

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 14<sup>th</sup> October, 2015

*The House met at the Senate Chamber,  
Main Parliament Buildings at 2.30 p.m.*

*[The Speaker (Hon. Ethuro) in the Chair]*

### PRAYERS

### COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM TANGAZA  
UNIVERSITY COLLEGE

**The Speaker** (Hon. Ethuro): Hon. Senators, I wish to recognize the presence of visiting staff and students from Tangaza University College seated in the Speaker's Gallery. The students have visited the Senate today as part of their study on Sustainable and Collaborative Leadership for Development.

I commend them for choosing the Senate as a House of Parliament to gain a few tips on collaborative leadership as a concept we have been implementing as a House. In our long standing tradition of receiving and welcoming visitors, I take this opportunity, on behalf of the Senate and on my own behalf, to extend a warm welcome to the staff and the students of Tangaza University College. I wish them a fruitful visit to our House.

*(Applause)*

Sen. Wangari, you have one minute.

**Sen. Wangari:** Mr. Speaker, Sir, I also want to join you in welcoming the students from Tangaza University College, especially at this time that we are expecting to host the Pope towards the end of the year. I want to encourage them, even as they engage in this learning process, that they also intercede for us and pray for the leadership of this country.

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Mr. Speaker, Sir, for welcoming my fellow Catholics. As a practicing Catholic, I am delighted to see them in the Speaker's Gallery. I had an opportunity a moment ago to say hello to the delegation and shook hands with each of those nuns seated up there. I now feel very holy.

(Laughter)

We encourage such visits, especially when this country is bedeviled with endless and unhelpful arguments between politicians. When we see such holy visits, we feel there is some divine guidance and intervention in our Chamber. We shall act in such a just a manner as to enhance the welfare of Kenyans.

**The Speaker** (Hon. Ethuro): Sen. Sijeny, it is now your opportunity. However, I was wondering whether the Senate Minority Leader had now reached his Damascus.

(Laughter)

**Sen. Sijeny:** Mr. Speaker, Sir, I also wish to join you to welcome the visitors from Tangaza University College. I am more delighted because I can see most of them, if not all, are ladies. I know that when you educate a lady, you educate the whole nation. I know that they shall intervene in a very special manner giving it a ladies and a spiritual touch.

Welcome and God bless you.

**The Speaker** (Hon. Ethuro): Finally, Sen. Karaba.

**Sen. Karaba:** Thank you, Mr. Speaker, Sir, for also allowing me to welcome the Tangaza University College sisterhood who are seated at the Speaker's Gallery. As the Chairperson of the Committee on Education, I feel proud that we have sisters coming in the name of a university. We need to know about it and why there are no men.

**The Speaker** (Hon. Ethuro): Next Order.

## PAPERS LAID

### REPORTS OF THE AUDITOR-GENERAL ON THE FINANCIAL OPERATIONS OF VARIOUS COUNTY GOVERNMENTS

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Wednesday, 14<sup>th</sup> October, 2015:-

Report of the Auditor-General on the financial statements of the County Government of Kiambu for the 16 months period ended 30<sup>th</sup> June, 2014.

Report of the Auditor-General on the financial statements of Kiambu County Executive for the year ended 30<sup>th</sup> June, 2014.

Report of the Auditor-General on the financial statements of the County Government of Uasin Gishu for the 16 months period ended 30<sup>th</sup> June, 2014.

Report of the Auditor-General on the financial statements of the County Government of Nandi for the 16 months period ended 30<sup>th</sup> June, 2014.

Report of the Auditor-General on the financial statements of Makueni County Government for the year ended 30<sup>th</sup> June, 2014.

Report of the Auditor-General on the financial statements of Isiolo County Government for the year ended 30<sup>th</sup> June, 2014.

Report of the Auditor-General on the financial operations of Lamu County Executive for the year ended 30<sup>th</sup> June, 2014.

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Report of the Auditor-General on the financial statements of the County Government of Murang'a for the 16 months period ended 30<sup>th</sup> June, 2014.

Report of the Auditor-General on the financial statements of the County Government of Nyeri for the 16 months period ended 30<sup>th</sup> June, 2014.

Report of the Auditor-General on the financial operations of Laikipia County Executive for the year ended 30<sup>th</sup> June, 2014.

*(Sen. (Dr.) Khalwale laid the documents on the Table)*

THE PUBLIC FINANCE MANAGEMENT (STATE OFFICERS AND PUBLIC OFFICERS MOTOR CAR LOAN SCHEME FUND) REGULATIONS, 2015

**Sen. Sang:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Wednesday, 14<sup>th</sup> October, 2015.

The Public Finance Management (State Officers and Public Officers Motor Car Loan Scheme Fund) Regulations, 2015.

*(Sen. Sang laid the document on the Table)*

STATEMENTS

RIISING INTEREST RATES AND STABILITY  
OF SMALL BANKS IN THE COUNTRY

**Sen. Kagwe:** Mr. Speaker, Sir, pursuant to Standing Order No.45(2)(b), I rise to seek a statement from the Chairperson of the Standing Committee on Finance, Commerce and Budget relating to the stability of small banks and alarming interest rates. In the statement, the Chairperson should explain:-

(1) What was the reason for placing Imperial Bank and Dubai Bank in receivership?

(2) What is causing the alarming rise in interest rates in all banks, which is bound to affect persons with mortgages, businesses with loans and, indeed, our national economic performance negatively?

(3) What mitigating action is the national Treasury taking to avoid a financial run of the tier-two banks?

(4) What immediate action can the Ministry take to confirm to the general public that small banks in the country are stable?

**The Speaker** (Hon. Ethuro): Is the Chairperson here? Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, that is a serious statement. In the absence of the Chairperson and Vice Chairperson and given the fact that the question has been asked by a Member of my Committee, we shall expedite and have a response on Thursday, next week.

**The Speaker** (Hon. Ethuro): It is so directed.

*(Interruption of Statements)*

## CONSIDERED RULING

### MODE OF DRESSING IN THE CHAMBER

**The Speaker** (Hon. Ethuro): Hon. Members, I have a Communication to make on the mode of dressing in the House.

You may recall that yesterday, Tuesday, 13<sup>th</sup> October, 2015, the Senator for Migori County, Sen. (Dr.) Machage, rose on a point of order and sought the guidance of the Chair on whether the Senator for Tana River County, Sen. Bule, was properly dressed within the meaning of our rules and practices. For the benefit of Senators who were not in the House at that time, Sen. Bule was dressed in a black checked *kanzu* with a matching jacket and a cap. I allowed several Senators to comment on the matter and consequently undertook to give a ruling on the matter to the extent that I was asked to expedite it just in case another Member comes in traditional regalia, with a sword.

After listening to the debate that ensued on the matter, I isolated the following issues as requiring my consideration-

(1) whether or not, it is proper for a Senator to enter this Chamber while dressed in a *kanzu*,

(2) what acceptable dress code for the Chamber is; and,

(3) whether Sen. Ali Bule was properly dressed during that particular sitting.

Hon. Senators, before I deliver my ruling on this matter, let me apprise the Senate on the current requirements and practices obtaining in our Parliament and even in other Parliaments. In our case, the manner of dressing is provided for in Chapter One, Rule Five of the Speaker's Rules which provides, I quote:-

"Members are required not to enter the Chamber, lounge or dinning room without being properly dressed."

"Proper dressing" is defined as "a coat, tie, long trousers, socks and shoes or service uniform or decent national dress for men; and equivalent standard for women with hats being optional."

Hon. Senators, the question of proper dress or otherwise in the House as defined in the rule that I have just quoted, has been a recurring matter in our Parliament over the last 50 years or so. As Senators may expect, several communications have been made on the matter. For instance, on 16<sup>th</sup> April, 1968, the Chair while responding to an objection on the dressing of a Member ruled as follow:-

"Hon. Members, as I have said on other occasions, we have no Standing Orders concerning dress which I can enforce. It rests on the collective opinion of the House as to what is or is not proper dressing. If Mr. Mbogoh does not meet with the approval of hon. Members, he will doubtless hear about it."

Similarly, on 24<sup>th</sup> March, 1993, the Chair then ruled as follows on the same subject, and I wish to quote:-

"Hon. Members, this morning an issue arose as to whether Hon. Shikuku, MP for Butere, was properly dressed as per the Speaker's Rules regulating the conduct of Members of the National Assembly. The hon. Member was dressed in long trousers, shirt, bow tie and a sleeves outer

garment. Was hon. Shikuku properly dressed when he wore a sleeveless outer garment? I looked up the definition of a coat in the dictionary and it is defined as: “A long outer garment with sleeves buttoned at the front.” An outer garment without sleeves is not a coat. Consequently, hon. Shikuku was not properly dressed within the meaning of the Speaker’s Rules.”

Again, on Tuesday, 9<sup>th</sup> November, 1993, the then Speaker of the National Assembly made the following ruling and I quote:-

“As a guide, hon. Members are allowed into the Chamber while wearing a coat, collar, tie, long trousers, socks and shoes or service uniform or decent national dress for men, and equivalent standard for ladies. As a practice also, hon. Members of the Islamic faith have in addition been allowed to wear a white *kanzu* buttoned at the neck and with a jacket, preferably a black one, worn on top, a cap, socks and shoes.”

Hon. Senators, on 11<sup>th</sup> March, 2014, I delivered a ruling to this Senate on the appropriateness of the dress worn by the Senator for Garissa County, Sen. Haji, who came to the Chambers wearing a *kanzu*. In that ruling, I found that Sen. Haji was properly dressed on that material day. There is no assurance; it is always, on the material day.

(Laughter)

In the UK House of Commons, the dress code is formal with even requirements for neatness and tidiness. Men should wear a jacket, shirt, tie and long trousers in the Chamber as a mark of respect for both their colleagues and for the institution itself. Members are even not allowed to have their hands in their pockets. The Chair of the House of Commons is on record saying:-

“It is not appropriate to address the House without being properly attired.”

Similarly, in the Parliaments of New Zealand, Canada and Australia, dress code is very formal. Closer home in Uganda, the rules provide that members shall dress in a decent and dignified manner;

- a) A pair of trousers with a jacket, shirt and tie. A *kanzu* or jacket or safari suit for male Members.
- b) A jacket, blouse and skirt or dress or *busuti* traditional wear for lady Members.
- c) Military attire for the members of the Armed Forces

The rules also provide that any Member intending to dress otherwise, may do so, with the permission of the Speaker. This is to provide facilitation so that when circumstances such as medical requirements or one’s faith may dictate his or her manner of dressing.

Hon. Senators, let me retaliate the position taken by the Speaker of the National Assembly on 7<sup>th</sup> May, 2009 on the same matter, and I quote.

“Hon. Members, the essence of the communication is not restricted to the concept of proper dress code, but extend to capture a deep reflection on the need to uphold the dignity of the House, which we have jealously protected and defended over the years.”

The issue of the appropriate dress, therefore, is principally for upholding the dignity of the House. However, I extend to add that it is still evolving and I invite any Senator who may have a suggestion or suggestions on the appropriate mode of dressing in the Chamber, committees, lounge and dining areas to forward them to my office so that we can have a fresh discourse on this particular important matter.

As to the question under consideration, I noted that Sen. Ali Bule was dressed in a black checked *kanzu* with a matching jacket and a cap as usually worn by persons of Islamic faith. Under the circumstances, I find that he was properly dressed according to our rules and practices on that material day.

**Sen. Wetangula:** Mr. Speaker, Sir, thank you for that ruling and guidance. However, yesterday Sen. Bule was actually wearing clothes that had multiple colours. It was not just black. I do not know whether that fits in your description of proper dressing.

Secondly, you have not exhaustively addressed the issue of the manner of dressing of our colleague ladies. We have also seen some of them enter these Chamber skimpily dressed in a manner that is inconsistent with what we expect a distinguished Senator of this House to dress. We hope that you will also enforce those rules seriously. These proceedings are always broadcast live. We want Kenyans out there, when they look at the contexture of the Senate and the attire of Senators, to see a distinguished House of Kenyans that Kenya look at, in not just form, but also substance in everything that we do.

Finally, you ruled that people can wear hats. Is it a religious tarbush or any hat even like the one that the President of South Sudan sports anywhere? Could we also come here wearing cowboy hats as long as we are in suits? You have just said we can wear hats as part of our distinguished attire.

Lastly, how do you, as a Speaker, or any Senator for that matter, determine whether a distinguished male Senator with a pair of trousers up to the ankle is wearing a pair socks or not, now that you have also said that socks is part of the attire?

**Sen. Kagwe:** Mr. Speaker, Sir, not to defend you, but to clarify. My understanding in respect to wearing of hats was that it referred to lady attire, not to men attire. As for ladies, I do not know the conflicting position between what Sen. Wetangula is proposing and what is popularly known as 'my dress my choice'.

(Laughter)

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, thank you for your ruling. However, we want to hear your comment if we all appeared here in our religious attire. I have in mind *Jeshi la Wokovu* uniform, *Legio Maria* regalia, Dini ya Musambwa and so on.

(Laughter)

**Sen. Haji:** Mr. Speaker, Sir, the question of hats has been addressed by Sen. Kagwe. However, the manner in which Sen. Bule was dressed yesterday, you have very well described it. I am surprised that the Leader of the Minority is either deaf or he does not want to listen to what the Speaker said.

Secondly, I want to address the Senator for Migori about wearing *Jeshi la Wokovu* attire and others. The most important thing here is what people wear on either daily or weekly basis. If you come here with a dress made of leopard skin, I am sure you will not be allowed in the Senate.

**Sen. Abdirahman:** Thank you, Mr. Speaker, Sir, for your wise ruling. I want to say that in one of the decisions you quoted, it was about a white *kanzu*. Of late, *kanzus* come in various colours and patterns for the information of my colleagues. This is not a traditional regalia. Indeed, I said yesterday and a few Members wanted to challenge me, it is an Islamic mode of dressing. I shall put it like that and thank you for ruling again.

**Sen. Orengo:** Mr. Speaker, Sir, I am sorry I came a little late in the middle of your ruling, which I agree with entirely. However, I did not get you very clearly because I think it is in the tradition amongst the gentlemen who are Members of Parliament that you have a buttoned collar. I thought I heard such an expression. Yesterday, my friend, Sen. Bule did not have a collar nor a buttoned shirt. That needs to be made clear because I can also decide to come with a casual smart wear. The tradition has been, even if it is religious, the good example is that worn by Senator for Garissa. The shirt must be collared and buttoned up, but not an open neck. That would go against the traditions of the House.

**The Speaker (Hon. Ethuro):** Order, Members! Of course, this kind of a ruling always elicits some lights moments. The Senate Majority Leader has given the sufficient dose. I just want to comment that I gave the definition of proper dressing as a coat, tie, long trousers, socks and shoes or service uniform or decent national dress for men and an equivalent standard for women with hats as an option. So, the hats are clearly for the women. However, the most important point I was making is about the dignity of the House. The manner of dressing must reflect the dignity of the House and the individual Senator.

As to whether Senators have the option of coming in their various religious attires as mentioned by Sen. (Dr.) Machage, we will cross that bridge when we reach there. I agree with Sen. Haji that it depends on a common practice. If you just decide to do it for the sake of it, and we know you do not belong to that faith, it will be a bit difficult for the Chair to entertain you dressed in a manner that is not consistent with your faith. The difficulties, of course, are to determine which faith you belong to. However, I believe that when we take records initially you have to indicate which faith you belong then we can use that.

As to Sen. Mutahi Kagwe's 'my dress, my choice', that is not for here. Here, we have defined proper dressing. So, the choices are a bit limited to the definition of proper dressing.

Next Order.

## MOTION

### REPORT OF THE SELECT COMMITTEE OF THE SENATE ON CONSTITUTIONAL AND LEGAL REVIEW

**Sen. Murkomen:** Mr. Speaker, Sir, I beg to move the following Motion:-

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THAT, this House adopts the Report of the Select Committee of the Senate on Constitutional and Legal Review laid on the Table of the House on Wednesday, 23<sup>rd</sup> September, 2015.

I stand here today on behalf of my colleagues, the Members of this Select Committee, to move a Motion which is very critical to this House at a very critical moment in our Republic.

When we passed the new Constitution five years ago, it came with a lot of expectations with an improved human rights environment and better space for the public to engage with elected leaders and Government. One of the most integral pillars of this Constitution was the new system of devolved governance.

I have said again that many people think that when we talk about devolved governance and devolution, we are just talking about county governments. However, as the Constitution puts it very clear in Article 6, this system of governance relates to the two levels of Government; that is the national Government and county governments. The relationship between the two levels of Government must conduct themselves with a lot of mutual respect. Article 6(3) of the Constitution provides that as a result of devolution, even national entities will have the opportunity to carry out their functions closer to the people or to the very local level. If you look at the objectives of devolution in Article 174 of the Constitution, it is emphasized that there is a mechanism and institutional framework for carrying out functions to the local level. One of the most defining provisions of our Constitution that runs throughout the whole Constitution is devolved governance.

With our experience in the last five years, and particularly in the last almost three years when we were elected to come to this House, there have been certain experiences that we have gone through as a House that led to the formation of this Select Committee. That experience was anchored in the sector of devolution and the manner in which the institutions of governance are working together, particularly the National Assembly and the Senate in supporting and fostering that institution of governance called devolved system of governance.

Therefore, this House established a Committee comprised of;

1. Sen. Murkomen – Chairman
2. Mutula Kilonzo Jnr. – Deputy Chairman
3. Sen. Murungi
4. Sen. Lesuuda
5. Sen (Eng.) Muriuki
6. Sen. Billow
7. Sen. Orendo
8. Sen. Khalwale
9. Sen. Abdille

Mr. Speaker Sir, it is instructive that I am moving this Motion on a day that people from Tangaza College are here to study the Sustainable and Collaborative Leadership for Development. We achieved the objective of this Committee because we worked as a team behind the scene. This was a suggestion from the senior counsel, Sen. Orendo who shared with us his personal experience of many years in the House, since the time I was born. He told us that it was useful for the Committee to work behind the



scenes without seeking publicity. That advice assisted this Committee because people are saying they are not seeing us working. We are more concerned in ensuring that we produce a product that is in conformity with the provisions and the desire of this House and for the good of this country.

The Committee had terms of reference including; how we can improve protecting the interest of the counties and their governments.

We were to inquire on the role of the Senate; how the Senate is involved in matters of budget-making, legislative processes and oversight of the national Government and the county governments. We also had the responsibility to examine the appropriate role that the Senate or Parliament can play in appointment of State officers.

We were also reviewing the linkage between the Senate and national Government, the Senate and National Assembly, the Senate and county governments, the Senate and other State organs. We had also the responsibility to recommend to this House the constitutional and legislative innervations that were necessary to ensure we secure and safeguard the devolved system of government.

Finally, we had the responsibility to examine and make a recommendation on any other matter that is connected to the issues that I have raised above or incidental to the issues that are necessary and good for this country.

We, as a Committee, came up with a report that was tabled in this House. With that report, we came up with a draft Constitution (Amendment) Bill, 2015, that actually points out the areas that should be amended. I will give an overview of the Draft Bill, and the details of why the suggested amendments are in the Report.

The first part of that Draft Bill is in relation to the legislature. The objective of the Draft Bill is to rationalize the role of the National Assembly and the Senate, particularly by reviewing Articles 94, 95 and 96. Since Independence, the most misunderstood intuition was Senate. In 1969, it was abolished. When we came up with the new Constitution of 2010 and started this Senate in 2013, again, it is the most misunderstood institution in this country. Some of those misunderstandings were actually in the mixture of the roles of these institutions.

We had to re-look at Articles 94, 95 and 96 and marry them together with the functions of Parliament to ensure that we had a succinct provision that is clear in terms of capturing the roles of Parliament. Instead of verbose statements that are provided there by providing in one House, it looks like you are excluding the other House.

We have proposed an amendment to Article 94, so that we just provide straightforward the role of Parliament. You will permit me to read so that I am very clear on it. It states:-

“Parliament shall enact legislation according to Part IV of the Constitution, and Parliaments shall exercise oversight responsibility which is on national revenue, allocate national Government and all it is expenditure state organs and other public entities”.

“Parliament represents special interest in the National Assembly and the Senate.”

That is Article 94. It very clears that if it is legislative role, it will be for those who are following page two of the Draft Bill. We are also proposing an amendment to the current Article 95 and replace with an article which is also succinct or, brief and to the

point on the unique functions of the two Chambers of Parliament. There are so many people who have not yet appreciated that the terminologies have changed. When we say “Parliament”, we mean the Senate and the National Assembly.

We agreed that we are not coming here to glorify one Chamber against the other. We are not proposing amendments that will make the Senate more powerful than the National Assembly. Our role is to ensure that we have a working legislature and that we have a Senate that mirrors the traditions and practices of Senates all over the world. We want a Senate that will carry out its legislative responsibilities in a manner that will check the other Chamber of Parliament. We also need a National Assembly that will carry out its responsibilities in a manner that will check the Senate. We did not want to be petty because this is not a House of pettiness. It is a House of laws, soberness and reason. We must give direction to our people as a nation as to how the two Chambers of Parliament are supposed to operate in a manner that is in conformity with the constitutional order of systems of government that are like us all over the world. Therefore, Article 95 provides that the National Assembly will represent constituencies while the Senate will represent counties.

There is this assumption that the National Assembly represents the people. However, all of us, represent the people. At the end of the day, we exist because of people. We do not exist because of objects, but we exist because we represent living things; human beings. These are people who can reason. These are the people we govern; these are the people who voted for us and they expect services from us. So, assuming that when saying constituencies, it will be an object or a creature called constituency minus people, it is to stretch our imagination far. It means people of those constituencies. The Senate represents counties. It serves and protects the interests of the counties and their governments. It also oversees revenue allocated to, raised by or rather received by county governments.

The current Article 96 provides that our responsibility to oversight resources allocated by national Government to the counties. There is a provision in Article 96 that also permits the Senate to look at other resources. The protection of interest can go to resources raised or received by county governments so the provision has been made more clear in terms of what the Senate can do as stated in Article 96 of the Constitution as a special responsibility of the Senate in that regard.

The second thing we did in as far as the legislature was concerned is reviewing the legislative process, how Bills are moving from one House to the other; how Bills will be processed from the National Assembly to the Senate, and the Senate to National Assembly until to the point where we go for presidential assent.

Madam Temporary Speaker, the first thing that we need to look at is where we are told that the Senate shall consider Bills concerning counties. This is currently the most misinterpreted and misused provision. Particularly it is the reason the relationship between the National Assembly and the Senate has not been very good. It is a definition that minimalists – people who do not believe that the Constitution is a living thing that is growing and is interconnected – have used to ensure that they deny the Senate the responsibility to legislate and protect interests of counties.

We, therefore, proposed that the Senate will consider all Bills having amended Articles 94, 95 and 96. To ensure that the Senate will consider all Bills, Article 110 in so

far as the provision of Bills concerning counties, has been deleted. All Bills will come to the Senate. The key provision here for Senators to appreciate is that this amendment confers on the Senate of the Republic of Kenya, like other Senators of the world, including the United States of America (USA), the full legislative mandate just like the National Assembly.

Madam Temporary Speaker, there are people who have asked this question; why should the Senate legislate on the same issue that the National Assembly is legislating? In the new Article 96, the special responsibility of the National Assembly is to represent the interests of constituencies. The special responsibility of the Senate is to represent the interests of counties and their governments. That responsibility cannot be achieved if certain legislations that have implications on those counties and their governments are being held in the National Assembly and yet that Senate has the responsibility to protect those counties. For example, on the face of it, a Bill that relates to security may not look like a Bill that should come to the Senate. However, when you look at what security does in so far as how counties are being run, how the business of counties will be achieved and provision of services like water and health facilities, it means that for a county to operate and achieve its responsibility, security is an important function. Therefore, the Senate protects counties by ensuring that those Bills are brought to the Senate.

*[The Speaker (Sen. Ethuro) left the Chair]*

*[The Temporary Speaker (Sen. Ongoro) took the Chair]*

Madam Temporary Speaker, we have also looked at the other problem of referral of Bills for signature by the President. The current practice is not very clear. We have a situation where the Speaker of one House can run to the President with a Bill, even when the other House has protested that, that Bill has not gone through the normal processes of the Senate or the National Assembly agreeing to.

In the new Article 109, we have provided that before a Bill is signed by the President into law, there must be a joint certificate signed by both Speakers, to provide that the Bill has been passed by both Houses. In summary, both Houses will originate Bills with the exception of a few Bills that I will mention. Both Houses will have full legislative mandate and both Speakers must sign a joint certificate before the President can be sure that the Bill has been passed properly by Parliament. That is why it is called a law that has been made by Parliament.

The other issue is the definition of a money Bill. Currently, money has been used as an excuse that a Bill is a money Bill to deny Senate the responsibility to debate it. The fact that it could have one or two provisions relating to money issues, it has been used as an excuse that the Senate has no responsibility to debate it because it is a money Bill.

Madam Temporary Speaker, one of the things that we have done is to clarify that if a Bill has to be considered to be a money Bill, it should only be a Bill that deals with money matters alone. Those are matters of taxes, imposition of charges, appropriation, raising or guarantee of loans and matters incidental to the above.

The point here is that we must narrow the definition of what a money Bill can be. This is because it must not exclude – as long as you bring a Bill that relates to other issues other than taxes – imposition of charges, misappropriation or guarantee of loans, then that Bill ceases to be a money Bill.

The second and most important is that because we have already amended Article 109 to ensure that all Bills come to the Senate, the point here is that you just need the definition of what a money Bill is for the simple objective to know which House will originate that Bill. The practice all over the world is that money Bills originate from the National Assembly or “Lower Chamber”. For that reason, we have maintained the practice that money Bills will originate from the National Assembly. The definition of what amounts to a money Bill is there. Ultimately, if these amendments will be approved by this House and Kenyans, all money Bills will come to the Senate, including Appropriation Bills.

Madam Temporary Speaker, the second thing is the oversight role of Parliament. The responsibility of Parliament in overseeing national and county governments is not so clear, especially when it comes to the national level. We, as a Committee, agreed – bearing in mind comparative experiences in other jurisdictions – that when it comes to approval of State officers, we have defined and determined criteria which will be approved by the National Assembly and which ones by the Senate.

The approval of all State officers who will serve the presidency and at the pleasure of the President will remain with the National Assembly. They include Cabinet Secretaries (CS), Attorney-General (AG), Secretary to the Cabinet, Principal Secretaries (PSs), High Commissioners, ambassadors and diplomatic and consular representatives. Those are men and women who will serve at the pleasure of the President and come in every time a new Government is in place. The President can also change them midway.

For those who enjoy security of tenure, the Senate of the Republic of Kenya will approve their appointments. That includes the Director of Public Prosecution (DPP), chair and members of constitutional commissioners, Chief Justice (CJ), Deputy Chief Justice, Auditor-General (AG), Inspector-General of Police and Controller of Budget. These are men and women whose nomination and appointments will be approved by the Senate.

Madam Temporary Speaker, the second issue in so far as oversight is concerned is the oversight of Parliament in matters of security. As I speak, Article 58 of the Constitution denies the Senate a responsibility in the declaration of emergency. Whether it is approval or extension of a state of emergency, the Senate does not play a role. We have proposed an amendment to ensure that approval and extension of a state of emergency will not be approved by the National Assembly alone, but by both Houses. This is critical, not only for the stability of the nation, but also stability and functioning of counties.

Madam Temporary Speaker, we have also proposed an amendment to Article 241(3) so that the Senate can play a role in the deployment of forces. Again, currently under Article 241(3), it is only the National Assembly that plays a role in deployment of our armed forces whether within or outside the country. We have proposed an amendment to that article because that responsibility relates to the stability of the country,

the overall functioning of the counties and resources that are shared between the two levels of Government. Therefore, it is important that the Senate is involved in this matter.

Traditionally, it would have been only the Senate which would have done this responsibility, but we thought because this function is already being exercised by the National Assembly, we did not want to be divisive; we wanted to say both levels of Houses will play that role.

We have also provided for the leadership of the Senate in the Constitution by amending Article 108 to make it clearer that Majority Leader means Majority Leader in both Houses and Minority Leader means Minority Leader in both Houses of Parliament.

Madam Temporary Speaker, we have also provided for Administration of Parliament. The way Parliament is currently structured does not respect the responsibilities of the two Houses. The practice all over the world, whether it is in the United States, Australia, is that every Chamber of Parliament has its own independence in terms of hiring staff, expenditure of its resources and how they are going to spend those resources. At the moment, if you have a situation where you have a constitutional Commission whose responsibility is to facilitate functioning of Parliament, but the representation in that institution is good, you will find a situation where a Speaker of one House is the Chair like at the moment, where the Speaker of the National Assembly is the Chair of the Parliamentary Service Commission (PSC). When sitting and presiding over PSC because they are human beings, they are like you and I, their first priority will be the Chamber they are presiding, the people who elected him to sit in that seat and, lastly, the House that he presides over every day.

Madam Temporary Speaker, biases will come in whether presumed or actual. There will come a time you will have an erratic Speaker who, perhaps, will have no respect of another House of Parliament. That will lead to frustration of services. If that chamber is also performing a function like the Senate at the moment, deals with county governments, then it will be frustrated.

Madam Temporary Speaker, I believe that the organization of our structure at the moment is the reason the Senate is frustrated when it comes to performing and Senators being facilitated to carry out their oversight responsibilities in the counties. That is why the Senate is proposing that we have two Service Commissions; one in charge of the Senate and the other in charge of the National Assembly. The Chair of the Service Commission of the Senate will be the Speaker of the Senate. The Chair of the Service Commission of the National Assembly will be the Speaker of the National Assembly.

We have become very careful not to increase the wage bill of this Republic. We were conscious of that fact. That is why we ensured that the membership and the representation, those who are at the moment representing Senate in the PSC, the figure and the numbers of people who are representing Senate in the PSC is just transferred to the new Service Commission. Currently, the staff serving in the Senate under PSC will be transferred to Senate Service Commission (SSC). The staff serving the National Assembly under the currently PSC will move to National Assembly Service Commission (NSC).

Madam Temporary Speaker, I want to dispel any possibility and thinking that anyone would argue that there will be an increase on the wage bill or overheads as a result of the split of PSC to the two Service Commissions. I want to tell them that that is

far from it because the membership and the representation will remain the same. It is only a split for the purpose of independence and ability to carry out those functions without interference by another Chamber of Parliament. I need to emphasise this because usually in cases like these where you are dealing with a sensitive matter like amending the Constitution, Kenyan people will want accountability from us as to whether we are doing things for the benefit of our own at the expense of Kenyans and at the expense of service delivery.

Madam Temporary Speaker, the other subject that has been dealt with is the issue of national and county executive. We have clarified the process of removal of the governor and the deputy governor. The process that is there at the moment provides that Parliament shall be able to enact legislation on the removal of a governor or a deputy governor. We have imported that the provisions of the County Government Act, in so far as removal of a governor and the deputy governor is concerned. We have also imported the provision of Article 145 of the Constitution on removal of a President and the Deputy President, all of them created a similar process of removal of a governor or a deputy governor in the Constitution.

We want to add that as a result of the same, we realized that when it comes to removal of a state officer, there can be unnecessary inordinate delays. The experience that we now have with the Wambora situation, where one moves from one court to the other, looking for delaying tactics to ensure that they frustrate a process of accountability, has now been checked by this Draft, by making a provision that will ensure that any person who would like to challenge a removal of a governor or a deputy governor, a removal of President or Deputy President, we have to make it uniform, will have to do so in the Supreme Court and within 60 days.

Madam Temporary Speaker, also as a lawyer, I want to remind the Republic that although the substance of the removal can be challenged in the Supreme Court, we have no capacity and ability to legislate the High Court out of any question that relates to human rights and violation of rights of an individual even in that process. When that question of that issue comes before the Supreme Court at any given time, they will have to determine how to deal with issues that have been challenged in the High Court in as far as personal rights of any person is concerned.

Madam Temporary Speaker, we have also dealt with the issues of safeguarding the independence of the county assemblies. At the moment, the county assemblies are at the mercy of the county executive in the manner in which their budgets are being released, and how they manage those resources. Although an Act of Parliament had already provided in the Public Finance Management Act, that it will be independent to the county assembly, we thought that it was important to provide it in the Constitution clearly that the County Assembly Service Board shall be an independent institution, just like we have the County Public Service Board. So, the County Public Service Board can run its affairs independently and in a manner that with their clerk being the accounting officer and the Chief Executive Officer (CEO) of the county assembly, so that they can run their affairs independently.

Madam Temporary Speaker, we have also dealt with the publication of county Bills by creating in the Constitution a definition of gazette that includes a County Gazette which is a gazette published with the authority of the county government, so that we do

not delay the Bills of county governments from being published. As a result of differences, county governments and the executive can use the current Government Printers to frustrate the county assemblies. They can print it anywhere as long as that printing has been done with the authority of the county government.

Finally, Madam Temporary Speaker, is to mention the issue of public finances. We want to ensure that there is adequate allocation of public resources to the counties. We have made a proposal to amend Article 203 in two ways: First, the resources that will go to county governments instead of 15 per cent, we have said 40 per cent of the national resources should be allocated to county governments. That is an issue we debated for a long time. However, considering the functions that have been devolved to the counties, the importance of devolution to our country and the desire to grow our economies at the local level, we say that 15 per cent should be provided for. We also said that instead of waiting for figures from the Auditor-General to be approved by the National Assembly, we should use the latest figures from the Auditor-General without requiring the approval of the National Assembly because it can be delayed. That is a critical amendment that relates to the resources that go to our counties.

We have also ensured that the Senate is involved in finances by dealing with the Appropriations Bill. We also ensure that the County Allocation of Revenue Bill is published early enough. I know the Vice-Chairman who will second this Motion, will say we need to ensure that the Division of Revenue Bill is passed at least three months before the end of the financial year.

Madam Temporary Speaker, secondly, we have provided that the County Allocation of Revenue Bill should be passed within 30 days from the date of passing the Division of Revenue Bill. That will ensure that one month before the financial year ends and before the national Budget is read, the county governments will already know what they will receive from the national Government. Therefore, there will be no delay after June, July and August with county governments still debating their budgets because they are not sure of the amount of resources they will receive from the national Government.

We have also ensured that we tighten the oversight of public entities so that the entities at the national level with issues of misuse of money. We have provided that the National Assembly will have a say in ensuring that the money that goes to national level, oversight will be by the National Assembly which can also initiate the process of stopping money to an entity they believe has not accounted enough for those resources. In the same manner, the Senate will have the responsibility to stop resources going to the counties that have not accounted for resources and have questionable mechanisms of dealing with resources so that we do not just become people who complain. For instance, Sen. Wetangula's county is buying one wheelbarrow for Kshs109,000. If and when the people of Bungoma County ask us to question such kind of allocations, we must have the capacity as a House to say that we cannot allow a situation where a county is spending Kshs109,000 to buy one wheelbarrow.

We were also told of another county that opened a *Facebook* page at the cost of Kshs2 million. They paid a contractor that huge amount of money to open a *Facebook*, *Twitter* and *WhatsApp* pages yet we all know that those social media are opened free.

We have also been informed that some counties spend millions to buy curtains. We are told that it costs more resources to buy curtains in Meru than to equip a hospital.

Madam Temporary Speaker, Nandi County spent about Kshs2.5 million to build toilets in a market yet every centre has its own toilets. I am informed that in one of the counties, they are using wire mesh or what is popularly known as chicken mesh to build a perimeter wall in a market that has operated since 1963 in open space with clear room for expansion. However, since someone wants to make a lot of money before the next election, a contract is given.

In my own county, there are questions that are pending and are yet to come here about building sheds for *boda boda* operators that cost about Kshs13 million. However, with one or two *mabatis* and three wooden poles, one would still build good sheds for those operators. People are misusing county resources. I am still waiting for a report that was tabled in my county assembly that relates to the building a house for our governor. I am told that the report is damning and it will be debated tomorrow. I have told my County Assembly Members (MCAs) that should they waiver in following the truth, I will be watching. Should they pass a different report, I will report here. The County Public Accounts and Investments Committee (CPAIC) led by Sen. (Dr.) Khalwale will descend on Elgeyo-Marakwet County and ensure that accountability is achieved.

Madam Temporary Speaker, this House must, therefore, have the teeth to bite and ensure that resources of the county are spent on the intended purpose. If the counties become an opportunity for us to enrich ourselves, then it is an arms race and I am worried. I said that during the transition from county councils to county governments my fear was that the mayors, chairmen and councilors of the defunct county councils were likely to misappropriate public funds because of the confusion of transition. However, in the transition to the first election under the county governments, I fear that the budget of 2015/2016, the county governments will be budgeting with the intention of raising campaign funds. Some of the governors know that they will not be reelected. Some are saying publicly that even if they are not reelected, they will continue leading a better life because they have made enough money.

Madam Temporary Speaker, we did not devolve resources to create 'lords' at the local level who will preside over poverty in the local areas. We must have the teeth to bite, institutional framework and ability to stop money from going to counties which use resources for purposes of enriching themselves. That is the reason we have provided that the Auditor-General will present his reports directly to Parliament. His role should be independent.

The Office of the Auditor-General is critical in as far as operation of national resources is concerned. We must ensure that the people working in this office are well vetted and that they uphold high standards of integrity. If the Auditor-General is not trusted, the county governments will bribe officers who go to audit them to clear a county government, entity or officer. It is for that reason that we said that the Senate must be allocated some resources for oversight, so that we can visit our counties, have meetings with the people, listen to them and do social audit of the functions performed at the county level. If people suspect that money could have been misappropriated in a particular county, they can have an opportunity to complain to us. We can use those resources to do audit and get reports for this House because we have to protect our resources.



I know many Senators want to contribute to this Motion, but allow me to conclude.

Madam Temporary Speaker, I want to conclude. First, this is a long journey that we must walk. It is a journey that we must carry others who are like-minded together. We must, as a House, agree on the best modality and how to reach the end of this journey by ensuring that these proposals have been passed into law and be part of our Constitution. I say this with a lot of respect. If we want to have a Senate that will stay for another 100 years, if we want to have a Senate that will check the excesses of the National Assembly, if we will have a National Assembly that will check the excesses of the Senate, if we will have a Senate that will check the excesses of county governments, then we need to strengthen this law. It is not about us versus them or this versus the other. It is about all of us being enabled by law to carry out our responsibilities.

I know that this requires a referendum. I know that the debate of a referendum is a political issue. However, there is nothing very difficult in a nation for people to agree on something, like the Bible says: "Come, let us reason together." If we could meet at a table like the Senate has done and reason together, we could agree that this is the right time to pass this law or the best opportunity to strengthen this institution.

Madam Temporary Speaker, I like the argument that we had in our Committee. I wish it could be imported to this Senate and exported to the public. When dealing with matters of national importance, we should not reason as the Coalition for Reforms and Democracy (CORD), the Jubilee Government, tribes or religions. We should agree that it is important for us to strengthen institutions and come up with laws and mechanisms that will strengthen this House. Therefore, we are ready to engage, in a respectful manner, in a round table discussion so that we achieve the right amendments at the right time.

I invite the leadership of the political parties on both sides for discussions; that is, the President, Deputy President and all the leadership in the Jubilee side and the leadership of the CORD led by the former Prime Minister and the former Vice President. We must forget about all the other political interests, agree on the national interest for this country and look at provisions of law which can be very useful in strengthening this institution. We do not want a Senate that is impotent. We do not want an institution that everybody runs away from to go to counties.

I know that Sen. (Dr.) Khalwale is on the way to becoming the Governor for Kakamega County. I have also heard rumours that Sen. (Prof.) Anyang'-Nyong'o will vie for governorship. I have not heard anything about Sen. Wako. I think he wants to stay here. Sen. Wako, Sen. Orengo, a few others and I may remain here. I do not see many Senators from our side who will choose to remain apart from, maybe, Sen. Haji. For those of us who will choose to remain in this House to provide leadership that is required, let us strengthen this institution so that it will continue attracting the quality legislators and public servants that will contribute towards national building.

Madam Temporary Speaker, I have nothing else to add on that. I am very proud, in a small way, to contribute to this historical document and, perhaps, to get myself to the footnote of Kenya history that I was part and parcel of those who thought about how to strengthen institutions of governance, so that devolution, Parliament, institutions and our country has strong institutions that could check excesses of power.

Madam Temporary Speaker, allow me to invite Sen. Mutula Kilonzo Jnr. to second this Motion.

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Speaker, I rise to second this Motion. I will deal with four thematic areas as to how we arrived at this. From the outset, I thank the Committee Members and the Secretariat for having availed themselves to many, about 20, meetings that we had. This document has neither leaked to the Press nor discussed anywhere yet it would have found its way out to the public before we presented it.

Madam Temporary Speaker, the Committee was known as “the Murkomen Committee.” My Chairman delved into some details on this. I just want to put it into perspective the motive, experiences on the process and summarize how we arrived at the conclusions that we have.

In terms of the experiences, there has been concern in this Republic about why we need to amend the Constitution. Five years later, the experiences in other jurisdictions - I have three - show that we have waited for too long to consider whether or not we need to amend the Constitution. In India, the Constitution was adopted in 1950. However, 18 months later, that was 18<sup>th</sup> June, 1951, the first amendment was made. Since then, several amendments have been made. The amendment on affirmative action is actually amendment No.208 in the Republic of India. Therefore, we are doing poorly in that respect.

Secondly, in the United States of America (USA), the Constitution was ratified on 21<sup>st</sup> June, 1788. The first amendment was done on 25<sup>th</sup> September, 1789. That was one year and three months later. Back home in South Africa, the Constitution came into effect on 4<sup>th</sup> February, 1997. The first amendment was done on 29<sup>th</sup> August, 1997. That was six months and two weeks later.

Therefore, Madam Temporary Speaker, in terms of experience and research, this Committee has made the inevitable conclusion that this is the right time to consider the proposed amendments to our Constitution. We agreed unanimously that we would not get into what has been described in the Press quite wrongly as “a superiority debate” between the National Assembly and Senate. Our motivation was to protect the institution of the Senate and Chapter 11 of the Constitution.

For the record, we have quoted Advisory Opinion No.2 of the Supreme Court where we challenged our participation in the Division of Revenue Bill. Allow me to quote what the Supreme Court said just for the sake of record:-

“Kenya has had a long but checkered history with decentralization. The country has experienced all three main aspects of decentralization; deconcentration, delegation and now, devolution. These have had political, administrative and physical dimensions. Most of these efforts have been inspired by fear of domination and discomfort with rising horizontal inequalities on one hand and, on the other, a desire to take resources and services closer to the people. In this respect, decentralization has been a product of both fear and aspiration and emotionally mixed venture. This fact has been a major element in the country’s tribulations.”

Madam Temporary Speaker, the Supreme Court further said that at Independence, Kenya adopted the most radical form of decentralization which had regional assemblies,

regional governance and a Senate to protect the process at national level; the so called *Majimbo* system of Government. However, this was soon undermined and subsequently abolished in the mid 1960s by the first Post-Independence regime whose anti-apathy for this system was all-manifest. Its abolition coincided with the expansion of power and influence of the provincial administration, a staunch colonial era and law and order institution. The collapse of the initiatives of political decentralization was followed in the subsequent years at administrative, decentralization and various degradations of delegation and decentralization and the supreme mode continued.

Madam Temporary Speaker, I want to quote one paragraph which is the cornerstone of our motivation as a Committee. This is paragraph 143 and that is what the Supreme Court said. It is what made us come to a conclusion on the various things that ideally will cause discomfort, displeasure and a lot of rivalry among politicians.

It states that:-

“Devolution is the core promise of the new Constitution. It reverses the system of control and authority established by colonial powers and continued by successive presidents. The large panoply of institutions that play a role in devolution matters, evidences the central place of devolution in the reconstruction of the Kenyan State”.

Thus, Chapter 11 approach would wrongly obscure interlocking the nature of devolution with other aspects and institutions of the Constitution, an element which is critical to its success.

These other elements include Treasury---

**The Temporary Speaker** (Sen. Ongoro): I will give one intervention to Sen. (Prof.) Lonyangapuo. Take your seat, Senator.

**Sen. (Prof.) Lonyangapuo:** On a point of order, Madam Temporary Speaker. Is it in order for the Seconder of the Motion to read verbatim and address himself instead of addressing the House?

**The Temporary Speaker** (Sen. Ongoro): Sen. (Prof.) Lonyangapuo from where I sit from this vintage position, I see him making reference from time to time. He is not reading verbatim.

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Speaker, I am not.

**The Temporary Speaker** (Sen. Ongoro): Proceed

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Speaker, I am about to finish. I was reading that:-

“These other elements include Treasury which plays a significant role in the public finance matters.”

*(Sen. (Prof.) Lonyangapuo consulted other Senators)*

Sen. (Prof.) Lonyangapuo, please, listen because this is important.  
It continues:-

“Parliament which requires a functional Senate to provide sufficient protection to the devolved governments and to ensure there is no gridlock in the budgetary or legislative process. Judiciary, particularly the Supreme Court, whose mandate under Article 163(6) is to give an advisory opinion on any matter

concerning county governments and which is in the arena of arbitrating conflicts between the national Government and county governments.”

The highlight here for Sen. (Prof.) Lonyangapuo was that the Supreme Court identified correctly that in order to safeguard devolution, the Senate needed to have strong powers. In the same advisory opinion, the Supreme Court observed that although it appears that the drafters of this Constitution gave little legislative powers to the Senate, the intention, that is why in paragraph 102 they said, although matters concerning security, public finance and other things that are not in the Fourth Schedule, any good Speaker would find that those matters concern counties.

Other than leave those issues to conjecture and interpretation, that is the purpose under which we have proposed an amendment to Article 110 so that we do not leave to the Speaker of the Senate and the National Assembly to determine whether a matter of security concerns Garissa County or not. That is the purpose why I was reading this.

The discretion that is given to the Speaker of the National Assembly has been removed in the proposed amendments. The discretion on Bills has been removed. The discretion on budgets where one House is considering matters concerning the livelihoods of Kenyans in Garissa and Makueni counties will now be a function the Senate will conduct. It is important because if this Senate is considering the matters of public finance and debt, some of the issues affecting this Republic today would not happen. The public debt has got an impact directly on the funds that are going to our counties because it is considered first before dividing the revenue.

Although we will have a lot of work scrutinizing with a tooth comb the budget of Ministries, in the end, the complaints that you hear from the Senator of Nyandarua County about facilities in his county would never arise because we would find where the money is, hence, the proposal to deal with Money Bills. Although the veto has been left to the National Assembly, the fact of the matter is that the document will not be brought to us as a matter of course. It will not be brought to us for the sake of it because we will have the opportunity to look at it.

On Article 203, Division of Revenue, on matters of devolution, the Committee agreed unanimously that we need to increase that formula to 40 per cent of the most recent revenue. The questions about Article 204 - I speak to the counties that have been given the Equalization Fund - that sort of cushioning in this Article will not arise if we raise revenue as proposed in our Draft.

Madam Temporary Speaker, 12 chapters only and 53 clauses of the Constitution, we found reason why the President cannot declare a state of emergency in one county, say, in Lamu without involving the Senate. We found reason why the deployment of our military to any place should be a matter that should concern the Senate. Any Bill that needs to be discussed must come here for quality control because that is happening everywhere in the world. The Senate in Australia and in India, composed of eminent persons is supposed to offer quality control in their Bills.

The debate about whether or not the Bills that are in the National Assembly purporting to grant us more resources in our retirement would come here because although they do not concern counties, we, the Senators, as a House of Parliament, are also receiving the flak for not doing anything about it yet we have no role in dealing with these matters.

The Wambora issue would never arise when, if you agree to this proposal that if a governor is removed, and the governor challenges the matter in court, that suit would not last for eternity like the Embu provision.

An important Bill to this Senate has been proposed by Sen. Sang on The County Printer Bill to make sure that the legislative power of the county assembly is not impeded at the county level by the Government Printer. We have now included that definition in Article 260.

We will most likely and without a doubt go into a referendum. The referendum is not a word synonymous with any political outfit or persuasion. It is a term that we imported and we put in our Constitution under Articles 255, 256 and 257 to protect those chapters that deal with objects of Article 174. Since we have touched extensively on matters under Article 174, a referendum is inevitable. The approach to this referendum must be non-partisan so that the proposal to strengthen our counties, county assemblies and Senate that vet judges, Chief Justice and proposal to vet all office holders including commissions can then have fruit.

Madam Temporary Speaker, this is a milestone for this Senate. We have two options. One, we agree to do this non-partisan and two, is to do it non-partisan. We have no option other than to offer leadership because the first victim of not having a strong Senate, we will be blamed for eternity just like the 1966 amendments which led to all the inequalities in Kenya. All the land grabbing, corruption and everything that is synonymous with discrimination including tribalism is a product of the 1966 amendment of removing regional governments, Senators and the Senate.

In order to allow other Senators to have an opportunity to debate on this, we have given you a framework of how long we think this can be done. If allowed, I think before we go into the next General Elections in August 2017, it is possible to have this in the referendum.

Secondly, for all the proposals on the amendments in the Constitution including by the governors and those proposed by “*Okoa Kenya*” to be part and parcel of this document, so that we can achieve the objective that the Coalition for Reforms and Democracy (CORD) is looking for in the amendments to the Constitution. The proposals that the governors are looking for in the amendments to the Constitution and the proposals that we Senators have proposed to this Senate as the way forward, the truth and the life in having a true devolution in Kenya. For those naysayers, we want to tell them that there is no reverse gear in devolution. It is one way.

I support.

*(Question proposed)*

**Sen. (Eng.) Muriuki:** Madam Temporary Speaker, thank you for giving me a chance to support this very important Motion. I speak as a Member of the Committee and I wish to compliment my Chairperson and the Vice Chairperson for moving this Motion very well. However, I have a few things to elaborate.

The Constitution that was passed in 2010 was a culmination of attempts on constitutional making for nearly 20 years. Before this Constitution was passed, there was representation from religious leaders who cautioned us not to rush too fast. We did not

listen and whether the issues we are raising now are what they saw, the fact is that the Constitution has many gaps. Devolution came with a number of institutions, among them, a changed Parliament. The way the Constitution was drafted is such that when arguments come between the Senate and the National Assembly, they become indeterminate.

You will find that even when the issues are taken to the court, you find that the Constitution is not explicit. As a result, arguments arise and the “Lower House” is able to take advantage due to numerical numbers and also the executive is carried by the other House and end up frustrating the Senate.

The deliberations in this Committee were fairly confidential and we did our bit and made sure that it does not come out to the media before its time. The bottom-line is that in this country we either have a Senate which is functional or not at all. The way it is now, we have a Senate only in name. We have a situation where a straightforward matter like matters affecting counties, the way it is in the Constitution is debate. The essence of these amendments is to make clear the role of the Senate.

When we talk about matters affecting counties and we carry it on to revenue allocation, somebody will argue that it is not affecting counties. I would like to say that there are very few issues which do not affect counties. If you say issues do not affect counties, you end up allocating funds to the national Government.

The most important thing is that Parliament is Parliament and we have two Speakers. Therefore, a Bill going to the President for assent must have the concurrence of the two Speakers. That also includes the money aspect. There has also been this long standing argument as to whether it is 15 per cent or not. We argued about it and even for us who were very emphatic about a few issues, we had a discussion and we eventually arrived at 40 per cent. That is the correct level. Other counties may have different figures because the mandates of their devolved units are not necessarily similar to ours. We argued that the idea of waiting for the accounts to be approved by the National Assembly to become the basis does not make sense. Although it is in the Constitution but only until these amendments are passed.

The Government knows how much money has been raised and that is what is going to be used the following years. It is as simple as that. Other issues include security. Security is not devolved when you impose a curfew for a number of counties, it actually affects counties. These are the things that we need to address. The money Bills will be introduced in the National Assembly but the Constitution talks about introducing and not debating. The amendment we are proposing is that they will be introduced in the National Assembly but it must come to the Senate. After all, we made sure that the votes in the Senate are equal irrespective of how big or small your county is. Some of these equalizing factors must be applied across the board.

Madam Temporary Speaker, we are sending Kshs287 billion to the counties but when we ask for Kshs1 billion to oversight that amount, the National Assembly opposes it. If the Senate wants to do oversight, the Bill to deny or agree must come to this House the same way it goes to the National Assembly. The President should not sign things from the National Assembly and ignore the Senate.

As I finish my remarks, many Senators have heard occasion to go around the counties and I can report that devolution is working. However, the haphazard way in which funds are being applied and spent such that this quest by the Senate to do oversight

becomes more important than what we envisaged at the beginning. I am foreseeing a situation where this Senate will need to have another Committee to revisit the laws which govern how the county governments are being conducted. There is too much leeway and by the time they come to the County Public Accounts and Investments Committee, it is too late. We need a similar session of consultations so that we can do amendments to the laws which govern the way the county governments are operating at the moment.

With those few remarks, I wish to urge this Senate to support this Motion so that we can move on. I also wish to urge the National Assembly to see the wisdom in it and also appeal Kenyans at large, because eventually, it will end up in the referendum.

I beg to support.

**Sen. Orendo:** Thank you, Madam Temporary Speaker. First, let me also join my colleagues who have spoken particularly Sen (Eng.) Muriuki, who has congratulated both the Chair and the Vice Chair of the Committee. I must admit that this Committee was chaired by the youngest amongst us. I think they gave very effective leadership in conducting its affairs, until we came up with the draft which was agreeable and acceptable to all the Members of the Committee.

I also want to comment the spirit under which discussions were carried out in this Committee in the sense that they were carried out in a bipartisan manner. It was a contest of ideas and positive debate other than contestation on political issues or matters which were not relevant to the discussion that we were having in this particular Committee.

Madam Temporary Speaker, I want to say very boldly that if the Senate continues to operate the way we are operating, I think it should be disbanded. The way we are operating at the moment, and looking at our legislative records, in the last three years, only four or five Bills have gone through the Senate and have received presidential assent. Three of those were actually Bills which were required and were mandatory under the Constitution.

The only legislation which has come from this Senate directly, that had no constitutional bearing was the Sang Bill. We know what eventually happened to the Sang Bill. The court discussed it and came to the conclusion that it had certain provisions which are not in line with the Constitution. In effect, it looks like the Senate is merely a sinecure. A sinecure is a position that exists in all for the glamour and the glory but without any power or authority. It is matter of great injustice to the makers of this Constitution, that at the end of the day, despite that the design and structure of this Constitution that what the Senators will merely be doing here is to sit and debate without the authority of legislation.

The Constitution is quite clear that legislative authority of the Republic is in both the Senate and the National Assembly at the national level and in the county assemblies at the county level. I want to say this in order to persuade our brothers in the National Assembly that the way power is distributed in a modern Constitution, and if we really believe in constitutional democracy, is that power is distributed not just within the traditional three arms of government, but even within the arms of government be it the executive, power is distributed.

This is in effect to make sure that the functions of Government take effect efficiently and there is accountability and the requirements and needs of the people are met. For example, in the Executive, we glorify the presidency as a very powerful position

and yet one of the mischief this Constitution was addressing is the old Constitution where the president was everything about the executive. However, this Constitution now requires the president to govern through the Cabinet. The Cabinet is an important institution within the Executive. Within the Executive, we have independent offices and commissions.

Within the Executive structure, you can see all these institutions that actually exercise executive authority, outside the presidency. In fact, they are not under the control or direction of the President or the Deputy President.

Similarly, in the Judiciary, the courts as constituted, even at the ordinary tribunals, including court marshals have different functions. For example, a magistrate court cannot sit and preside over a court marshal. That is a special court. Within the Judiciary itself, although there is some kind of hierarchy, you can find that the Supreme Court, the highest court in the land, does not have all the powers. It exercises its authority only in certain specified functions as required under the Constitution, as the court of last resort or as an advisory court as it were.

Within Parliament, it cannot be that the Senate was created just for us to come and sit here talk and go home then claim our allowances. Indeed, this definition that is contained in the Constitution that Parliament consists of the National Assembly and the Senate was supposed to mean something. In the old days, Parliament consisted of the National Assembly and the President. In fact, not the National Assembly and the President; it was the President and the National Assembly. This meant something. It meant the President was a component of Parliament; he was a Member of Parliament. Therefore, one of the things that this Draft as presented ably by the Chairman of this Committee, is supposed to address something in the Constitution which probably was not provided for but to make it clear that, when it comes to legislation both the National Assembly and the Senate have a function.

Finally, when a law is enacted or it is a document passed by both Houses which comprise National Assembly and the Senate. Historically, you would find that institutions which were meant to play a role, if by law they are not well crafted out, you ran into a lot of problems.

One of the problems that we ran into is that the design and the authors of this Constitution, when it came to implementation, somehow, including us who were supposed to implement this Constitution, decided to play around with the Constitution in such a way that it is not working as it was originally designed. We have had similar situations before, including the Lancaster Constitution. It was not a bad Constitution, but the way it was implemented and, thereafter, in order to meet the wishes of the imperial presidency, it was amended not for a good cause but in order to maintain and expand the power of the imperial presidency.

At the moment, it will be important for the reasons which our Chairman put ably that, the role of the Senate in a Republic like Kenya Republic, by design cannot be a monarchy. It is in a monarchy where you can create offices and where people just sit and earn allowances or attend institutions ceremoniously like the old House of Lords.

I am looking at a word which fairly describes the present situation of the Senate, because I think it is a sinecure. Looking at the British dictionary definition for the word "sinecure" it says; "It is a noun; of a paid office or post involving minimal duties." In



current arrangement, as our friends and partners would rather have, it is that the Senate should have minimal duties. I do not think that a Republic where the taxpayer is worried about how his money is spent would want to pay an office for the glory of it.

They will want to pay an officer for the glory of it, to carry out minimal duties. The other meaning was that it was church benefice to which no spiritual or pastoral charge is attached. In order to deal with this mischief, I persuade us that the way forward is to not only approve this Motion, but go out there to support and promote it under the Constitution and go to a referendum as a team.

Madam Temporary Speaker, the late Wamalwa used to say that a better idea always gives way to a good idea. I think what Sen. Murkomen's Committee has come up with is a better idea. We should not be in a time warp and think that the Constitution cannot be changed or altered. The Senate is demonstrating that we can change the Constitution for a good course and not like in the other House where it is being changed for negative or adverse objectives to the constitutional arrangement in this country.

I fully hope that we will be together in this in the same way the enactment of the current Constitution required of Kenyans to come together. Had we pursued it on the basis of partisan politics, we would never have succeeded. Even the idea of Kenya becoming independent; had it been followed on the basis of partisan politics, we would never have achieved Independence. One group led the struggle for the purposes of a narrow selfish interest. This will require all of us to be together, pursue it together for what this stands for and not necessarily what other people may think that the Senate is trying to do, which is to amass additional power. I do not think we are amassing any additional power. All we are trying to do is to ensure that this institution falls within the frame and structure of the current Constitution.

Madam Temporary Speaker, the idea of increasing allocation to counties despite the problems that we are seeing in many counties – corruption and misuse of money – is a matter that we can deal with using the structures within the Constitution itself. However, it has been demonstrated that the allocations to counties are making a difference to the lives and welfare of all Kenyans, irrespective of where they live or come from. No one county or community has been left out. The politics of exclusivism or tribalism can be dealt with by ensuring that resources go to counties so that everybody has a piece of the cake.

I now challenge the Jubilee administration, because they have a greater challenge than the Opposition, to come to terms with what Kenya really needs. If we can come to terms with what Kenya needs, we can move forward. Yesterday I was listening to the debate of the democratic candidates in the United States of America (USA) and somebody said: "We are tired of listening to this issue of emails. We want to address the substantive issues that affect the nation".

In Kenya at the moment, the economy is not doing well. People are not being paid their salaries including allowances for Senators and, teachers out there still do not know whether their demands will be met despite court orders. In fact, this is one of the great ideas that can engage the minds and souls of Kenyans, to ensure that we have a better country and leave it better than we found it, instead of wasting our energy on International Criminal Court (ICC) debates. You find 100 Members of Parliament (MPs) going for a prayer meeting. We are supposed to do our business here in the Senate and in

the National Assembly. I am sure that if we have proper structures, we will not even have time to go to funerals. We will go to very few funerals because we will have a lot of work here.

With those few remarks, I support.

**Sen. Karaba:** Thank you, Madam Temporary Speaker, for allowing me to also contribute in support to this wonderful Motion. If this Motion came in 2010 before the promulgation of the new Constitution, it would have been defeated. Now that we are out of 2010, 2012 and are now in 2015, we have had many problems coming from the National Assembly affecting us. It is as a result of the problems that we have undergone that has made this Motion relevant and popular among Senators.

*[The Temporary Speaker (Sen. Ongoro) left the Chair]*

*[The Temporary Speaker (Sen. Murkomen) took the Chair]*

I remember when my friend, Sen. Wako, was the Attorney-General (AG), there was the Wako Draft and it is like it was trying to convince us that the Senate at that time was not supposed to be very strong. Reading through it, you see now we have Sen. Wako here as one of the Senators. I am sure you will support a different view from what the Wako Draft was all about. I am happy that the Naivasha I and II might have a lot of impact ---

**The Temporary Speaker** (Sen. Murkomen): Sen. Karaba, do you want to be informed?

**Sen. Karaba:** Mr. Temporary Speaker, Sir, I do not mind. Let us hear it.

**Sen. Wako:** Mr. Temporary Speaker, Sir, the so called Wako Draft was not actually Wako Draft. It was a draft directed to the Attorney-General (AG) to draft specifically by Parliament at that time, which said: "We want the draft along the following lines." So, it was Wako Draft I and it failed. Wako Draft II, which is now the current draft went through. Again, this was a product of Parliament. Both were Wako Drafts.

If this one goes through, Sen. Murkomen may claim the amendments to the Constitution. However, as Chairman of the Committee on Legal Affairs and Human Rights, I would say it is part of Wako III now.

**The Temporary Speaker** (Sen. Murkomen): Except your last comments, the rest are okay.

**Sen. Karaba:** Thank you for that information, Sen. Wako. That time he was the Attorney-General (AG) and we have a lot of respect for him and the Office of the Attorney-General (AG). He was the legal advisor of Government on what was to happen both for the Constitution and also the formation of the two Houses.

What happened in 2013 after we were elected, some of us were elected on a platform that we least new about. We were elected as Senators and we did not know what the functions of the Senate were to be. Some governors were elected without even the knowledge of what they were to do. They were elected on the platform that they were to be the owners or the ones in charge of counties. Senators were supposed to provide oversight over the same counties. However, little was done to come up with the nitty-

gritty of how that was going to function and succeed. That is why we are having this Motion now.

Mr. Temporary Speaker, Sir, we have really had problems in trying to translate the role of the Senate *vis-a-vis* the Senator, and also the role of the governor *vis-a-vis* the county government.

So, what you see these days are that, the governor has immense powers that he continues amassing the wealth without anybody questioning where the wealth is coming from. The Senator has to sit in this Senate without caring how that money will be used. Even when he wants to get to know how the money can be used, there are no provisions and there is no framework on how to go about it. So, this is the reason why you find this Constitution review is necessary. The Motion, therefore, is relevant now that we have had the experience from both Houses.

Mr. Temporary Speaker, Sir, you realize that in both Houses, most functions are almost duplicated. A Motion is passed in the “Lower House”, and in the Senate, a similar Motion is passed. A committee to probe an issue is created in the Senate, and another parallel committee is also created in the National Assembly. You find out there is a lot of duplication and this duplication is a waste of time. If we could come up with clear framework as to what roles the National Assembly should play against what the Senate should do and it is well spelt out in the Motion, that is what we should have done earlier. If we had known about this information at the beginning of 2013, may be in April, May or June, by now we would have done a lot of work to our Governments and a lot of work also to our counties.

Mr. Temporary Speaker, Sir, you will realize that if you compare Kenya with other countries like India, America and Nigeria, we are very far apart. Whatever we do here in the Senate cannot be compared with what Senators do in America. In America, you rise even to become a president from being a senator, as you have seen what happened to Obama. Here, the scenario is different because what we are doing, we cannot even influence our own counties, because our governors have a lot of powers and no limitation on how to use the money.

In this case, therefore, it will be prudent to imagine that the Senate should have been given more powers as it is enshrined in the Motion by Sen. Murkomen. If that happens and it is passed, then it means that we are going to be seen like a House which can discipline someone. Right now, we have failed to exercise our powers. It is like there is no House in existence. We tried to do one Embu case, and we were frustrated. Somebody went all the way to say after all, what is this House doing?

It appears that we cannot do much because with that now and the court ruling, it is like similar cases will never come here for us to pass because of the bad past. So, to create an impression that Senate can do something, we need to be seen, and that can only come through this Motion where we have powers. Let us be seen like we are powerful. You noted that even to get a seat in the county assemblies is a problem because you cannot just go and create one, you cannot go and displace the governor, and neither can you say that you want to address the people without permission from the governor. The governor can always say, no. If he says, no, and he has the mandate to even form his own battalion of security forces, he has his own cabinet, he has forces to even recruit whoever

he wants to recruit, it means, therefore, that the Senator will not have any power to do anything in his county.

Mr. Temporary Speaker, Sir, the Motion is, therefore, trying to address the powers of a Senator. That is why we feel that it is good. It has come at the right time, and when it comes, we will be in a position to even question some of the things which are happening. We cannot question them now because we have no mandate, and it is not spelt out in the Constitution. We have no money allocated to us. The other day we were trying to debate how we can get Kshs1 billion and it was not possible. So, we cannot even ask how the governors are using Kshs1 billion or Kshs5 billion, because of the limited resources that we have. Some of us represent vast counties; counties where we have about eight to 10 Members of Parliament, and these MPs, going by the past, have more monetary powers than what we can claim to have.

Mr. Temporary Speaker, Sir, we feel like if nothing changes, we will be a dejected House. We will be a belittled House that has no powers at all. A House that cannot oversee anything happening in the county, and this to us will be detrimental to the operations of this House. When this Motion is passed and effected, I am sure the Senate will be seen like a House, not only of records but a serious House; a House which can discipline some of these wayward governors and some of the officers, because we have developed a team, and that is what the Motion is calling for.

Mr. Temporary Speaker, Sir, it is important, therefore, that we scrutinize even the budgets of the county governors. Some of the officers who discuss these budgets are not qualified at all. So, you find that they overspent, but even if they did, we cannot have any question because we have no space, we have no monetary power and we are overruled by the structure of the senatorial programme.

I support.

**The Temporary Speaker** (Sen. Murkomen): Sen. Hassan Omar Hassan.

**Sen. Hassan:** Shukran sana, Bw. Spika wa Muda, kwa nafasi hii. Ninafikiri kwa vile jana tulianza na tabia ya kuzungumza Kiswahili kidogo mpaka leo, bado naona ile lugha ya Kiswahili iko katika gia. Mwanzo kabisa ninataka kukushukuru Kamati yako akiwa Naibu wa Mwenyekiti Seneta Mutula Kilonzo Jnr., na mawakili wakubwa katika Seneti hii pamoja na ndugu zetu ambao si mawakili ambao walikaa katika Kamati hii kama vile Sen. Lesuuda, Sen. (Eng.) Muriuki, Sen. Billow, Sen. (Dr.) Khalwale na Sen. Halima Abdille.

Hii inaonyesha kwamba huu ni mchanganyiko, kwamba si tu kufuatia hisia za wanasheria na kujifanya kwamba wanasheria ndio wanafahamu kila kitu, lakini ni kuchukua hisia za Wakenya wote kwa ujumla ili tuweze kunufaisha hii harakati yetu.

Bw. Spika wa Muda, tulijaribu harakati kama hii miaka miwili iliyopita na kidogo tukafikia ukingoni bila yale madhumuni yetu kuafikiwa. Nafikiria sasa baada ya kukaa katika hili Jumba la Seneti kwa muda mrefu zaidi, tumejua wapi Jumba hili linavuja, na tunaambiwa kuna wakati mtu anafaa kubadilisha katiba na wakati haufai. Lakini mimi ninasema hata kama nyumba ni mpya, kama inavuja lazima uzibe ule ufa ama utaenda kujenga nyumba nzima. Hata kama gari ni jipya latoka DT Dobie, kama breki haifanyi lazima uende ukatengeneze breki ama uende ukapata ajali. Nafikiria hivi ndio tunajaribu kufanya leo.

Bw. Spika wa Muda, wale ambao walioleta hikii kiungo kinachoitwa Seneti, malengo yao ni kwamba katika mpangilio wowote wa ugatuzi, lazima kuwe na kiungo ambacho kinaweza kulinda ugatuzi. Na sisi hapa tunaambiwa leo kwamba sisi kama Jumba la Seneti, malengo yetu makubwa ni kulinda ugatuzi. Bw. Spika wa Muda, leo wewe ukiambiwa ulinde Benki Kuu ya Taifa huwezi ukapatiwa fimbo kulinda benki kama hiyo wala ukapatiwa rungu. Kila tukipita katika benki za Kitaifa nyingi tunaona watu wamejiandaa na mabunduki na kadhalika, kwa sababu wanajua wanalinda rasilimali, wanalinda benki kutoka majambazi sugu.

Kwa hivyo, sisi leo tumepatiwa tulinde ugatuzi na tumepatiwa fimbo. Tunasema lazima tuongezewe zile silaha za kuweza kulinda ugatuzi kwa namna ambayo ugatuzi utaafikia ile dhamira ya Wakenya wote kwa ujumla.

Bw. Spika wa Muda ninashukuru Kamati yako kwa mapendekezo yake. Nimeiona ratiba mliyopendekeza lakini tutibu kidonda hicho haraka iwezekanavyo kabla wakati haujapita sana. Hatuwezi kuendelea katika hali hii ya kutoweza kulinda pesa zinazopelekwa mashinani. Kwa hivyo, ni lazima tufanye haraka iwezekanavyo ili tupate suluhu ya jambo hili. Juzi, nilimsikia Rais wa Tanzania akisema kwamba katika nchi yake, hakuna watu wajinga. Tanzania ina umoja. Baada ya miaka kumi, kiongozi anang'atuka uongozini na kumpisha kiongozi mwingine. Aliposema hivyo, nilihisi kwa njia moja au nyingine kwamba anajaribu kusema Kenya ina watu wa aina hiyo.

Katiba tuliyonayo ingekuwa inafanya kazi vyema, ingekuwa hatutumii sera za ujinga katika kuendeleza Katiba yetu. Ningependa tuzingatia falsafa ya Abunuasi kwani kiongozi aliychaguliwa katika eneo Bunge moja, ilhali mimi nilichaguliwa na maeneo Bunge sita, nitakua aje chini yake? Hiyo ni falsafa ya Abunuasi. Ni lazima tupambane nayo kisheria. Hakuna mtu yeyote Kenya mwenye shaka kwamba Seneti ndio Bunge kubwa kuliko Bunge la Kitaifa. Kama kuna yeyote mwenye shaka, lazima tuihindue shaka hiyo kwa njia za kisheria na kikatiba. Nilikubaliana na Kamati hii kwamba tuwe na tume mbili; tume ya Bunge la Seneti na tume ya Bunge la kitaifa kwa vile sisi kama Maseneta hatuwezi kutekeleza majukumu yetu ikiwa hatutapewa uwezo fulani. Hatutaki hazina ya Constituencies Development Fund (CDF) kama wenzetu au Hazina ya Maendeleo ya Kaunti yaani County Development Fund ili kutekeleza majukumu yetu. Bali sisi kama Maseneta tulio na wafanyikazi watatu hivi na askari mmoja, hatuwezi kuyatekeleza majukumu yetu kwa taifa la Kenya. Lazima tupewe ofisi iliyo na uwezo; maafisa wa kufanya utafiti, mawakili na maafisa wa kushughulikia maswala ya bajeti na maafisa wa maswala ya hazina na maadili ya kikatiba. Lazima tutibu janga hilo.

Bw. Spika wa Muda, sasa wakati umefika ambao Waswahili husema lazima tuonyeshe ushujaa na ujeuri. Ndugu zetu wa Bunge la Kitaifa wametuonyesha ujeuri mkubwa na wazungu husema nguvu huheshimu nguvu pekee, kwa Kingereza, 'Power respects power'. Hatufai kujidhalilisha mbele ya ndugu zetu wa Bunge la Kitaifa. Lazima tupambane na ujeuri wao.

Juzi nilisikia wengine wao wakitoa pendekezo kwamba watachukua Kshs1 bilioni ya hazina ya usawa, 'Equalization Fund', ije katika milki ya Wabunge na hivyo nasi watupe Kshs1 bilioni waliotunyang'anya katika bajeti ya mwaka huu 2015/2016. Niliwaona wakiwa wepesi wa fikra sana na wenye madharau wakidhanja kwamba sisi tunaweza kukigeuza kipengee cha kwanza cha Katiba ya Kenya kwa kutoa neno 'county'

na kuweka neno ‘constituency’. Sisi ni watu na akili zetu, na tunajua kwamba tunalo jukumu la kulinda ugatuzi na lazima pia tulinde Katiba yetu.

*[The Temporary Speaker (Sen. Murkomen) left the Chair]*

*[The Temporary Speaker (Sen. Ogoro) took the Chair]*

Tukiwa na tume ya kuangalia maswala yetu ya Seneti na nyingine ya kuzingatia maswala ya Bunge la Kitaifa, itakuwa vyema kwani jambo hilo litatuwezesha sisi kuendeleza ratiba zetu. Tumekuwa na nafasi ya kuona vile Bunge la Seneti la Nigeria na United States of America (USA) yanavyoendesha shughuli zao. Nasi pia ikiwa tutalinda ugatuzi hapa Kenya, lazima tugawe majukumu. Majukumu kama kamati teule ya kuchunguza Baraza la Mawaziri na Mkuu wa Sheria limepewa Bunge la kitaifa. Hilo ni jambo jema. Lakini wale wanahifadhi ya kikatiba, yaani ‘*constitutional tenure*’, kama majaji wa Mahakama ya Juu na Mahakama ya Rufaa, watachunguzwa na Bunge la Seneti.

Bi. Spika wa Muda, tuna ugatuzi katika taifa letu la Kenya lakini kuna watu wenye fikira kwamba Bunge hili la Seneti halina faida. Yeyote mwenye mafikira hayo ni mtu ambaye haelewi misimamo na misingi ya kikatiba na maswala ya ugatuzi. Kile ambacho lazima tujumuike kufanya ni kuhakikisha kwamba tuna uzani na nguvu ya kupitisha sheria zetu bila kupitisha miswada yetu katika Bunge la Kitaifa ili kupata makubaliano. Nakubaliana na mambo yalivyo hivi sasa. Hata hivyo, Seneti lina uwezo mwingi kuliko Bunge la Kitaifa. Itakuwaje sisi tuchaguliwe katika maeneo Bunge mengi na tuwe chini yao? Ndugu yangu, Seneta wa Kakamega alichaguliwa katika maeneo Bunge 12 itakuwaje tuogope kusema kwamba, hili ndilo Bunge la juu? Wengi wetu hapa tuliwapitisha Wabunge wetu na vivyo hivyo tutaenda kuwabwaga kwani wamekosa hisia ya kulinda ugatuzi.

Leo tumetiwa hofu eti Wabunge wa Kitaifa watapinga Mswada wetu. Lakini sisi hatuogopi kwani tunataka kupingwa. Wakati tunapingwa ndipo tunapata fikira. Mtu asipopingwa, yeye huzembea. Mtu anapopingwa ndipo anapopata maarifa zaidi. Kwa hivyo, nawahimiza wenzangu hapa wasiogope kupingwa. Wabunge wengine hata katika chama chetu wanaogopa kuwa Mswada wetu utapingwa lakini mimi siogopi kupingwa. Mswada huo ukipingwa na Bunge la kitaifa, utaungwa mkono na Wakenya. Kwa hivyo, tusiwe na hofu kwamba Bunge la Kitaifa litatupeleka katika njia zisizo haki.

Bi. Spika wa Muda, ningependa kuwahimiza Maseneta wenzangu kupambana na Bunge la Kitaifa moja kwa moja kwa sababu Bunge hili ndilo la juu. Itakuwaje tuchaguliwe katika maeneo Bunge mengi na kisha tuogope kusema sisi ndio “Bunge la juu”? Tulipofungua eneo letu la kuegesha magari, nao wakaja hapo. Najua kesho tukifungua chumba chetu cha maankuli watakuja huko pia. Wanatuvamia kila mahali. Kwa hivyo, lazima tulete msimamo ili Bunge la Seneti liwe na majukumu yake na uwezo wake na Bunge la Kitaifa vile vile. Sisi tumetaabika sana kwa kuitwa “Bunge ndogo”. Nangoja kura ije ili tuwaonyeshe nani mdogo. Tusikubali kuwa katika hali hii. Tunapaswa kuangalia na kuutetea ugatuzi.

Mwisho, kubadilisha Katiba kwa njia itakayoimarisha Shilingi ya Kenya ndio uzalendo. Kutetea kwamba CDF iwe chini ya Wabunge wa Kitaifa si uzalendo, bali ni

utoto. Sisi tunataka kuleta uzalendo kwa kuimarisha uwezo wa Seneti. Nilimsikia ndugu yangu, Sen. Murkomen, akisema kwamba wengi wetu hatutakuwa hapa baada ya uchaguzi ujao. Wengi wetu tukakuwa magavana. Kwa hivyo, ingekuwa sisi ni watu ambao mioyo zetu hazijakinai, hatungepigania mageuzi haya bali tungetaka maisha yaendeleo vii hivi. Kwa hivyo, sisi tunafanya hivyo kama Wakenya kwa maana tunaipenda Kenya, na ndio maana tunataka kuhakikisha kuwa tumeweka msingi.

Ndugu yangu hapa, Sen. (Dr.) Khalwale, huenda akawa gavana Mungu akimjalila. Hata kama hayuko katika chama kile, mimi nitakwenda pale kwa maana najua kuwa ni mkweli bali si mwizi. Tunajua kuwa sera nyingi zinazoendelezwa katika kaunti zetu ni za wizi na Wakenya wamechoshwa na hali hiyo. Kama mtu si mwizi, inafaa tumpende ziadi na kumkumbatia. Ikiwa Sen. (Dr.) Khalwale hangetaka ugutuzi uendeleo, angehakikisha kuwa Seneti halipewi uwezo wowote. Isitoshe, hangetaka magavana wafike ili kujieleza mbele ya Kamati yake. Yeye ndiye amefanya watu waende kortini kwa vile huwaandikia barua akitaka majibu. Kwa hivyo, hangefanya hivyo iwapo alikuwa hataki hayo.

Sisi tunafanya mambo kwa imani ya Wakenya. Tunataka ugutuzi na utawala ufanye kazi nchini Kenya. Hatufanyi hivyo kwa vile tunajali maslahi yetu. Leo hii, utapata mtu anataka kutoa *Constituencies Development Fund (CDF)* na *Equalisation Fund* kutoka kaunti hadi eneo Bunge. Mtu kama huyo anadhani atakuwa Mbunge maisha yake yote? Kwa nini mtu haangalii mbele akafikiria watoto wake, jamii yake na vizazi vinavyokuja?

Takwimu zinaonyesha kwamba kila wakati wa uchaguzi, Wakenya huwapeleka nyumbani asilimia 70 ya viongozi waliowachagua. Kwa nini mtu atake pesa ziende kwake? Hajui atapeleka nyumbani?

Kwa hivyo, sisi tuko hapa kuulinda ugutuzi.

**Sen. Kittony:** Madam Temporary Speaker, I thank the Mover of this Motion and the Seconder for a very well researched presentation this afternoon. A lot has been said. As Sen. (Eng.) Muriuki said, devolution is working. When you go out there, you will find a number of people who appreciate what the Senate is doing. It is this Senate that will make this country a better place in future because this is the House where you will find sober minds and people with dignity.

Madam Temporary Speaker, the laws of Kenya have been put down. It is only appropriate that people respect the laws that have been laid down and follow them. It is very disturbing to see what we have gone through for the few years that we have been here. When you take matters to court, they are sent back to you. I will challenge the Mover of this Motion on that.

I used to watch him a lot on television talking about the Constitution when he was in the civil society. It is time civic education was started for Kenyans who think that they are in the Legislature and, therefore should not respect the laws that have been laid down. It is very unfortunate to see laws being violated. It is time – as we review these laws – that civic education was started again. Maybe we rushed to have the Constitution; that some people did not get enough time to understand and digest in order to respect it. Dignity begins with respect. If you do not respect what you are doing, then, obviously, you are failing.

I have just returned from touring a beautiful Senate in Mexico. It is bigger than the White House. It is, indeed, a supreme House. You feel shaken when you enter it. The

country is run well. It is the responsibility of Senators who are here, whom I have a lot of respect for, to make sure that this Senate brings this country together for the sake of the future. It should not allow it to be viewed otherwise.

In every country, the Senate is the Upper House and the laws are respected. It is time that civic education was undertaken to Members of the other House so that they understand their position and know that the Senate is the Upper House which has got to carry this country to greater prosperity for the future generation.

Madam Temporary Speaker, it is time we looked at what is happening. I know that devolution is working and that there are committees mandated to look at corruption and the theft that is going on. You will get scared to see what is happening. You will see houses mushrooming and wonderful buildings coming up very fast yet such like things were not there in the past.

We need a sober society; a society that is respectful and fearful. As a leader, you have got to carry your office with dignity if you are mandated with one. That is what the Senate should be calling for; to have a dignified House which will carry Kenya a long way.

Madam Temporary Speaker, I thank the Mover of the Motion. We should review these laws properly because the Committee is mandated to do that. Let us also consider whether civic education can be provided so that people can respect their positions, offices that they hold and the laws that have been laid down in this country.

With those few remarks, I beg to support.

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, like those who have come before me, I am proud of the Committee. I thank the House for having suggested that I sit in the Committee. I am aware that today, we are marking a time when Members of the Committee are celebrating the sweat of their industry, especially demonstrated by the commitment. We never had issues of quorum. We also had high levels of confidentiality to the extent that this Report is now reaching the public for the first time because there were no leakages.

The Committee was co-chaired by Sen. Murkomen and Sen. Mutula Kilonzo Jnr., both who are first timers in politics and they have done such a good job. That is a vote of confidence for the youth of this country. I congratulate them for that.

Madam Temporary Speaker, I want to tell Kenyans that ours as a Committee – if this House approves – is a mere proposal. We are coming to Kenyans with our proposal which, according to me, will – with effect from today – signal the beginning of a sober and honest national conversation. In the conversation, we want to talk to ourselves, our groups, our communities and the nation called Kenya on critical issues.

According to me, the critical issues are that this draft is attempting to address the issue of vetting of public officers in critical public offices. This exercise has been going on under the new Constitution and many Kenyans think that the process of vetting as it is today could be better. When the National Assembly is conducting a vetting, you wonder why they subject a qualified person to petty questions like they asked the Governor of Central Bank. I do not want to repeat that kind of pettiness. Now that we have restructured it to provide that when it comes to offices where a public officer will enjoy the security of tenure, under the Constitution, meaning that he will be in office not



necessarily within the term of the President in office but beyond, a more stable decision making body like the Senate, should be involved.

For purposes of forming a Government, the President wants to make a quick confirmation of the kind of Cabinet Secretaries and Principal Secretaries that he can work with; the exercise is left to the National Assembly so that the President can quickly form the Government and start discharging his duties as manifested in his manifesto.

Madam Temporary Speaker, through this draft we want to go for a national conversation on the need for us to have increased resources to the counties. We have agreed on 40 per cent. Members of this House and the Committee agonised over this for a very long time before we settled on 40 per cent. Without the risk of preempting the debate, I want to tell you of an experience we had when we looked at the accounts of the County Government of Nakuru. It is amazing that in Nakuru County, revenue collected at source and the money allocated directly as devolved funds, as conditional and unconditional grants is approximately Kshs10 billion. It came as a shock to us that Nakuru County, highly funded as it is; the Governor spent only Kshs841million in a financial year on development. It does not matter even if you have devolution in Nakuru County for twenty years, for as long the Governor continue spending 10 per cent of what he receives on development, Nakuru County will go nowhere. This is the conversation we want to carry out. We either want devolution that will have immediate deliverables or we do not want it at all.

Madam Temporary Speaker, there is an issue of oversight. This Draft is attempting to give the Senate more teeth so that we are able to carry out more effective oversight on the counties. It is a pity in all the counties that we have looked at. I normally invite the Senator of the county in question together with the nominated ones to join us in the discussion and it is just coming one after the other that the Senator is actually irrelevant. In the case of Nakuru County, some of the things we were asking in Plenary during the session, the area Senator had earlier written to the Governor asking him to respond to them. It means that we are just an entity that is ignored and which nobody cares about. We might be celebrated in the court of public opinion, but effective wise, we are not there.

Madam Temporary Speaker, I now want to go into a difficult area. I would like to beg for an understanding that this is my personal view for which I have committed myself that if we are in this country to change the lives of our people, then the use of public resources must not only be respected, but also applied to areas where it is strictly needed. I, therefore, want to open the conversation in the minds of Kenyans that, three years down the line, we are now wiser because we have the benefit of hindsight. Time has now come for us to speak looking at each other as men, women, youth, the disabled and everybody straight in the eye and ask ourselves what we want the cost of administration, the devolved and the national governments to be. Every time I interrogate this issue, I feel that the following issues must be addressed so that the cost of that structure that supports governance in this country can be affordable and be fruitful. One of them is the way provincial administration, simply put, is parallel to the system called devolved government.

Many and principally almost all, the functions that the county and regional commissioners do, are actually a duplicate to what the governors are doing. Let us not

pretend, Kenyans. When you put there a ward administrator he is doing what the chiefs are doing. The village administrators are doing what the assistant chiefs are doing. What the former District Officer (DO) was doing, is what the sub-county administrator is doing. Let us get rid of the provincial administration.

Secondly, there are 1,455 wards in Kenya. What is this magic that this bloated number of wards is giving to Kenyans? In my mind, the problem must be addressed. The people of Lamu and Isiolo counties are happy they have a county. However, strictly speaking, some of these counties are so small that they only serve to massage the ego of the communities that live in those counties. If Kakamega, Kiambu, Homa Bay and Nakuru counties can function with so many constituencies, it means the smaller counties can be merged to create fewer counties that make economic sense.

Madam Temporary Speaker, governors have started organizing themselves into bigger economic units. The governors from the former Coast Province have gone into *Jumuiya ya Pwani*; those of the lake region have gone into the lake basin and those of Mount Kenya into the Mount Kenya. These counties are good, but they are too small economically that they should come together to make economically viable units.

It is for this reason that I propose, even if I annoy a few Kenyans, that I signal a conversation. I propose that we merge some of these counties to this extent. All the counties in the former western province are merged to create only two counties. All the counties in the former Nyanza region be merged to create only two counties in Nyanza. All the current counties in the former Coast Province be merged to create only two counties in coast and the current counties in the Rift Valley be merged to create only two counties. All the counties in the former Eastern Province be merged to create only two counties and all the counties in North Eastern be merged to create only one county so that we have a total of 14 counties. South Africa with a bigger population than ours has got nine National Council of Provinces (NCOP).

India with a population running into billions of people has got nine units of devolution. I propose we have 14 counties where you will have serious governments to run the affairs of a devolved system is economically viable. If you go further, this joke of having a high school in the National Assembly whose population is equal to that of Malinya Girls Secondary School, even in this school the teacher cannot control it; they have to divide it into Form One up to Form Four for them to be handled separately. There is no debate that goes on in the National Assembly; a Member is allowed to speak for two minutes. What can you conclude in two minutes? Here, we discharge seriously because we are few. One can do a debate of 10 to 15 minutes and sometimes 30 minutes or one hour.

Madam Temporary Speaker, we therefore, have to reduce the constituencies from 290 to 210. The wards in the new structure of 14 counties, each county assembly to have an equal number of Members of County Assembly (MCAs), that is 60; those will be a total of 840.

On the issue of commissions, we need to reduce the number of commissioners and commissions so that those which are overlapping can be mapped. Those commissions are very expensive. Then we do not make them commissions that run on a full time basis. They should sit on a need basis and then we define in law, the sitting allowance. There is no reason why commissioners sit and get a sitting allowance of

Kshs40,000 when a Senator who sweats to be elected gets a sitting allowance of Kshs5,000. I am not in the game of competing for resources but we just want to rationalize.

Finally, and this is the most difficult; I know Sen. Njoroge will kill me tonight. I am persuaded that in this country where we have 800 Nominated MCAs, 20 Nominated Senators, 12 Nominated Members of Parliament (MPs) and 47 Special MPs in the National Assembly is a luxury that we cannot afford. All these nominated positions should be scrapped. Not because we do not like the women who benefit from these positions, but the gender rule will then be moved away from this elective position to the other significant and more important offices constitutional or otherwise. By this, for example, I mean that we can instead of making these two-thirds; we can make it 50 per cent.

**The Temporary Speaker** (Sen. Ongoro): Sen. (Dr.) Khalwale, Sen. Lesuuda is on a point of order. We will hold your time.

Proceed, Sen. Lesuuda.

**Sen. Lesuuda:** On a point of order, Madam Temporary Speaker. I would not have loved to interrupt Sen. (Dr.) Khalwale but is he in order to mislead this House and the country that having the Nominated MCAs, Senators or MPs; that we were not fulfilling a mandate in the Constitution on issues that are therein? We all passed it and it indicates that we should not have more than two-thirds of either gender. We are not even yet there. So, saying that we scrap it without giving an option on how we will meet that mandate; is he in order?

**The Temporary Speaker** (Sen. Ongoro): Sen. (Dr.) Khalwale, expound.

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, I beg Sen. Lesuuda to understand that---

**The Temporary Speaker** (Sen. Ongoro): I will allow the point of order from Sen. Njoroge. We are holding your time, Sen. (Dr.) Khalwale.

**Sen. Njoroge:** On a point of order, Madam Temporary Speaker. Is the Senator for Kakamega whom I really respect in order to insinuate that Nominated Members of this House and especially ones with disability do not add any value to this House as he does when he represents Kakamega County? How many times did the Senator contribute on matters relating to disability when we had no representatives of persons with disabilities in Parliament? How many times did he advocate for the rights of persons with disabilities as an MP. Is he in order to mislead this House?

**The Temporary Speaker** (Sen. Ongoro): Sen. (Dr.) Khalwale, respond to those interventions.

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, I am persuaded that, indeed, I am in order because during debate, a Senator is expected to advance his thinking to persuade the other Senators to agree with him or her. I am in order to that extent. However, if you do not agree with me, you do so through a rebuttal.

I am a medical doctor and I know the difference between somebody living with disability and somebody who is lucky not to live with a disability. Therefore, I want the country to know that in no way, I am suggesting inability of persons with disabilities to articulate their issues.

In elections you cannot give what you do not have. So, when you purport that you want to give a position in an elective process, you must always remember that you do not have it. The person who has that position is the voter. So, if the voter chooses to elect somebody living with a disability, Hallelujah!

**The Temporary Speaker** (Sen. Ongoro): Sen. (Dr.) Khalwale, you are getting out of order. You are not answering the issues as presented very soberly by the two Senators. They are asking you to elaborate why you are trying to imply that it is the Nominated Senators whose presence is costing the Government and if they are not here by right of a provision in the Constitution. Please, address that as you respond.

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, I thought that is the obvious. The fact that they are there is obvious because it is provided for in the Constitution but I am now talking about the Kenya of the future. We want to sort out these things once and for all. If there is a way we can do it better, and I am saying we can, you can easily in this country provide that instead of the one-third rule, you put it 50-50 but in appointive offices so that when you tell the President, that he or she will not form the Government unless 50 per cent of his or her Cabinet Secretaries are women; for the reason that they are nominated.

**The Temporary Speaker** (Sen. Ongoro): Sen. (Dr.) Khalwale, Cabinet Secretaries are not nominated. They are appointed because they are qualified to occupy those offices. You are still not addressing the issues that are being raised. Your clarification is now implying that we go back to the former system where the Committee of Experts found it necessary to have representatives of these specific clusters of people because over the years, there was a vacuum of representation. Therefore, for example, when persons with disabilities were included through a provision in the Constitution, it is because it was felt that over the years they were not adequately represented by those who are not living with disability on matters of legislation. This is the matter that Sen. Njoroge is raising. Sen. Lesuuda has also aptly put the issue of representation of women after a lot of interrogation. You need to address that issue because we are live and this will go into the HANSARD.

What are the facts that you are presenting to the Senate to expound on that matter that we need to scrap it? What is your alternative mode of representing these two categories of people?

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, let me put it in the bigger picture. People who compete for elections must demonstrate to the youth and persons with disabilities that when they get into office, they will address their concerns.

We may run away from it but the truth is that our elective positions are bloated. I have articulated all of them right from the number of constituencies touching on the number of MPs, reducing the number of governors, Senators and MCAs. Therefore the reduction is not targeting persons with disabilities; it is targeting a national problem. If these things will not work one day, a time will come when some of us will run for presidency. We will approach Kenyans, and say that if I am your president I would want to do things in a better way. That is what leadership entails that you cannot lift a country to the next level if you keep on doing things the same way, done badly in the past.

**The Temporary Speaker** (Sen. Ongoro): I will allow that intervention again from Sen. Njoroge.

**Sen. Njoroge:** On a point of order, Madam, Temporary Speaker. I am really disturbed. Does it mean that representation of women, persons with disability and the youth is not a matter of national interest in this country? Is Sen.(Dr.) Khalwale implying that this institution known as Parliament is not supposed to have either of the three categories, women, youth and persons with disability? He is really advising that we should be appointed in other position but not Parliament .Is he in order?

**Sen. Lesuuda:** On a point of order, Madam Temporary Speaker. I am fully aware that those are the opinions of Sen. (Dr) Khalwale but, I would like to raise one issue on whether he is in order to mislead this House in all the other representation areas he has talked about reducing and that representation will still be there but he is merging the counties to form viable economic units. Those areas will still be represented. The positions that are there through nomination, he said very clearly that they need to be scrapped. How are those areas going to be represented?

**Sen. Kittony:** On a point of order, Madam Temporary Speaker. Is it in order that a long serving legislator who knows the roles and the rules of this country to mislead the House? The Constitution of Kenya is very clear on party nominations. So, is he in order? He is telling us that the Nominated Senators are not supposed to be there.

**Sen. (Dr.) Khalwale:** Thank you. Let me answer Sen. Kittony first. It is the Constitution that we are trying to amend for it to suit our situation and I am giving my thoughts. Sen. Njoroge said that people living with disabilities cannot win an election. I want to inform him that hon. Timothy Wanyonyi, Member of Parliament for Westlands won an election; the late Dr. Ellison Wameyo won an election; Sen. Leshore won an election; Sen. Hassan of Kamukunji won an election as far as the youth are concerned.

I now want to address Sen. Lesuuda, just take a bit of time and google the American Constitution. It says that you cannot enter the Senate unless you are 35 years and above. We want to align our Constitution with the best international practices. There is no point of trying to imagine that you can reinvent the wheel. This conversation that I am speaking to is going on in this country. Who said that a woman cannot win an election? None other than Speaker Ongoro has won an election in some of the most competitive constituency in Nairobi; Kasarani Constituency. It is a lie, we are living a lie, we live in a moment of comfort, and we do not want to challenge ourselves so that we make our country better. Here you are stuck, you cannot even be paid your mileage claim; people are getting their salaries late, it is not by chance. We have to manage the administration on the cost of running the country. You do not attack the disabled alone, I have attacked all the positions so that we manage this, and I want to be persuaded to move away from that thinking.

**The Temporary Speaker (Sen. Ongoro):** Order, Senator! The last intervention from Sen. Njoroge and we will have to conclude with the Senator.

**Sen. Njoroge:** On a point of order, Madam Temporary Speaker. Is it in order for the Senator to continue misleading the nation through this House? Sen (Dr.) Khalwale has this kind of a feeling that among the seats to be scrapped so that the country can really improve its economic status; what if it comes to voting, can he really vote for a person with disability if he has this kind of feeling? If he feels that right now he is not comfortable being here with those three groups, when this country was fighting for

affirmative action, it was as a result of Kenyans of likeminded as Sen. (Dr.) Khalwale. Is he in order to mislead this nation?

**Sen. (Dr.) Khalwale:** I think with all due respect, you are now over burdening me with your own opinion.

**The Temporary Speaker** (Sen. Ongoro): Order! Senator that is not unparliamentarily language. He is in order because he rose on a point of order and I granted it. You need to respond to the specific issue that he is rising. He is not overburdening you; you have a responsibility towards this House and towards Kenyans to expound what exactly you mean.

**Sen. (Dr.) Khalwale:** Madam Temporary Speaker, because I am addressing the nation. I want the nation to know that I am advancing my opinion and the opinion of those as many as they are who think that we should address the issue of the cost of maintaining the administrative structure under the new Constitution. In that opinion, I am not vindictive, I have addressed all the sects knowing that in the eyes of the Lord, living with or without disability we are all equal, and I have confirmed that many people have won elections and will continue to do so. I know these things better than Sen. Njoroge. Today, you do not have a disability, tomorrow you have one because you become one by getting involved in an accident. So, it is neither here nor there, we want all Kenyans to be looked at as equals.

We should make sure that we level the playing ground for various people to enjoy access to the electorate. In fact, in my mind the biggest challenge the youth have, the women, and the persons living with disabilities is accessing the voter. Many people once they access the voter, people realise that this is a better leader this is the Kenya I want where all people are equal; people to compete equally and they get what they want. Today, the Kenya you have is where people access offices based on ethnicity, friendship and nepotism. That is a bad way and is just another way of running our country.

In the fullness of time, this debate of reducing the number of constituencies and counties so that they become economically viable, scraping positions that can otherwise have the intentions of having those offices achieved in a more inclusive way, is the thing of the future. The current situation is dynamics of emotions. Let me tell you, Members, because some of us played a very critical role in the fight to pass this Constitution; I remember sitting in certain meetings where people were agreeing that if you do not include this clause here, this Constitution ---

I support.

**Sen. (Prof.) Lonyangapuo:** Thank you, Madam Temporary Speaker. I join my colleagues in thanking and congratulating the Senate Select Committee on Constitutional and Legal Review that came up with this Report.

It is just two years since we elected office bearers after the Constitution came into effect. We remember that this Constitution was promulgated on 27<sup>th</sup> August, 2010 at 10.27 a.m. when it was released and the old one withdrawn. You know the whole story as Kenyans can attest. A rigorous campaign took place in May and June prior to the voting for this Constitution. There was a group that said “No” and another that said “Yes”. After the General Election, the two groups were accommodated and we even have some Senators who were elected but they had wanted the Constitution to be delayed because they thought it had issues. However, majority of Kenyans said; “Let us pass it.” That was

the “Yes” group. We passed it with the hope that we will amend it and address some of the challenges that would later affect Kenyans.

Madam Temporary Speaker, as I speak, we have suggestions that the Select Committee on Constitutional and Legal Review has brought here. This document was laid on the Table of the Senate on 23<sup>rd</sup> September, 2015. Today, you can already read in the newspapers the stress that Kenyans are going through as a result of the huge expenditure and shortage of funds that we are seeing, so much so that this document that we are presenting here is very current. There are newer problems that have come up on top of this. It means that there is no other time that we can address some of these issues that have arisen as a result of the implementation of the Constitution.

The Select Committee that composed of eminent Senators has already gone ahead and given us some recommendations of what should be addressed or amended in the Constitution for the good of Kenyans. It does not mean that Kenyans will entirely agree to the suggested amendments. They may add that we do certain things that some Members are suggesting here. For example, when we went to the Referendum and passed this Constitution, we jumped very high from one central Government system to 47 plus one units of payments; 47 counties; 47 Senators, 47 Women Representatives and 47 governors. Because of the faith that Kenyans have in themselves, they hoped that their problems would be simplified 47 times. Two-and-a-half years later, we see drama germinating daily as a result of these units.

Madam Temporary Speaker, for the very first time two days ago, I visited my county together with the Select Committee on Infrastructure headed by Sen. (Eng.) Muriuki and Sen. Adan as the Vice-Chairperson. The most dramatic thing that we found is a man sitting as the governor in my county, who is today bigger than anything I have ever come across. When we asked whether this county requires any more support so that they have enough infrastructure as envisaged in devolution, he said that where the governor sits must be decent, almost a mini Office of the President. The county assembly must be a very decent place supported by the national Government because they are the ones who created it and it is a mini Parliament. He said: “I am sufficiently funded.” Remember he gets only Kshs4 billion that passed through the Senate as a result of my representation here. He said, “I do not need this Select Committee in my office. So, I do not need the Kshs700 million proposed for those two functions.” He pointed and showed us eight small houses that have been built for Agriculture, National Treasury, and Education and so on.

So, we have several problems that you wonder whether that is what the Constitution that we created was supposed to bring. It was to bring development and a future for Kenya. For those of us who went to Europe to study, if you look at the houses that were built in 1914s and 1918s, they are still as intact as they were. The people who sat down to plan did their job well.

Madam Temporary Speaker, the Constitution that we have is not cast in stone. I am not a lawyer but they say that we are not made for the law; the law is made for us. It means that we are the ones who can read it and are supposed to amend it for our good. Our colleagues in the National Assembly will also look at what we have proposed to Kenyans through the amendments here. For the very first time when Sen. Orendo spoke, he mentioned that what is presented here is not the Coalition for Reforms and Democracy

(CORD) version which they have a name. The version is not the one that governors call *Pesa Mashinani*, but a purely parliamentary driven document that is supposed to address some of the challenges that we need to overcome. Look at what the Senate was supposed to do – represent and protect interests of counties and their governments. Today, you are an alien in the county because the governor, his team and by extension the county assembly, think that the Senate is a foreign thing and yet this Constitution is written.

Most of the people sitting in this Senate led by the former Attorney-General *emeritus*, Sen. Wako; Sen. Orendo, Sen. Murungi, Sen. Wetangula and everybody here who was in the previous Parliament, worked on this document. However, because a document is supposed to evolve, nobody knew that it would be harmful to Kenyans and that it would derail and make oversight weak.

Madam Temporary Speaker, the people that we were campaigning for in West Pokot County--- I had four MPs in my party and all of them plus the governor were queuing after me and I campaigned for all them. A number of them won. I had 20 county assembly candidates and they would all pledge allegiance before me every day for them to be voted in. A number of them were voted in and that is why the only Kenya National African Union (KANU) Government in Kenya is found in West Pokot County and not anywhere else. But today, their Senate has been reduced to almost an Any Other Business (AOB) because of some of the challenges this new Constitution has come up with. When we created the Constitution, we said we have commissions and the amount of money we set aside to commissions is over Kshs100 billion per year. You would expect that as a result of having these commissions in place, devolution was going to be tightened to work, but look at the challenges we have today, they are not working.

By now, normally, if you want to arrest a bad situation or bad manner from affecting people or counties, you deal with culprits on the spot. This is now going to three years, no governor who has been cited for misbehaviour has been dealt with and even some of the Members of County Assemblies or the County Executive Committee Members (CECs), yet we were supposed to have put tight rules which protect the sanctity of this Constitution. The first recommendation that has been given by the Committee is the role of Parliament which has now been written that we need to strengthen Senate and the National Assembly, but they work together separately by having their own Parliamentary Service Commissions (PSC); Senate Commission that looks at the welfare of the Senators and another one looking at the welfare of the National Assembly so that these conflicts that normally arise do not come. You also read in the first page of *The Star* and *The People* newspapers, some of the challenges that are now coming up misuse of money. The Auditor-General has recorded that money has been lost in Parliament. So, you would not know which House of Parliament brought all those issues. Suppose we had different commissions, we would have been able to pinpoint which one brought this disrepute as indicated there.

Madam Temporary Speaker, the Committee in their recommendation also talked about the legislative mandate of Parliament. We need full legislative mandate of the Senate and the National Assembly to provide passage of all Bills. We have had a very big challenge. I brought three Bills here; the first one was on the Kenya National Police Reservists (KPRs), and both Houses of Parliament passed it. But to date, the President has not assented it into law. These reservists are the ones that have now brought sense



and order in the cattle rustling prone zones, in the areas where we have terrorism around the border of Kenya and Somalia and so on. When you ask why, they say because it has monetary implications. How can anybody imagine a Senator representing a whole county being told that whatever he has brought does not touch on that? Where are the KPRs? They are all in the counties, and so on.

The second one about village elders was passed and it has disappeared, and so many others just to mention a few. It is time that we looked at this and enhanced the capacity of the Senate as well as that of the National Assembly to work in tandem.

There is also another proposal here that has been given by the Committee; nominees of people who should be vetted, and I agree that Senate needs to have a hand particularly on the officers vetted here. The National Assembly should work with officers that come with any government. Normally, they go with the government of the day. But we deal with people who are permanent and pensionable for the duration that they are there. The beauty about this recommendation of raising money going to the county from 15 percent minimum, you now raise to a correct figure. We have been dealing with 15 percent minimum. The first time we were told it came to 23 percent, the other one 33 percent and recently we were told the one that we had just passed was 43 percent. We specified a permanent figure which is 40 percent so that if the money goes, even the national Government requires money. A lot of brilliant proposals have been put here.

Madam Temporary Speaker, I would prefer that we study these recommendations, bring it to the public so that we see how this can be improve the document that governs Kenya better. Some MCAs are today mishandling counties because they have pocketed governors to the extent that they do not---

**The Temporary Speaker** (Sen. Ongoro): Thank you, Senator.

**Sen. Lesuuda:** Thank you, Madam Temporary Speaker, for giving me this opportunity to contribute to this very important Motion that is before us and also to commend the Chairman and the Vice-Chair of this Committee which I was a member. I also had the privilege of sharing experience with distinguished Senators who thoroughly looked at the issues that pertain to this House and this institution.

I remember very well that one of the things that we clearly spelt out before even we started our work was to say that we are not looking at how to make the Senate the Upper House for the sake of it, because of our past relationships with National Assembly, or a way of weakening the National Assembly. At all times, that was our guiding principle as a Committee. The other guiding principle was that we need to strengthen the institution; the House itself as a Senate. That is why, earlier on, many of my colleagues have said that many of us will not be in this House come the next elections. But the need of having a strong Senate for the purpose of the new system of governance that we have is very critical, beyond each one of us, beyond any Member in this House or even in the National Assembly.

Madam Speaker, it was also interesting to note, and it is something that we have talked about for a long time and it is also an observation that I noticed since we came to this House; we said that for a long time the Senate has been weak. The Senate cannot execute its mandate, but it was interesting to note that many of those who sit in this institution now, sat in the Tenth Parliament which actually worked a lot to make sure that

we had this Constitution. Sen. (Dr.) Khalwale is one of them and he said he has done a lot to ensure we have this Constitution.

It came to my mind that it was probably because he was in the other House, and did not foresee himself coming to the Senate. He did not make sure that there was a very strong Senate, probably even as an Upper House while they were in Naivasha. It is good to note that our distinguished Senators have realized that we should make changes and laws for posterity regardless of where we stand or our current position even as we move forward.

Madam Speaker, it is clear now that some of the Senators will even go for governorship. If they really wanted a weaker Senate so that the continuous mismanagement, misappropriation and everything that is happening in some of our counties continues, then even Senators who are here who want to go for governorship would definitely not want a strong Senate. Therefore, I commend my colleagues for the enthusiasm that they have shown to ensure that we strengthen the institution of the Senate.

Madam Speaker, we know that devolution was one of the key things that many Kenyans were so eager to see, so that we could have the whole issue of representation coming down. We have the whole issue of resources coming down to the people, and that is one of the key things that Kenyans valued in the Constitution that we have amongst very important chapters that we have in our Constitution.

Madam Temporary Speaker, it would have been better if we had the goodwill. That is what we have been lacking for a long time. We could have even continued for another 10 years before thinking about amending the Constitution. However, since we got the bicameral system and got devolved system of governance, we have continued to witness lack of goodwill that we are now forced as a House to ensure that we entrench what we want to see in the law. Remember when it was said that the role of the Senate is not very clear and that our roles were not clear. That is the kind of conversation that came up from time to time. It is unfortunate that even right now, it is clear what each House of Parliament does. However, there is always mischief in individuals and Members of the National Assembly who always say that the role of the Senate is not clear. Right now, we are making our roles clear and strengthening the Senate.

Some Members of the National Assembly were of the opinion that there was no need for the Senate Majority Leader and Senate Minority Leader. How would we conduct business in this House without them? We have had to deal with the mischief that was hidden when we were coming up with the Constitution. Those are some of the issues that we want to rectify through the amendments proposed by the Select Committee.

Madam Temporary Speaker, we also have to look at the whole issue of revenue that goes to the counties. It has been a contested issue on what percentage should go to the counties. We, as a Committee, agreed on 40 per cent of the national resources. This will be an issue of debate. However, we all agree that we need more resources to go to the counties notwithstanding the corruption that is there. It is not an excuse for us to deny the people an opportunity to get more resources and have services delivered to them. Therefore, we need to strengthen our oversight role as more resources go to the counties. The people of Kenya in different parts of the country must continue to enjoy the fruits of devolution.

It is also important for both Houses to have a role in the budget making process because that is what gives a House stature. The whole process of budget making and appropriating the funds is critical. Probably that is why Kenyans do not understand the critical role played by this House. The Division of Revenue Bill and coming up with the formula for division of revenue is something that this House continues to debate and deliberate on to see that there is equity in terms of division of resources that go to the counties. Therefore, it is important for us not just to say that 40 per cent go to the county, but it is critical for the Senate to be involved in the whole process of budget making.

Madam Temporary Speaker, there are also other issues that are pertinent. We need to ensure counties work; and separation of power between the executive and the county assemblies is paramount to ensure that there is independence. The county assemblies should also perform their duties without being tied to the executive at the county. We also hope that the Senate and the National Assembly will have separate commissions so that our work is not impeded because of certain reasons.

We disrupted Sen. (Dr.) Khalwale on a number of times when he was speaking on the issue of representation. It is a crucial issue because many Kenyans are talking about the bloated system of governance that we have. As we continue to enjoy the fruits of the Constitution, we realize what needs to be done and corrected. On the issue of representation and as we talk about affirmative action, we could come up with a competitive way to achieve gender balance. However, we have to agree that the playing ground is not leveled. I will not be the same, if I do not have a chance to sit in this House after the next election. If we can make the process competitive even for the affirmative seats, and create a level playing ground for all the other groups, then we will succeed. The problem is about this tokenism.

We have to agree that as a country, we have faced several challenges to get to where we are today and cater for the different interest groups. These are conversations that we continue to have even as we continue thinking about implementing the two-thirds gender rule. These are some of the conversations that we will continue to have with our colleagues and see how best to achieve them without dismissing the different roles played by different interest groups in the leadership positions they hold.

Madam Temporary Speaker, it is also important to note that until now the distinguished Senators in this House do not have any fund that they manage. It is commendable that the Senators have continued to execute their mandate without funds. When we asked for a kitty to assist us in doing our oversight role, it was denied by the National Assembly. However, Senators have continued to play their oversight role even without funds. When Senators proposed to have a board that would facilitate consultations in the counties, it was also denied. We know that the role of the Senators is not being felt in the counties. That is why debate has continued that the Senate needs to be scrapped. The Senate needs to be strengthened for posterity.

In conclusion, it is interesting to see the bipartisan approach to this issue. When we just came to the Senate, there was discussion about strengthening the Senate. I do not know what scattered us then, but we have now done our job. Earlier on, we were just shouting at funeral, weddings and other functions about strengthening the Senate. We have now done it properly. I hope and pray that the same approach that we have seen today will be seen in the different fora that we will have as we continue to deliberate on

these amendments. We have to do that for prosperity so that Kenyans understand that it is not just supremacy battles and that we do not want powers for the sake of it, but to strengthen the Senate.

Madam Temporary Speaker, I would also like to call upon Kenyans to support us now that this document is public. We had to work quietly to ensure that the issues do not even get out to the media until we brought the amendments and laid the document on the Table of this House. I know and also hope that Kenyans and my former colleagues in the media will look at these amendments in totality because I know what might happen. We might pick one or two amendments which we feel should not be part of this Constitutional (Amendment) Bill and tear it up even before we start having reservations about it.

Madam Temporary Speaker, I support the recommendations of the Committee. I hope that Kenyans will agree that we need to have a strong Senate –when we go for a referendum – so that their expectations of this institution are met. When Kenyans see distinguished Sen. Obure, Sen. Boy Juma Boy and others, they have a lot of expectations from us. That is why they, in their own wisdom, elected people with a lot of experience to sit in this House. However, looking at the current state of how the Senate operates, it has become almost impossible for Senators to go about their business in the best manner that they should or would have. I hope Kenyans will see the need and relevance of ensuring that we have a strong Senate.

**Sen. Boy Juma Boy:** Asante sana, Bi. Spika wa Muda kunipa nafasi hii ili niungane na Maseneta wenzangu kuunga mkono Hoja hii muhimu. Ukiisoma Hoja hii, unafaa kujiuliza inapendekeza nini. Hoja hii inataka mabadiliko katika Katiba ili kuifanya Seneti hii kuwa na nguvu. Inafaa tujiulize ikiwa ni kweli kwamba Seneti haina nguvu. Jibu la swali hili ni kuwa Seneti haina nguvu. Kwanza tunafaa kuwasifu Wanakamati wa Kamati hii. Kamati hii ili wajumuisha mawakili wanne waliokolea katika taaluma ya uwakili. Nilipotazama vizuri, niliona kuwa ilikuwa na akina dada wawili wazuri sana na walio na elimu ya juu. Ukitazama vizuri, utaona kwamba Kamati hiyo iliundwa na watu walio na busara.

Bi. Spika wa Muda, Hoja hii inaazimia kutia nguvu ugatuzi. Tunafaa kujiuliza iwapo ugatuzi katika nchi yetu kulingana na Katiba ya sasa uko hatarini. Ukiangalia vizuri, utapata kuwa ugatuzi uko hatarani. Hii ni kwa sababu ilibidi twende kortini kufuatia Mswada kuhusu Ugawanyaji wa Pesa au *Revenue Allocation Bill*. Mswada wa pili, ulijulikana kama “*Sang Bill*.” Mswada huu ulitaka bodi iundwe lakini pia ulikatzwa. Mswada wa tatu uliohusu *oversight* vilevile ukakataliwa. Tunataka ushahidi gani zaidi ya huo kuonyesha kwamba Seneti hii iko hatarini? Tuko hatarani kwa mujibu wa ushahidi ulioko sasa. Ndio maana niliketi hapa kwa muda mrefu nikisubiri kupewa nafasi ili kuongeza sauti yangu kuunga mkono Hoja hii kwa sababu ugatuzi ni kitu kizuri sana.

Bi. Spika wa Muda, tunafaa kuwasifu wale ambao si wezi lakini majizi ya pesaa za umma yanafaa kulaniwa. Tumeona watu wengine wakinunua likwama moja kwa Kshs109,000. Kama huo si wizi, basi ni nini? Huo ni wizi ulio wazi. Ndio maana tunasema kuwa majizi yalaumiwe kwa wizi na wale wanaofanya kazi vizuri wasifiwe.

Ndio maana nasema ya kwamba tuwe na utaratibu na mabadiliko kwa kubadilisha Katiba. Haya hayakuanza leo. Sisi katika mrembo wa *the Coalition for Reforms and*

*Democracy (CORD)* tuliona mambo haya mapema. Tulianza kampeni za “*Okoa Kenya*” lakini wenzetu wakatupinga. Leo hii, ni kama kuongeza chumvi katika chakula kwa sababu haya yalikuwako. Hata wewe pia ulikuwa mmojawapo miongoni mwa wale waliokuwa katika mstari wa mbele tulipokuwa tukisema Kenya iokolowe. Tulisema kuwa asilimia ya pesa iliokuwa ikienda kwenye kaunti ni ndogo. Wataalamu na mawakili wa gredi wakiongozwa na Sen. Murkomen na wengine walipokaa, waliona yale yale tuliokuwa tukiyasema sisi. Sasa ndio haya.

Hata hivyo, tuwache mambo ya mrengo wa CORD. Tunasema ya kwamba haya maneno si ya leo kwa sababu tulikuwa tumeshayaona. Tulisema kwamba tulihitaji Katiba kubadilishwa, kama si jana, basi kesho. Hii ni kwa sababu Hoja hii imetuwekea hali ambayo itatuondolea unyanyasaji wa Seneti. Maseneta wengi wameeleza hayo lakini unapoenda kwenye kaunti, mfalme mkubwa huko ni bwana mmoja aitwaye gavana na serikali yake ya kaunti. Hata hivyo, gavana hana ujanja kwa sababu lazima pesa za kaunti ziidhinishwe na Seneti ilhali Seneta hana umuhimu kwake. Haya ndio baadhi ya mambo ambayo Hoja hii inahitaji vipengele fulani za Katiba zifanyiwe mabadiliko.

Bi. Spika wa Muda, kumekuwa na uoga mkubwa kafuatia swala la kubadilisha Katiba. Ume kuwa kama wimbo unaogopwa watu wanapozungumzia kubadilisha Katiba. Kama walivyosema wengine na Mwenyekiti wa Kamati hii, kuna nchi nyingi ambazo zilipitisha Katiba kama yetu lakini ilibadilishwa baada ya muda fulani. Itabidi sisi, kama Seneti, kuingiza ndani fikra za tatu ama za nne ambazo zina umuhimu katika maswala ya Katiba kwa sababu tumeona upungufu. Waingereza husema, “mvaa kiatu ndiye hujua wapi kinambana sana.” Hata wewe ukivaa kiatu, utajua ni wapi kinakubana. Tunavaa kiatu cha ugatuzi na ndio maana tunahisi kinatubana ndio maana tunasema ya kwamba kuna haja ya Hoja hii kuungwa mkono. Nasisitiza kuwa sisi kama Seneti, bila kutazama mrengo huu au ule, tuiunge mkono Hoja hii kadiri tutakavyoweza na katika fikra moja.

Nikinukuu, juzi, Mhe. Rais wa Tanzania alisema kuwa labda uwe mpumbavu ndio hutaelewa. Nimenukuu maneno yake ili mtu asiye akasema kuwa Sen. Boy Juma Boy ndiye aliyesema. Nimenukuu mfano ambao ulitolewa na Rais wa Tanzania, Dkt. Jakaya Mrisho Kikwete alipokuwa akihitubia Bunge juzi. Hakuna Mtanzania mpumbavu. Nikifananisha mfano ule, sifikirii kuna Seneta mpumbavu ambaye atapinga Hoja kama hii kwa sababu ya yale matukio ambayo tunayaeleza, tunayaona na ambayo yako.

Bi. Spika wa Muda, marekebisho haya ambayo yameingizwa ndani ya ripoti hii ni ya muhimu sana. Yataweza kutupa mwelekeo mzuri lakini tashwishi yangu kubwa ni umoja wa Seneti. Hivi sasa, tunazungumza kwa lugha moja lakini tuna tabia katika Seneti hii baada ya muda fulani, tukitoka kila mmoja ataegemea kwa msimamo na mrengo wa vyama. Tukitaka kufaulu katika hili, maana tukitoka hapa na utazame utaratibu peke, kutakuwa na swala la *referendum*. Tukipotea katika laini yetu na kuingia mirengo yetu, basi hatutafaulu. Ukweli wa mambo ni kwamba wako watu ambao haja yao kubwa ni tusifaulu. Wako na wanapenda Seneti isifaulu. Vielelezo vipo kwamba wanapenda tusifaulu na vimeonekana na ushahidi upo kama vile mtu anaposema Matayo 1 na Yohana 2. Ushahidi wa vitendo vya kuonyesha wanavyopenda kuoneka Seneti isifaulu. Si swala la kuzungumzia tu na watu, ushahidi upo.

Kutokana na hali hii ndivyo tunasisitiza tuwe na fikira moja na tutoke kwa mirengo ya vyama na tuwe kwa mirengo ya kutazama Seneti kama mlinzi wa ugatuzi na wa kuhakikisha kesho na kesho kutwa Seneti imebaki. Bila Seneti hatuna ugatuzi. Haina haja kuanza kulaumiana. Tusitazame yaliyopita, bali tugange yalimo na yajayo.

Nikimaliza kwa kuunga mkono Hoja hii, kikamilivu na kwa dhati wa moyo wangu, kwamba kuna umuhimu wa hii Seneti. Hautajua mpaka utoke hapa na uenda majimboni. Unapofika jimboni, kuna bwana mmoja hubebwa kiti. Bwana huyu ni gavana. Magavana wetu wana magari ya kuwabebea viti na jukwaa ya ugavana. Magari ya kusafirisha viti hivo na jukwa hutumia mafuta ya petrol. Kiti hiki huwa na maadizi haya: County Government of Homa Bay.

Hawaongei na zile spika zile mimi na wewe tunatumia, wao wana zao. Haya ndiyo mambo ambayo lazima tuone kwamba mbele yako katika msingi ambayo ni ya kueleweka. Pamoja na uharibifu ambao upo, tukubaliane kwamba ugatuzi ndio nia na jambo ambalo litatuwezesha kuhakikisha Wakenya tutakuwa na nchi moja ya umoja ambayo itatuweka kwa pamoja bila kuwa na wasi wasi, shaka na tashwishi.

Bi. Spika wa Muda, hata nikisema sana nitakuwa nachukua nafasi ya wenzangu. Kwa hayo machache, ninashukuru na ninaunga mkono Hoja hii.

**Sen. Okong'o:** Thank you, Madam Temporary Speaker. I was almost tempted to speak in Kiswahili, but once the Senator of Kwale County has spoken, I will not be doing justice to the Kiswahili language.

From the onset, let me take this opportunity to commend the team which put this Report to embark on this very gigantic task. Where there is a will, there is always a way. Since we came to this Senate almost two and a half years ago, we have been faced with challenges. Our role has been to defend devolution. We have tried effectively to do that without the necessary instruments.

Madam Temporary Speaker, problems emanated from how we were composed. The problem with the Constitution 2010 was copy and paste. Today we have a Constitution which was overwhelmingly supported by Kenyans. This Constitution is 80 per cent perfect. We told Kenyans that in the subsequent years, we will have to panel beat the 20 per cent to have a perfect and progressive Constitution.

The welfare of Senators and Members of the National Assembly is taken care of by the Parliamentary Service Commission (PSC). That was a very big mistake. We ceded one position as a Senate that since we are few, we do not need to have enough equal number of commissioners. It was an oversight because it was not put anywhere in the Constitution.

Madam Temporary Speaker, Sen. Boy Juma Boy mentioned that we do not have to talk about the past. We have to think of history so that we focus on the future. Most of the senior Senators in this House contributed in diluting the powers of the Senate. I have been on record on saying that. They went to Naivasha and diluted the powers, but now they have realised that the only pillar of devolution is the Senate. Unanimously, we need to embark on this road which is tedious, but we have the will to move forward.

These recommendations require a referendum. We need to do a lot of outreach to the Kenyans who regard us as their defenders in terms of effectively fighting for devolution. I got surprised two years ago when we had a meeting with the Salaries and Remuneration Commission (SRC). She mentioned that she does not know the role of the

Senate and that she was going to embark on a mission of checking its role. It is a tragedy of the highest order.

Madam Temporary Speaker, the way the county governments are constituted, requires effective oversight so that the taxpayers' money can be effectively used. As most of the Senators have alluded to, the wastage and the drain of the resources of the people of Kenya, is too high. It is very important that when we move forward on this path, men and women who will state the course will be charged by history to have been nationalists for the course of this country. The county assemblies as constituted composed of Members who do not have the highest calibre to oversight the governors. For instance, where I come from, the Governor of Nyamira County suspended several County Executive Committee members. The same county assembly which had recommended the suspension, failed to do their role effectively giving the Governor a leeway to sack them. They were compromised mid way. These are issues which require an effective oversight, especially from the Senate.

Madam Temporary Speaker, some of these governors have set aside huge sums of money for their legal teams. The Sang Bill went down the drain because we were not effectively represented at the time of need. Men and women who sat in this Select Committee have done their part. It is important and incumbent upon us to play our part in a bipartisan manner.

More often than not, we have stood together, but when we are whipped on party lines, we lose our track. I believe with these recommendations, all of us in this House will have to create room and prepare our pages in history that we embarked to have an effective Senate. There are those I call centrists who believe in the old yesteryears of the status quo. We fought for moneys to go to the counties. We understand the bureaucratic bottlenecks used by the centrists. It is this House which acts like a father who goes out to look for 'food', which is then taken back to the counties. This can only be possible if we are well entrenched in those stipulated amendments Constitution so that we can move forward.

When the governors refused to honour summons by the Senate, it took us eight months haggling in the courts. The courts made the right decision. We are now scrutinizing accounts of 2013/2014 in the Public Accounts Committee. We could have done so, eight months ago.

When Kenyans were campaigning for this Constitution, we did not conduct civic education. Sometimes when I am at home, I play the role of Member of the County Assembly (MCA), a Member of National Assembly or a governor because Kenyan citizens do not understand the role of a Senator. The role of a Senator is to oversight.

With this constitutional Amendment, this House will be a House which resembles other contemporary Senate Houses in the world. For example, in Philippines, United States of America and Russia, the Senators are given tools of trade. Senators are not fighting for powers for the sake of it. We need tools to do our oversight role.

As I said earlier, county governments will not exist without the Senate. I call upon Kenyans who are listening and watching to support us on this tough task ahead of us.

I support.

**Sen. Obure:** Hon. Temporary Madam Speaker, I thank the Select Committee for a job well done. This Committee was comprised of very serious members of the society.

It had lawyers with very good reputation, engineers, legislatures, including my brother Sen. (Dr.) Khalwale, and ladies of high standing in the society.

The Committee has done a tremendous and commendable job on a very complex subject which is of national importance and great interest to every Kenyan.

The terms of reference of this Committee were very clear. First of all, they were to inquire into the design and arrangement of Parliament itself. To look at the Senate and find out if then current arrangements are suited to the mandate of the Senate in terms of protecting the interests of the 47 county governments in the country.

It was also mandated to inquire into the role of the Senate under the current constitutional dispensation. They were to find out if we can place this Senate in a better position to be able to get involved in such matters as budget-making process. The Senate must play its part more effectively in terms of representation, legislation and oversight.

### ADJOURMENT

**The Temporary Speaker** (Sen. Ongoro): Order, hon. Senator! You will have 13 minutes tomorrow if you wish to conclude your contribution.

Hon. Senators, it is time for interruption of business of the Senate. The Senate, therefore, stand adjourned till tomorrow, Thursday 15<sup>th</sup> October, 2015 at 2.30 p.m.

The Senate rose at 6.30 p.m.