution wanted to see that there is another way of vacating your office as a Member of Parliament, this is where they would have put it. So, I do not know how the Chief Justice with all his wisdom, and I know he is a wise man, did not conjure up all these things together to notice that his direction under Article 261 of the Constitution was now an impossibility. He says that he only

had one way, but in that one way he has time to think through. He has one way, but he has time to think through, like Hon. Mutunga thought through and decided to exempt the 10th, 11th and 12th Parliaments because that advice is not implementable.

As I sit down, I want to advise the President, although I do not have the authority to advise, but I know the President has very good advisors and he will know just as he has read very correctly his functions under the Judicial Service Commission. The Judicial Service Commission said they would take some names to him and the law says that, “he shall”, but he said in public, and I agree with him that if these people thought he is just a figurehead, that his duty is just to convey things, then why do they bother to take that thing to him? It means that this thing called, “shall” means that there is a lot of things that must go through the President’s mind before he does what you call... He is not just a figurehead as you think. It is the Chief Justice himself who has expressed himself that the President does not have a role but that he is just a figurehead. He called him a rubber stamp. I listened to an interview where he called the President a rubber stamp. Well, if he is a rubber stamp, why does he not take that rubber stamp and stamp it and go? This is what therefore is equivalent to where we are here. Yes, it says that, “the President shall dissolve”, but the President has to think about several things before doing that, “shall”. This is where lawyers all over are saying that the Constitution is clear. They will know that there is nothing clear in this Constitution when they come to think about it. The President in doing this “shall” must think about several things. He has to know that the public mood is now talking about the BBI to look at this Constitution. He has to know that we are 18 months away to a general election and having an election now is going to bring the governors and himself to go for an election and he has to know whether he has money to pay for it. He has to think this before he does his “shall”. It is not that these things are not there. He has to think through them. By the time he has thought all these things, you will discover that the word “shall” is indeterminate. The word “shall” may not necessarily be immediate and even when it is immediate it may not be now. That is why up to today we do not have judges appointed.

We are in the same country and we have been thrown where we are. I would have wished that the Chief Justice had not done this. I want to remember him more by the successes of the election petition that he handled, in my view but now there is another way in which I have to think in evaluating my understanding of him. But whichever way, let us not worry: let us not be a Parliament which looks like we are fighting an institution. It is clear in my mind and it is clear in the Constitution that we.... A very imminent lawyer was saying that the things we are passing here are null and void. He has not read the Constitution. If you had read the Constitution, you would know that the proceedings of this House are not invalidated in any way. Even if there was something which was untoward or unconstitutional, still, the proceedings of this House are force of law and are not invalidated. So, what we are doing here is what Articles 94 and 95 of the Constitution expect of us to do.

Hon. Speaker, I do not know why the Chief Justice somehow called a Press conference to address the President. I have seen you several times take Bills to the President for assent. You stand there in your place as the Hon. Speaker, Sir. The President also looks presidential while signing the Bills. This is how it should be because this is public service. I have never heard you call a Press conference to address the President when you transmit Bills to him. So, how can it be that a head of an institution as serious as the Judiciary must choose the social media? I do not know whether e-mail is also part of social media, is it? Why should he choose social media to address the President and the nation? At worst, if he cannot get appointment to State House, he could have organised his brief nicely and sent it to the Head of Public Service at the gate of State House and

said, “Give it to Mr. President when he comes.” Or let him stand there and let us see if the President will turn him away from transmitting his views. I found that he got into judicial activism – something I do not know Hon. Maraga for. Hon. Maraga is a Judge of the pen. Hon. Mutunga would have been a different cut. However, remember he is the one who dissented in the opinion about this because he knew the impossibility of implementing this kind of a thing.

Hon. Speaker, I want to suggest that our colleagues of the other gender should suffer a little bit. Let me use an example from this gender that ate the apple; the forbidden fruit in the Bible. Let me touch on this gender. The other gender will give me a lot of problems if I touch on them. If we went by what is being said and increase the number of elected Members from 290 to achieve the two-thirds gender rule, we will have 100 more people in this House. For example, assuming that it was men who were agitating for the two-thirds gender rule, we would be having 100 more men in this House. Now, all these 100 more people in this House will have a vote. So, you are here, as elected Members, making a decision because you have the power from the people, but there are 100 more people there who are from nowhere – some busybodies – and have more powers than you have. The other House is even protected by the Constitution because the head of the delegation has a vote. So, how can you implement this kind of thing by bringing 100 more people here, give them weight and then they become the deciders on issues yet the people who have been elected cannot have the same privilege.

Thank you for the opportunity, Hon. Speaker. I beg to sit down.

Hon. Speaker: Now we have very little time left. I will give Hon. Wangwe one minute.

Hon. Emmanuel Wangwe (Navakholo, JP): Thank you, Hon. Speaker. Now that you have said it is one minute, I will just consume the one minute. I would like to say that the Chief Justice only relied on Article 261 of the Constitution rather than looking at the Constitution holistically. Article 259 of the Constitution, as it is written and also stated elsewhere in the same Constitution, provides that if there is a conflict between different language versions of this Constitution, the way you have said, for instance, certain legal jargon, the English language version prevails. That is what our Constitution says. I have read it in English and what I make of this Constitution is that you also have to look at the number perspective of it. Do not just look at the letters and make a decision.

Article 97 of the Constitution gives the number of Members that constitute the National Assembly. Article 98 of the Constitution gives us the number of Members that the Senate is made up of. When you look at the way you put the categories of Members together to come up with the numbers, it definitely now means that for you to implement Article 27 of the Constitution, you have to simulate a model through which you are going to achieve the two-thirds gender rule as per what Article 27 of the Constitution envisages.

Therefore, Hon. Speaker, I see the Chief Justice trying, maybe, without really being very specific, to revenge or could be he is trying to look at an issue which he would want to express himself on but he is not able. Maybe he was unhappy with the issue of non-appointment of judges. I am saying so because he appeared before the Departmental Committee on Justice and Legal Affairs where I am a Member and his view on why the judges have not been appointed and his exit from the Judiciary left a mark on us, as a Committee, in terms of how he feels about the frustration he is going through.

Therefore, I feel his decision is vindictive.

Hon. Speaker: Hon. Members, even before we rise, I want to make it clear, because I heard some of you say that we must respect the Judiciary; that we are not at war with the Judiciary. That must be absolutely made clear. We do not have a war with the Judiciary. We are just dealing

with one aspect and not a war with the Judiciary. So, it must not go out there that we spent the afternoon discussing or debating about the Judiciary. It is not the Judiciary.

ADJOURNMENT

Hon. Speaker: Hon. Members, the time being 7.01 p.m., the House stands adjourned until Thursday, 24th September 2020 at 10.00 a.m.

The House rose at 7.01 p.m.