



EXECUTIVE OFFICE OF THE PRESIDENT

MEMORANDUM

By **His Excellency the Honourable William Samoei Ruto**, PhD, CGH, President and Commander-in-Chief of the Kenya Defence Forces.

Submitted to:

The Speaker of the National Assembly; and
The Speaker of the Senate.

Honourable Speakers, I write to engage you as the apex of parliamentary leadership, outside the rigid framework of Executive-Parliament interaction set out in Article 132 of the Constitution.

The purpose of this engagement is to initiate a collaborative exploration of existing opportunities to enrich Kenya's democratic experience by enhancing the institutional capacities, strengthening complementary interrelationships and refining the mandates, in order to develop the potential to conform with the constitution and actualise the nation's expectations.

A number of these opportunities call for measures to adjust the constitutional framework. At the same time, I am mindful of the imperative to defer to the judiciary's guidance, laid down



through the constitutional court's determination, that the president lacks legitimate authority to initiate changes to the constitution.

Nevertheless, I hold the firm belief that as president, I can and indeed must engage authorised entities like Parliament. Accordingly, the purpose of this letter to you, dear **Honourable Speakers**, is to request that Parliament considers all policy measures necessary and sufficient to fully actualise the promise of our constitution.

In effect, I am urging Parliament to exercise its full authority and precisely calibrate the balance of constitutional powers, deepen good governance, enhance inclusion in the democratic space, strengthen parliamentary oversight of the executive and promote the responsiveness of elected representatives to citizen aspirations. Broadly, the matters in which I request this purposive intervention are:

1. Implementation of the two-thirds Gender Rule.
2. Constituency Development, Senate Oversight and National Government Affirmative Action funds.
3. The position of the leader of official opposition.
4. Parliamentary oversight of the executive.

I am persuaded that the intrinsic implications of these matters are sufficiently fundamental to mobilise effective bipartisan parliamentary collaboration and ultimately generate broad consensus among citizens throughout the country.

1. Gender Inclusion and Affirmative Action

On compliance with the gender inclusion framework of the two-thirds rule, it is regrettable that implementation has



become a conundrum that has remained unresolved for too long. There is a profound sense that we have failed Kenya's women, and I believe that it is time to make a decisive breakthrough.

There has been notable legislative endeavour to facilitate greater political participation by women, especially by encouraging more women to vie for elective positions. Equally appreciable are the significant gains made in terms of sustained increase in the number of women leaders elected to various positions. Despite this, the composition of the 13th Parliament remains far short of the constitutional minimum requirement. This non-compliance has far-reaching consequences.

We must recall that in 2020, the Chief justice wrote to the President calling for the dissolution of Parliament due to its non-conformity with the two-thirds gender inclusion principle.

I am committed to all efforts that will help us avert a similar constitutional predicament. Our government pledged to champion the promotion and realisation of women's inclusion and effective participation in every sphere of national endeavour. We have an opportunity to collaborate and deliver this critical mandate.

The constitution mandates the progressive realisation of the gender representation ratio set out in the gender inclusion principle through legislative and other policy measures.

I therefore propose that, if Parliament concurs, a constitutional amendment be enacted, establishing a



formula to guide the computation of the gender ration in the National Assembly based only on the numbers of those members elected from the constituencies (National Assembly) and counties (Senate) per Art. 97(1)(a) and 98(1)(a) respectively. The proposed amendment can be set out under Art. 97(3).

For the National Assembly, the effect of this formula would establish one-third at 97 members. There already exist 47 affirmative action seats dedicated to women leadership. The maximum number of seats required to fulfil the constitutional threshold would therefore be only 50. In the case of the current National Assembly, with 26 women elected from the constituencies, the nomination of an additional 24 women would suffice to meet the constitutional requirement.

By the same formula, the constitutional gender inclusion threshold would be met through the nomination of 16 women to the Senate.

I believe that trading off the increase in the parliamentary wage bill with the achievement of compliant inclusion of women in parliament is eminently worthwhile. I therefore encourage you to seriously consider it.

Another modality of achieving compliance is for political parties to deliberately embark on sustained, institutionalised and robust initiatives that facilitate the empowerment of women to successfully contest legislative seats in greater numbers. Apart from minimising or even eliminating the necessity of top-up nominations, this modality is superior as



it captures the proper spirit of affirmative action, and expresses the essence of the gender inclusion agenda.

There is empirical evidence to support the proposition that equipping and promoting more women to run for office will, in a few election cycles, bring the number of women contesting and winning elections to at least the same level as men.

In order to actualise this intention, I further propose that under an article 97(3)(b), existing legislation be amended to establish a Women's Inclusion and Political Participation Fund. The Fund will be drawn from a percentage of funds allocated to political parties, and will finance education and training, mentorship and capacity building as well as support for women seeking competitive elected representative positions.

It is my further suggestion, **Honourable Speakers**, that such amendments be subject to an appropriate sunset clause to retire it upon attainment of the constitutional requirement.

2. **Constituency Development, Senate Oversight and National Government Affirmative Action Funds**

I have followed the public discourse, parliamentary debate as well as judicial determinations on the constitutionality of the Constituency Development Fund and its successor, the National Government Constituency Development Fund, with great interest. It is essential, Honourable Speakers, that as leaders, we lead the way in following the law. It is equally paramount that we do not risk undermining our credibility by appearing to employ mischievous legalities and technicalities to skirt about constitutional boundaries. At the same time,



Parliament is the proper forum with full authority to develop laws that are not only constitutionally sound, but which are also responsive to citizens' aspirations.

In my days in Parliament, I served when there was no CDF, and also served when there was CDF. Localised problems often demand expeditious local interventions. CDF empowers legislators to perform their function of representation more effectively by keeping them in touch with the pulse of their constituencies. The CDF also makes the constituency a forum for continuous engagement on critical issues, and effective mobilisation to solve problems in the spirit of collective action. There is, therefore, a strong case to be made, rooted in the essence of the very idea of representative democracy, for the CDF to exist under an appropriate framework.

I am encouraged to note that the 13th Parliament is very much alive to the imperative of this moment, and has already taken up the issue through the Constitution of Kenya (Amendment) Bill, 2022. The proposed insertion of an Article 204A to establish the National Government Constituency Development, Senate Oversight and the National Government Affirmative Action Funds to be drawn out of the national government's shareable revenue, in my considered opinion, are sufficient for purposes of conformity with the express and implicit parameters set out by the constitutional court.

3. The Leadership of the Official Opposition

The commitment to robust democracy, rule of law and effective checks and balances comes with the mandate to respect institutions and to promote sound institutional practices. The 2010 constitution defined and entrenched the



institutions established through democratic elections. However, whilst it provided adequately for the institutional subsistence of the majority side, in my view, the constitution fell short in providing similar clarity on the full post-election fate of the minority side. This is to say that the bipartisan symmetry between the majority and minority sides does not extend to its full logical extent.

The transition to the Presidential system, coupled with the exclusion of presidential candidates from simultaneously contesting parliamentary seats in a General Election created a novel political paradigm. The consequence is that the overall political leader of the minority side is effectively excluded from meaningful political participation, and left to rely on the minority house leaderships to perform the function of oversight. No sound rationale has been proffered to adequately allay the sense that this anomaly is the result of a monumental oversight.

I believe that the idea of Official Opposition, above and beyond mere minority parliamentary leadership, makes tremendous sense in terms of institutionalising governance, strengthening oversight and deepening democracy. The time has come for us to explore the possibility of remedying this shortcoming.

I therefore propose that Parliament consider an amendment to Chapter nine, Part IV of the constitution to establish the office of the Leader of the Official Opposition, with its operational dimensions to be provided for in consequential legislation.



4. Parliamentary Oversight of the Executive

It is ill-considered to interpret the rigid separation of powers established under the constitution as the effective insulation of various institutions and organs of government from oversight and accountability. I believe that our government will become more responsive, accountable and effective when it is subjected to rigorous oversight. There is tremendous benefit in experiencing checks and balances in the course of policy implementation.

The Executive has a vested interest in engaging productively with Parliament because the legislature is the custodian of critical instruments that are indispensable for the functioning of government. There is profound value in prosecuting the Executive's legislative agenda and elaborating government policy from the floor of the House, as opposed to segmented committee engagements. An additional benefit of executive participation in parliamentary business is transparency of public proceedings, which can close the information gap between citizens and government, thereby enhancing trust.

For these reasons, I recommend and request that Parliament consider formulating a mechanism within its Standing Orders to facilitate the participation of Cabinet Secretaries/ Chief Administrative Secretaries in parliamentary proceedings, particularly by responding to questions raised by MPs.

Honourable Speakers,

I have taken this opportunity to transmit the foregoing proposals in good faith, trusting that Parliament will consider them in the spirit of perfecting our democratic institutions,



unlocking the promise of our constitutional dispensation and enhancing our nation's capacity to actualise the aspirations of Kenyans.

I am sensitive to the current state of our nation, which is settling down after a long season of vigorous political mobilisation. For this reason, it is important that we endeavour to pursue only those pathways to institutional changes by means which do not entail the resumption of disruptive and potentially divisive mobilisation for a referendum, or campaigning. The proposals set out above, in my considered view, satisfy this critical prudential safeguard.

It is my hope then, that these proposals elicit appropriate consultation and bipartisan deliberation, and, in due course, enable the people's representatives do their part in liberating the country from contradictions and dilemmas which have cost us a lot of opportunities.

I HAVE SET MY HAND unto this Memorandum on this **NINTH** Day of **DECEMBER**, 2022.

A handwritten signature in black ink, reading 'William Samoei Ruto'.

WILLIAM SAMOEI RUTO
PRESIDENT.