

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 15th 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

NOTICE OF MOTION

NOTING OF THE REPORT OF THE IPU EXPERT MISSION TO KENYA ON
THE FRAMEWORK TO IMPLEMENT THE CONSTITUTIONAL PROVISION
OF THE TWO-THIRDS GENDER RULE

Sen. Ongoro: Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, aware that the Parliament of Kenya is an active Member of the Inter-Parliamentary Union (IPU) which is the international organization of national Parliaments, further aware that the IPU provides support to parliaments in areas such as law and policy making as well as representation; noting with appreciation that upon request by the Speaker of the Senate, the IPU sent an expert delegation to Kenya from 12th to 16th July, 2015 to offer advice on the way forward in implementing the constitutional requirement on the two-thirds gender rule; now, therefore, the Senate notes the report of the Inter-Parliamentary Union expert mission to Kenya on the framework to implement the constitutional provision of the two-thirds Gender Rule laid on the Table of the Senate on Thursday, 8th October, 2015 and extends its appreciation to the IPU for support on the matter.

PAPERS LAID

The Speaker (Hon. Ethuro): What has become of the senior Chairs of Committees? They have become assisted voters. I was not seeing any indication, but I see Sen. Billow now.

Sen. (Dr.) Khalwale, proceed.

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, Thursday, 15th October, 2015:-

The Report of the Auditor-General on the financial operations of Samburu County Assembly for the year ended 30th June 2014.

The Report of the Auditor-General on the financial operations of Bomet County Executive for the year ended 30th June 2014.

The Report of the Auditor-General on the financial statements of the County Government of Nyandarua for the 16 months period ended 30th June 2014.

The Report of the Auditor-General on the financial statements of the County Government of Elgeyo Marakwet for the 16 months period ended 30th June 2014.

The Report of the Auditor-General on the financial statement of the County Government of West Pokot for the 16 months period ended 30th June 2014.

The Report of the Auditor-General on the financial operations of Machakos County Executive and County Assembly for the period 1st July 2013 to 30th June 2014.

The Report of the Auditor-General on the financial statements of Machakos County Government for the 16 months period ended 30th June 2014.

The Report of the Auditor-General on the financial statements of Mandera County Government for the year ended 30th June, 2014.

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

REPORTS OF THE CONTROLLER OF BUDGET ON THE
ANNUAL BUDGET IMPLEMENTATION REVIEW

Sen. Billow: Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Thursday, 15th October, 2015:-

The Report of the Controller of Budget on the Annual County Governments Budget Implementation Review.

The Report of the Controller of Budget on the Annual National Government Budget Implementation Review.

(Sen. Billow laid the document on the Table)

STATEMENTS

The Speaker (Hon. Ethuro): Hon. Senators, let us start with the Statement listed as 2(a).

Where is the Chairperson, Committee on National Security and Foreign Relations? Sen. Haji, if you may proceed.

Sen. Haji: Mr. Speaker, Sir, to save on time, I will not read the requests as such. However, on 29th September, 2015, Sen. Wetangula---

The Speaker (Hon. Ethuro): Order, Senator. I do not see the Member. We shall allow a few minutes as you go through the other statements. But you will deliver the Statement today whether he is present or not.

Let us move to the Statement listed as 2(b). Sen. Haji, your Vice Chair is not here. Let us move on to 2(c). The Member is also not here. Let us move on to 2(d), the Statement relating to the Committee on Roads and Transportation.

Sen. Obure, you may proceed.

CONSTRUCTION OF KAKAMEGA-KABURENGU-WEBUYE ROAD

Sen. Obure: Mr. Speaker, Sir, I will respond to the request by Sen.(Dr.) Khalwale---

The Speaker (Hon. Ethuro): Order, Senator. I have just seen the paper being passed on to you. Let us allow you time to interrogate it as we go on to the next Statement. We will come back to you.

Sen. Obure: Mr. Speaker, Sir, I am ready for it.

The Speaker (Hon. Ethuro): I was trying to be of assistance. However, you can proceed.

Sen. Obure: Mr. Speaker, Sir, I want to seek your indulgence. When Sen.(Dr.) Khalwale requested for this Statement, hon. Wetangula rode on that and sought additional information. Unfortunately, the additional information that Sen. Wetangula sought is not ready. With your indulgence, we want to answer it when we get the information.

The Speaker (Hon. Ethuro): Order, Members. I have advised variously in this House that when you have such a matter just approach the Chair so that you do not squander precious time of the House. I remember, in particular, I gave the same advice to Sen. (Dr.) Khalwale who has caused you to repeat the same – I do not want to call it “a mistake”, but I am still looking for a better word - for lack of a better word - the same mistake.

Let us move to the Statement listed as 2(e). I see the Senate Majority Leader and the Senate Deputy Majority Leader here. Can we move on to the Statement listed as 2(f)? I also see the Chairperson of the Committee on Devolved Government.

CAPACITY BUILDING FOR COUNTY OFFICIALS WHO PERFORM SECURITY AND ENFORCEMENT SERVICES

Sen. Murkomen: Mr. Speaker, Sir, the Statement is ready. However, we have consulted with Sen. Khaniri because the Statement came a little bit late. He needs time to read and appreciate it because it has a few annexures. We have agreed that we study it so that on Tuesday when we come and issue it, we will have clear information on follow up questions, if any. So, there is an agreement.

The Speaker (Hon. Ethuro): Sen. Khaniri, you have between now and Tuesday. You can get a copy of the response from your counterpart.

(Statement Deferred)

Let us move on to Statement 2(e)

THE GOVERNMENT'S PREPAREDNESS IN MITIGATING EFFECTS
OF THE IMPENDING *EL NINO* RAINS

(Sen. (Prof.) Kindiki and Sen. Keter consulted)

The Speaker (Hon. Ethuro): Order, Majority Leader and your deputy. It is not time for you to consult.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, that just shows how closely we are working.

I have just received the Statement. I wanted to request if it is in order if we can be indulged by Sen. Nabwala so that we issue it on Tuesday, next week. This will enable us internalize it in the event of any clarifications that might be sought.

The Speaker (Hon. Ethuro): Hon. Senators, even as Sen. Nabwala responds, again, when you have no business to transact, approach the Chair, we will assist both Members at this level. We have plenty of business to transact.

Sen. Nabwala: Obligated, Mr. Speaker, Sir. However, on Tuesday I will not be around, I will be out of the country.

The Speaker (Hon. Ethuro): That will be done the other Tuesday.

Sen. Karaba: On a point of order, Mr. Speaker. Sir. This Statement is very important to some of us because the *El Nino* rains might start tomorrow or the day after. When we talk of issuing the Statement in the next two or three weeks, the rains will have overtaken us, and, so, we need the response now.

The Speaker (Hon. Ethuro): Agreed. Members, the Standing Orders will guide Sen. Nabwala. I want to agree with Sen. Karaba that this matter is so important that Sen. Nabwala should make arrangements for the Statement to be delivered while she is away.

(Sen. Nabwala stood up in her place)

Order, Sen. Mukite! That is a directive, not for you to respond.

(Statement Deferred)

Let us proceed with Statement 2(a). Proceed, Sen. Haji.

Sen. Haji: Mr. Speaker, Sir, on 29th September, 2015, Sen. Wetangula---

The Senate Minority Leader (Sen. Wetangula): You are answering the wrong Statement. It should be 2(a)

Sen. Haji: What does Statement 2(a) say?

The Speaker (Hon. Ethuro): Order, Senators. Yes, he is answering the wrong Statement but at the same time the right one. If you look at the Statements listed as 2(a) and 2(b), those Statements were to be sought. They will not be sought today. Let us move to Statement 2(c).

Proceed, Sen. Haji.

DEMONSTRATIONS ALONG HARAMBEE AVENUE
AND PARLIAMENT ROAD

Sen. Haji: Mr. Speaker, Sir, on 29th September, 2015, Sen. Wetangula sought a Statement from the Cabinet Secretary for Interior and Coordination of National Government. I wish to state as follows:-

(a) The Government is not aware of any demonstration or any person or group of persons who were denied the right to demonstrate along Harambee Avenue or Parliament Road on 29th September, 2015. From the records held by the Nairobi County Police Commander, there is no group of persons who had notified the police of any intention to demonstrate.

(b) Police accord all citizens equal treatment without discrimination or favour. In discharging their duties, police are guided by the relevant laws and the Constitution, Article (3) of the Constitution inclusive.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, the Chairperson of my committee, who is my great friend and a man of great respect does not seem to live in this country.

On 29th September, 2015, a group of persons from the CORD Coalition sought to demonstrate and come and hand a petition to Parliament in relation to the tormenting and harassment *ad infinitum* of Sen. Johnstone Muthama. The group was repulsed with excessive force and could not be allowed to come to Parliament or beyond Electricity House around Bima House.

On the same afternoon, and you could even take judicial notice of this, there was a noisy group of ladies at the gate. For more than one and a half hours to two hours, they were shouting obscenities against Sen. Muthama the whole afternoon. I even stood out there and saw some Members from the National Assembly addressing them and hurling equally unprintable obscenities against Sen. Muthama.

If demonstrations, sit-ins, picketing and airing of views are guaranteed in the Constitution, why would the Government repulse one group and allow another to come and demonstrate at the gate of Parliament? Is it because they were demonstrating and insulting Sen. Muthama who is in the opposition or what was the exact reason that caused this to be done? Is the Government ready, willing and able to observe the constitutional provisions that guarantee Kenyans the right to demonstrate regardless of the message they want to pass or whoever they are demonstrating against?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, this answer demonstrates the attitude of the Government on the matter of Sen. Muthama; a deliberate effort to torment, frustrate, embarrass and eventually arraign him before a court of law.

Could the Senator in charge of this docket tell us why the same principle being applied on Sen. Muthama is not being applied on one Hon. Moses Kuria? Just like Sen. Muthama, Hon. Moses Kuria has also broken the Rome Statute which has been domesticated here. If he has admitted to interfering with witnesses and coaching them, it is a breach. Why has he not been arrested and arraigned in court up to now? Instead they are pursuing---

(An hon. Senator spoke off the record)

I did not ask you. Do not joke around with colleagues when they are being harassed.

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. The Senator for Kakamega is playing politics with a very important issue. You were consulting with a member of the Speaker's Panel there, but did you hear him talk about a Member of the National Assembly, Hon. Moses Kuria? In total misrepresentation of facts, he claimed that the Member was interfering with the ICC witnesses.

Could he tell us which witnesses he is referring to and where they were? How did he come to that knowledge? This ICC issue is not an issue to joke around with in this House. Also, what is the relevance of that question in relation to follow up to this statement? He took advantage of the fact that you were consulting a member of the Speaker's Panel.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, if there is anybody trying to play politics, then it is Sen. Murkomen. Hon. Moses Kuria is your 'baby'. You must bath him, babysit him and accept all that he has been uttering.

The Speaker (Hon. Ethuro): Order, Hon. Senator!

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, we are referring to the utterances by a Senator which are being used to harass him while another Member of Parliament has made worse utterances and nothing is being done. This is selective justice. I have to say this here. You want me to say it out of this House, so that you harass me also. Here, I enjoy immunity.

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Khalwale! The issue is the relevance of what you are saying to the Statement. That is the most important point.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, the relevance is as follows; that, because it is the same Government that is superintending over both cases, why is the rule of equity not being applied? Why on Sen. Muthama and not on Hon. Moses Kuria?

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. The Standing Orders are very clear. You have warned us in this House all the time, that when you are discussing an honourable Member, whether in this House or the "Lower House", the Standing Orders apply. If the Hon. Senator wants to bring a substantive Motion to discuss Hon. Moses Kuria, he should do so.

However, is it in order for my colleague to refer to Hon. Moses Kuria as my "baby"?

The Speaker (Hon. Ethuro): Order, Senator! That is a valid point of order, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, it is common knowledge that the medium of learning from class one up to the time you finish Law School is English. It is also common knowledge that lawyers "comprehend English" better than most professionals. He should know the meaning of figurative language.

The Speaker (Hon. Ethuro): Order, Senator! The English language also provides for relevance, dignity and is not demeaning. Just stick to your point of order, withdraw and apologise, then proceed.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, when he stood on a point of order, he never asked me to apologise for anything. So, if I am being asked to apologise for something, may I know what it is that I am apologizing for?

The Speaker (Hon. Ethuro): Order, Senator! There were two points of order already. Let us proceed. Sen. Billow.

Sen. Billow: On a point of order, Mr. Speaker, Sir. There is, in fact, selective application of law when it comes to demonstrations and picketing. Some people are allowed to demonstrate, picket, without any problem. In some areas or for some other groups, it is not allowed. It happens frequently. If you try to demonstrate in Mandera, it is considered to be a crime. This is discriminative application of the law.

Could the Chairman of the Committee on National Security and Foreign Relations explain why the Government applies double standards in that regard?

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. I seek further clarification. Considering that Article 27 is very important in our Constitution, has the Government considered creating very special areas around Parliament, or the Executive or around the Legislature, where Kenyans can have a right to come and demonstrate?

If you go to the White House, Washington DC, there is a specific area where there is a particular demonstrator whom we were told has been there for five years, sitting and opposing the war in Iraq and other wars that the United States of America (USA) is involved in. Is there any process that is being put in place to ensure that properly designated areas are provided for where Kenyans can have a right to come and exercise their demonstrations without interfering with the rights of other citizens? We would be doing poorly contrary to the USA.

Sen. Hassan: Mr. Speaker, Sir, as Sen. Haji answers Sen. Murkomen, could the Government also be apprised that they are trying to designate Kenyans, which is restrictive? Therefore, if there was that type of move, could the Chairman tell us whether we are trying to reintroduce some of the amendments that were kicked out from the Security Laws Amendments, designating places of demonstration?

Sen. Haji: Mr. Speaker, Sir, as to questions raised by Sen. Wetangula, I am not aware that there were ladies who came here shouting at the gate of Parliament Buildings.

(Loud consultations)

Just allow me, please. Secondly, he asked whether I am in Kenya or not? I am here, speaking in front of you. So, I am in Kenya. The Statement of the Cabinet Secretary (CS) states that they were not aware whether the group referred to by Sen. Wetangula, applied for license or not. They had not notified the police---

(Sen. Keter spoke off the record)

Sen. Wetangula: Mr. Speaker, Sir, before I pursue my point of order, could you restrain the distinguished Senator for Kericho from heckling?

(Laughter)

The Speaker (Hon. Ethuro): Order Sen. Wetangula! I cannot restrain a Member from what he has not done.

Sen. Wetangula: Mr. Speaker, Sir, did you hear the distinguished Chairman, Senator for Garissa saying that the CS is not aware of any application to demonstrate?

Under what law does anybody apply for a license to demonstrate, unless the Chairman is operating under the old school and old Constitution?

The Speaker (Hon. Ethuro): Order, Sen. Wetangula! Then Sen. Keter's unrecorded assertions were very helpful to you.

(Laughter)

Sen Haji: Mr. Speaker, Sir, when I read the statement, notwithstanding---. Saying "license" was a slip of the tongue. I wanted to say that they had not notified the police. Equally, I am not aware about the women who are said to have demonstrated here and whether they had notified the police or not. Secondly, the ICC matter is not for me to deal with. I understand the matter is already in court. Therefore, it is not proper for us to discuss it in the House.

As to what has been asked by Sen. Billow, I am not aware also that there is selective application of how people conduct demonstrations. The requirement of the law is for the people to inform the police. If police are informed, unless there is any special reason, people cannot be denied the right to demonstrate.

Regarding the question by Sen. Murkomen, that is totally a new question which I am not prepared to answer. He can put a question and it will be answered appropriately.

(Laughter)

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, the Chair has declined to respond to my inquiry about ICC on the grounds that the matter is in court. The *sub judice* rule is very clear. He has to give us the pleadings so that we know what it is that is in court. Is he in order to 'hide' in *sub judice* principle when he has not demonstrated that, indeed, this matter is active and ongoing in a court of law?

Sen Haji: Mr. Speaker, Sir, the ICC matter is common knowledge to everybody, including him, because he has referred to it. Again, it is totally different from the question which is being asked here. So, I am not prepared to indulge into unnecessary discussions.

(Applause)

The Speaker (Hon. Ethuro): Order Senators! I agree with the Chairman that that matter is not relevant to the Statement. So, he is under no obligation to respond to you.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, the Chairperson of the Committee has repeatedly operated under the smoke screen of not being aware. Now that we have made you aware as the Chairperson, could you assure this House that the events of 29th September, 2015, which is a scar and a blot to the image of Government, where you can block and chase away one group of demonstrators and literally ensconce another group at the gates of Parliament because they are shouting obscenities against a Member of the Senate that you do not like, and Kenyans, that the Government you represent here will not apply the law selectively, regardless?

That Kenyans who want to demonstrate, as long as they notify the police will be allowed to demonstrate, whether they are demonstrating against the reckless Hon. Moses Kuria or the sober Sen. Johnstone Muthama.

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. The Senate Minority Leader has used some barometers, one of which is to measure the level of sobriety. Is he in order to declare a Member of another House worse than the other; and where is the “sobermeter”?

Sen. Haji: Mr. Speaker, Sir, as I stated, the Constitution is very clear. So long as people will comply, there is no reason why they should not be allowed to demonstrate. There is no need for me to give any assurance because the law is there. The application of the law is that people must notify the police. If they do not, the law will take its course.

The Speaker (Hon. Ethuro): Before the next Order, I would like us to dispose of Order No. 12.

Sen. Kembi-Gitura: On a point of order, Mr. Speaker, Sir. I noticed that my friend, Sen. Khaniri, ---

(Some hon. Senators walked out of the Chamber)

The Speaker (Hon. Ethuro): Order, Senators, including Sen. Murkomen! We have enough numbers for voting and I do not want us to lose that opportunity.

Proceed, Sen. Kembi-Gitura.

ONGOING PROPERTY DEVELOPMENT ON LORESHO RIDGE

Sen. Kembi-Gitura: Mr. Speaker, Sir, on 29th July, 2015, I sought a Statement from the Committee on Lands and Natural Resources regarding a development that is going on at the junction of Lower Kabete Road and Loresho Ridge. I mentioned that it is a construction that had been stopped when the late Hon. Wangari Maathai, the Nobel Laureate was around. It was also stopped by the then Minister for Land, Housing and Urban Development. The construction is going on in a riparian area and I still have not got an answer.

I notice that the Vice-Chairperson of that Committee is here. I do not know when to expect this because it has taken inordinately long.

Sen. Khaniri: Mr. Speaker, Sir, my good friend, Sen. Kembi-Gitura will agree that we responded to the substantive Statement that he had sought. There was a subsequent request that he made, if I may recollect. Following that, we wrote a letter dated 5th August, 2015 to the Cabinet Secretary (CS), Prof. Judy Wakhungu, on the same matter. Up to now, we have not received any response. I have a copy of the letter and I can table it for the House to peruse but we will definitely make a follow-up. However, I think we responded to the substantive Statement.

Sen. Kembi-Gitura: Mr. Speaker, Sir, I am sure my learned colleague is---

(Loud consultation)

I apologise to Sen. Khaniri. I know he is not learned. I hope you accept my apology. He must be confusing two issues. I had raised an issue regarding a construction on Loresho Ridge itself, they dealt with it very perfectly and I am grateful about it.

However, if you go towards Kenya School of Government (KSG) at the junction going to Loresho Ridge, there is construction going on there on a riparian area on both

sides of the river. That is the one that I am interested in. No answer has been given to that specific one. It is urgent because if that construction goes on – or they seem to be playing a cat and mouse game – we may have a *fait accompli* and then we will be told that there was no order to stop it. If this Committee deals with this issue the way they have dealt with the other issues on environment which has been extremely commendable, I think it will help us a lot in saving the environment, not just in Nairobi but also in counties.

I would like Sen. Khaniri to look at it and deal with the exact situation. I have not received even a holding answer on the specific one. May be there is a confusion ---

The Speaker (Hon. Ethuro): Order, Senator! One is that this matter is not really our business for today but just a reminder. The Deputy Speaker is usually quite tough on such matters. The law applies to everybody. My directive is that this matter comes up next Thursday so that it is put on the Order Paper for it to be properly interrogated.

POINT OF ORDER

ALLEGED DEMEANING STATEMENTS AGAINST THE SENATE BY THE OFFICE OF SPEAKER OF THE NATIONAL ASSEMBLY

Sen. Billow: On a point of order, Mr. Speaker, Sir. I rise to seek your guidance on a matter that I think is of utmost importance to this House. Under Standing Order No. 90(1), we are not privileged to discuss the personal conduct of the Speaker except through a substantive Motion.

However, I would like your guidance in the case where the Office of the Speaker of the National Assembly published statements in the media today, that ridiculed the Senate and Senators in general and, are insulting to both the dignity and mandate of the Senate. This issue has been extensively carried in the media.

I would like your guidance as to whether, as a House, we are allowed to discuss this matter or because it is not touching on the personal conduct of the Speaker, he did it as an office. That matter is really very painful to Senators. We think that that office should not be allowed to get away with the statements that he made yesterday, regarding the role of Senators. The statement brings to question the whole mandate of the Senate; that we are engaged in an exercise in futility because we are working as committees on departments that are not within our mandate and we are not carrying out our oversight mandate effectively.

Those are the issues that I thought I wanted your guidance on how we can address them. As a House, we need to speak to that matter.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. I do not know whether you are aware of the words used by the Speaker of the National Assembly. I will not go into that but the long and short of it was that, as Senators, we are abetting wasteful usage of funds by counties.

The Speaker of the National Assembly is the head of the National Assembly and you are the head of the Senate. Maybe, you will also tell us - if you are aware - what you are doing as the Speaker of the Senate by way of a rebuttal?

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I join the distinguished Senators for Mandera and Kakamega in seeking your direction under Standing Order No. 90. My reading of the Standing Orders is that we are stopped by this

Standing Order from discussing the personal conduct of the Speaker. However, when a Speaker embarks on a frolic of his own, degrades the dignity of this House and even says that the Senate and Senators are abetting looting of funds in counties, from the county where I come from, people may even be tempted to think that I may be privy to the purchase of wheelbarrows and many other things. Many Senators here have issues of accountability in their counties.

I urge that you interpret this Standing Order in the most liberal terms and allow Members of this distinguished House to voice their concern, outrage and dissatisfaction with a distinguished Member of society; a Speaker of the National Assembly, who stands third in the pecking order of this country, degenerating to the level of saying the things that he said. It automatically puts him in a prism where we have to have an opportunity to voice our concern and discuss the issue, Motion or no Motion, in the most liberal interpretation of the Standing Order.

Sen. Keter: Mr. Speaker, Sir, whereas I agree with my colleagues, I seek your guidance in the sense that, are we allowed to refer to media reports? Sen. Billow is referring to the media reports and that is his basis of invoking Standing Order No. 90(1). It is good to clarify whether there was a ruling from the Chair and whether it was somewhere and if at all we go by the statement which I saw in the media, then we do not know if it is true or not. Before we even go into that, I think it is good to ascertain the issues first.

The Speaker (Hon. Ethuro): Order, Senators! I was equally perturbed to read that piece in the newspaper. As I was contemplating on what to do next, the Speaker of the National Assembly called me and said that there was no such communication with the media. That is what he told me. He was obviously agitated. Even if you look at that piece, they never attributed it to a particular reporter. So, in a way, I was willing to give it the benefit of the doubt in the sense that the report was under a *Nation* newspaper reporter and you all know under what kind of circumstances such reportage takes place. The reporter could be avoiding victimization. He could also be avoiding to be taken to task over the veracity of the assertions.

I have requested him to set the record straight and so, let us give the matter time. If the record is not straight, you know what to do. Let us leave it at that stage for now. I think it must be very clear to everybody; to Senators, Members of the National Assembly, governors, Members of the County Assembly (MCAs) and to the general public that the Senate does not need to account to another House of Parliament.

We represent the people of the Republic of Kenya and that is where our accountability is. So, all those others are opinions which are still subject to the same public. Let me not go beyond there.

Thank you.

Sen. Kagwe: On a point of order, Mr. Speaker, Sir. Thank you very much for the varied explanation that you have given us as a House, but I was wondering whether I would be in order to persuade you as the leader of this House---

(Loud consultations)

The Speaker (Hon. Ethuro): Order, Members! We still have a vote to take. So, if you are just outside, come back to the Chamber.

Sen. Kagwe: Mr. Speaker, Sir, I was also wondering the position of the Kshs1 billion supposed to equip this House in order to oversight the counties that was held in the National Assembly and we were wondering that since the National Assembly Speaker is the one that presided over the issue, are we in order to ask your office to pursue this matter so that our Kshs1 billion can be brought back to us so that we can effectively oversight the counties?

Mr. Speaker, Sir, we will have a situation where this House can be denied money so that it can be accused of not “oversighting” properly.

I thank you.

The Speaker (Hon. Ethuro): Order, Sen. Kagwe. I was very clear. With or without money, we have been working and we will continue to work. I think the only point you are making is that somebody is not trying to frustrate more efficiency and more effectiveness and then still blames you for that. That is the only contribution I am taking from you in terms of that. Let us leave it as I had suggested.

Sen. Ndiema!

Sen. Ndiema: Thank you Mr. Speaker, Sir, for giving me the opportunity. The recent incident---

The Speaker (Hon. Ethuro): Order! Proceed with the Statement.

(Resumption of statements)

KILLING OF MR. JOSHUA MUNGAI, A FIRST YEAR
STUDENT AT MASENO UNIVERSITY

Sen. Ndiema: Thank you Mr. Speaker, Sir. Pursuant to the provisions of Standing Order No. 45 (2) (c), I beg to seek a Statement from the Chairman of the Standing Committee on National Security and Foreign Relations on the killing of Mr. Joshua Mungai, son of Mr. Kariuki of Khalwengwe village in Trans Nzoia county.

In the Statement, the Chairman should give the following:-

1. Is he aware that Mr. Joshua Mungai who was a first year student in Maseno University was recently killed at the University?

2. What are the circumstances that led to the killing and who was responsible for the same?

3. What measures have the Government taken to ensure that the murders are prosecuted?

4. Will the Government ensure that the family is fully compensated arising from the offense of commission or omission by any of its officers leading to the cruel death of the student?

5. What measures have been put in place by the Government to ensure that such tragic incidences do not occur again in our institutions of learning?

Thank you.

I take this opportunity to pass a message of condolence to the family of the late Joshua Mungai for the loss of their dear son who was only in the University for 40 days.

Sen. Adan: Thank you Mr. Speaker, Sir. I wish to take this opportunity to pass my condolences to the family that has lost their son. It is really an unfortunate situation. I

request the Senator to give the Committee a week to be able to respond to this particular Statement, preferably, Thursday next week.

Thank you.

The Speaker (Hon. Ethuro): It is so ordered. We now go to Order No. 12 then we come back to order No. 8.

BILL

Second Reading

THE HIV AND AIDS PREVENTION AND CONTROL (AMENDMENT)
BILL (SENATE BILL NO. 4 OF 2015)

(Sen. (Dr.) Machage on 1.10.2015)

(Resumption of Debate interrupted on 6.10.2015)

The Speaker (Hon. Ethuro): I order the Division Bell to be rung for one minute.

(The Division bell was rung)

DIVISION

ELECTRONIC VOTING

*(Question that the HIV and AIDS Prevention and Control (Amendment) Bill
(Senate Bill No. 4 of 2015) be now Read a Second time, put and
the Senate proceeded to vote by County Delegation)*

AYES: Sen. Abdirahman, Wajir County; Sen. Billow, Mandera County; Sen. Chelule, Nakuru County; Sen. G.G. Kariuki, Laikipia County; Sen. Haji, Garissa County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. Kombi-Gitura, Murang'a County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Prof.) Lesan, Bomet County; Sen. M. Kajwang', Homa Bay County; Sen. (Dr.) Machage, Migori County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakiwet County; Sen. Musila, Kitui County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Sang, Nandi County; Sen. Wako, Busia County; and Sen. Wetangula, Bungoma County.

NOES: Nil

The Speaker (Hon. Ethuro): Hon. Senators, the results of the Division are as follows:-

AYES: 25

NOES: 0

ABSENTATIONS: 0

(Question carried by 25 votes to 0)

*(The Bill was read a Second Time and committed to a
Committee of the Whole tomorrow)*

MOTION

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

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, 23rd September, 2015.

(Sen. Murkomen on 14.10.2015)

(Resumption of Debate on 14.10.2015)

The Speaker (Hon. Ethuro): Sen. Obure, you have 13 minutes left to debate

Sen. Obure: Mr. Speaker, Sir, I was interrupted last evening at the close of business when I was in the process of appreciating the work of the Select Committee for a job well done. By looking at the report, I notice that the Committee held many meetings and workshops before producing this report. I also noticed that this report goes to considerable length in analyzing the key issues and they have gone further to give comparison of the situation in similar jurisdictions.

Mr. Speaker, Sir, I am aware that this was a complex assignment, but the quality of the members in the Select Committee is clearly reflected in the quality of the report produced. The terms of reference of the Committee, included among others; the assignment to inquire into the design and structure of Parliament as presently constituted and to determine whether the design and structure is appropriate for the purpose of protecting and safeguarding the devolved system of government.

Secondly, the Committee was expected to examine and make recommendations on the ideal relationship between the Senate and the following institutions; the national Government, the National Assembly, county governments and other state organs and agencies.

The current Constitution has been in operation since 2010. We have since witnessed some of the weaknesses, challenges and conflicts which have arisen when trying to implement some of the provisions of the Constitution. In any case, even when Kenyans adopted this Constitution, they were aware that it was not a perfect everlasting document. In my view, the time is now for us to address some of the challenges that we have experienced in attempting to implement the Constitution.

Mr. Speaker, Sir, one of the main problems that this nation faces today is that the role of each House of Parliament is not clearly understood even by the Members of Parliament themselves, leave alone the general Kenyan population. This has resulted into

confusion and unnecessary conflicts between the two Houses of Parliament. We have all heard about the questions being raised about which House of Parliament is more superior to the other.

[The Speaker (Hon. Ethuro) left the Chair]

[The Deputy Speaker (Sen. Kembi-Gitura) took the Chair]

We all know that is unproductive and a waste of time. The truth is that we have wasted a lot of time attending to such arguments. I, therefore, agree with the Select Committee on the urgent need to review Article 94, which defines the role of Parliament as well as Article 95 which attempts to define the role of the National Assembly. There is also the need to review Article 96 which attempts to define the role of the Senate.

Mr. Deputy Speaker, Sir, I strongly feel that there is need to define or set out – in clear, precise and specific terms – the role of each of these institutions to avoid the possibility of misinterpretation, confusion and, indeed, to remove any ambiguity of any kind.

With regard to the function of law making, I strongly feel that both Houses of Parliament should be allowed to initiate or originate any Bill provided that a Bill should only become law after passage by both Houses.

Mr. Deputy Speaker, Sir, the other question of significance which has been raised in this Report relates to allocation of finances to support the system of devolved government. We all agree that the reason Kenyans voted overwhelmingly for the current Constitution was because of what devolution promised.

Indeed, devolution promised that resources would be brought closer to the people, there would be improvement in service delivery, equitable distribution of resources to all parts of the country, reduction in marginalization and promoting equity all-round in the process. However, all these depend on the amount of resources we were to take closer to the people.

The current Constitution provides that the equitable share of national revenue allocated to county governments shall not be less than 15 percent of all the revenue collected by the national Government in any financial year. To make matters worse, this percentage is based on the last audited accounts. You are aware that in the past three years, the last audited accounts have gone back as far as the past five years. Therefore, counties have lost out very heavily.

Mr. Deputy Speaker, Sir, all of us – including those in the national Government – must demonstrate our support and commitment to the devolution agenda. Adequate funds must be provided to the devolved units to enable counties to build roads, provide healthcare to all our people, provide quality water and sanitation and make our counties more food secure. Indeed, this is the way to improve the welfare of citizens in our counties.

Mr. Deputy Speaker, Sir, I, therefore, agree with the Select Committee's recommendation to enhance the minimum percentage from 15 to 40 percent. Although I would have preferred 45 percent, I will go with the 40 percent recommended, based on the most recent revenue received or achieved. I also agree that in order for Senators to discharge their mandate of representing their counties effectively, it is important for the

Senate to be involved and participate fully in the budget making process. This is important because we have to be right there where the Budget is being made, otherwise, it will be too late to give our input. As a Senate, this is the critical role. We need to be involved and participate in it fully. That is the only way that the counties will be represented effectively in resource allocation.

Mr. Deputy Speaker, Sir, these are, indeed, very fundamental recommendations. Each one of us Senators needs to commit themselves to the recommendations which have been presented. We need to adopt the recommendations, commit ourselves to them and pursue their adoption at whatever level, including the national referendum when we get there. We need to commit ourselves individually and collectively for the survival of the institution of Senate and county governments or the devolved units. We need to work together on this, irrespective of our party positions, affiliations and political persuasions. It is important that we do this because, I think, we would be serving this generation and the generations to come.

With those remarks, I beg to support.

Sen. Billow: Mr. Deputy Speaker, Sir, I also rise to give my support to this Motion. I was privileged to be among Members of the Committee that did this work. There is no doubt that a lot has changed since we embraced this new political dispensation about five or six years ago. A lot has changed in the way we govern ourselves, where Kenyans hold their governments to account. We have also changes in the powers of the Executive; the checks and balances, the role of many public institutions and the bicameral nature of Parliament. A lot of the changes that have been introduced have fundamentally changed the way we govern ourselves.

Mr. Deputy Speaker, Sir, the Constitution is very clear. To interpret the Constitution, we must do it in a manner – this is according to Article 159 – that promotes its purpose, advances the rule of law and contributes to good governance and the development of law. I am not a lawyer but I can tell you for a fact that the Constitution, even with this very clear prescription has, in fact, been interpreted in various ways in the past few years. Many institutions, including Parliament, have had to go before the Supreme Court to seek clarification or advisory opinion on the meaning of certain provisions in the Constitution. It is because of that, that among other reasons, this hon. House felt it necessary to look at the Constitution and recommend amendments to the same.

Mr. Deputy Speaker, Sir, I will go specifically to a number of areas in this Report that I support. One of the key challenges that we have today is on finances and the budget. We all know that in the past two weeks, we have been treated to a lot of information in the media that our Government is, indeed, facing serious financial crisis. I do not think anybody doubts that when a Government or any institution for that matter fails to meet its obligations, then, that means that the institution is in the red. There are serious challenges when salaries cannot be paid on time, development budgets have not been implemented significantly in the First Quarter of this Financial Year and transfers to county governments have only been effected for one month out of the three months of the First Quarter of this Financial Year.

When you look at it critically, the genesis of this financial crisis is the manner in which the budgetary system or process of this country is being handled. We said that this year in June when we were looking at the Budget. The Budget is managed by one

institution. The National Assembly literally determines who gets money and who does not and what the expenditure should be.

Mr. Deputy Speaker, Sir, the law that we have today has literally placed the Treasury in the hands of one House of Parliament. Because of that, we have a situation where a country whose annual revenues are estimated to be Kshs1 trillion could come up with a budget of Kshs2.2 trillion. The same House can then pass a budget of Kshs2.2 trillion. Clearly, without even thinking, there is a gap between our revenue and expenditure of Kshs1trillion. Where will this money come from? Therefore, we have an institutional problem that our spending is much more than what we can afford. We are living beyond our means. How do we finance it?

The second problem we have is; we have allowed the government to borrow left, right and centre. The challenge we have today, the reason why we have delays in payment of money is because of the cash crunch arising from the repayments of the debts. It is easy to borrow. Today, the world is awash with money. If you want to borrow, you do not even need to think, you will be given money from any institution. Even individuals can lend hundreds of billions of shillings. They are looking for where to take their money globally yet if you come up with a policy that says borrow and spend, first, it contravenes the provisions of the Constitution.

The principles of public finance require that the future generation is not burdened with today's expenditure and debt. The challenge is that we do not have that opportunity. We are proposing that the Senate should be involved in the budgetary process of this country so that, as a House, we can act as a quality control. That is the essence of the Senate anywhere in the world. The reason why many countries in this world have a bicameral system of parliament is to ensure quality control. People might look at it from a simplistic point of view that we are duplicating the same law that goes to both Houses. It is not about duplication. That is looking at the simplistic aspect of it. It is about quality control.

Mr. Deputy Speaker, Sir, the legislations that we make today, that are being passed by the National Assembly, nearly 78 per cent of them are returned by the President. The reason why we are burdened with making legislation is because of lack of quality. We make law today; tomorrow we repeal it or amend it. It is becoming impossible. That is why we have a bicameral system. We must give the Senate that responsibility of looking at the budget and appropriations so that we can reign in the runaway expenditure of government which is creating the deficit that is forcing the Treasury to borrow billions of shillings. Today, we have to spend the little revenue that we get on servicing debt.

Last year alone, this country borrowed Kshs2 billion in the Euro bond. Early this year, they added another \$50million in international sovereign bond. Locally, the total borrowing last year was close to Kshs500 million. Today, our debt is Kshs2.8 trillion. By next year June, our budget office approximates it to be Kshs3.5 trillion. Where are we taking this country? That is one of the fundamental changes we want to bring it here. It happens in the United States of America (USA) and other countries with a bicameral system; that both Houses have to look at the budget.

The second aspect is on the legislative role. I think I have mentioned that it is very important. The recommendation here that every law must come to the Senate is very important. There is no law that is passed in this House or the National Assembly which

does not touch on the counties. There is none. Even if they do not, that aspect of quality control, the need to ensure that we are legislating for the future generations or perspective, makes it incumbent upon us to ensure that both Houses have looked at law. That is what happens in the developed countries. The reason why the same law goes to both Houses is to double check and to ensure that the law we are making respects the provisions of the Constitution, values of human life and the interests of the people of Kenya at all times. The more we look at it, the more we will find it essential we bring the legislative agenda of this country to this House. The only thing that we are saying in those recommendations is that for money Bills, it should start from the other House. Otherwise, we are saying that this House should look at all the legislations.

Mr. Deputy Speaker, Sir, the third area of importance is safeguarding devolution. This is something that all Kenyans today, wherever they are, are voting 100 per cent in any of the opinion polls. The single most important thing they all agree is the need to strengthen devolution. These recommendations go a long way in strengthening every institution that is associated with devolution, including and starting from the Senate. The reason why we are saying that we must enhance the role and powers of the Senate is ultimately aimed at strengthening devolution. We have also looked at other institutions like the county assemblies, the institutions of the governors so that all the institutions are entrenched in the Constitution so much so that no future government can undermine the role of these institutions in devolution.

Mr. Deputy Speaker, Sir, as regards the resources, we have also addressed that issue when we insisted in this recommendation that we must raise the threshold on allocation of revenue to the county governments to 40 per cent. This is critical. There is no way we can ensure equitable development in this country. One of the challenges we have had in this country is inequality more than even poverty. We cannot address that unless we look at the issue of resource allocation.

Oversight has also been addressed. Those who are saying Senators should not be given the responsibility of oversight are the same ones who have been undermining the institution of the Senate whether it is in resource allocation or in terms of their powers. In the recommendations we have made here, one thing we have ensured is clarity in the oversight role of the Senate so that it is in black and white what the oversight mandate of the Senate is. This has been made clear so that there is no room for ambiguity. That oversight is not limited to counties. As an institution in a bicameral system, we have a mandate to oversee what happens in other institutions at national level. That clarity is provided for.

Mr. Deputy Speaker, Sir, I want to emphasize one point with regard to oversight. About Kshs283 billion out of the Kshs2.2 trillion expenditure is what goes to the counties. The Kshs2 trillion that remains at National Government, the level and quality of oversight in this eleventh parliament by the National Assembly is so wanting. I have just explained how the country has gone into a high level of debt that has literally made us to go on our knees because of lack of oversight by our institution. This is why it is important to look at the recommendations that we have made here.

Without taking away the powers of the National Assembly, we have created a balance that will ensure that they have the role but at the same time the Senate will also have checks and balances. One of this is embodied clearly in the appointments. We have said appointments or institutions that relate to the formation of Government shall be done

by the National Assembly so that they can vet the judges, Cabinet Secretaries others. When it comes to oversight, those institutions that deal with oversight, like the Inspector General (IG), the Central Bank of Kenya and collateral institutions, offices with security of tenure and all similar oversight offices should be vetted by the Senate. This is important because their oversight mandate affects performance in counties.

The person who is appointed as the Auditor-General and the Controller of Budget determines what will happen or the quality of performance of work by the county governments. It is important that those oversight institutions are vetted by the Senate because they affect everyone. Those who have to deal with the national government on a day to day basis, government operations, formations of the government and running it, can be vetted and approved by the National Assembly. We have provided for that balance to ensure that we are not accused of usurping the powers of anyone.

Mr. Deputy Speaker, Sir, in concluding, I want to urge my colleagues to support this in a bipartisan manner.

With those remarks, I beg to support.

Sen. Wako: Mr. Deputy Speaker, Sir, thank you for giving me this opportunity to speak on this very important Motion. Along with my colleagues, I wish to congratulate the team that we appointed to look into these issues. It was a quality team with reflected the face of Kenya. It was a team of the young and old. It was a team that cut across religious loyalties. Most importantly, it was a team in which both sides of the political divide sat and deliberated. The fact that they have produced this good report, demonstrates that important issues facing this country can be dealt with when both sides come and reason together. That is the African way of doing things. The Senate is the House of elders and in the tradition way, the African elders sat together under a tree and agreed even on the most difficult issues.

I am, therefore, pleased by the remarks that were made by the Mover of the Motion when he appealed that just as this Committee worked together, he hoped that the togetherness will continue when we come to the campaigns during the referendum for the adoption of this report. Just as the team worked in a non-partisan way, we also hope that when we adopt this report and go to the public, it will also be done in a non-partisan way.

That is why I want to focus on the way forward because referendums can be very dicey. Most of the referendums that have been held, for example, in Europe on whether the country should join the European Union, you will find that the referendum is defeated, not so much on the advantages or disadvantages of the country joining the European Union, but because of some local issues. So, people vote not so much on the major issues but on local issues generated by the politicians. We even witnessed here when we were campaigning for this Constitution. You saw that the debate was not always on the substance of the Constitution as a whole but on an issue which had been misinterpreted. For example, it was said that the Constitution permits abortion. Therefore, a lot of emotions went into that.

Mr. Deputy Speaker, Sir, these good constitutional amendments that we have, I am very keen that the way we handle the way forward should not derail the result of the referendum due to concentrating on issues other than these very noble amendments. As Sen. Mutula Kilonzo Jnr. said, most of the major amendments to a constitution have been within one year of the promulgation of that constitution in many countries including the

United States of America (USA) and India. We have not been able to do so within one year.

When we were newly elected, it was our intention to have a constitutional amendment because of the challenge presented to the Senate but we cannot debate a very important Bill on Division of Revenue. We wanted to have a constitutional amendment on this but we could not do so due to other factors.

Having said that, we are in a situation where we are now half way through our term and my fear is that the political temperatures are rising and the enabling environment to consider these issues soberly is becoming very difficult. This Committee has pointed the way, that in spite of the difficulties we may face, if we can do things in a non-partisan manner and focus on issues, we should be able to go through. Sen. Billow has stated the situation facing this country and has painted a very gloomy picture of the economic crisis which we might be facing at the moment. He has used that as a reason why, as the Senate, we should be involved in the budget-making processes.

Mr. Deputy Speaker, Sir, apart from economic problems, this country is also facing many problems including insecurity. I commend this Committee especially on the method it adopted in tackling this issue. That is the same method the country should adopt in tackling this grave crisis that we are facing at a point in time when we are facing elections. That is the way to go. Therefore, I support the appeal by both the Mover and the Secunder of this Motion that the political leadership of this country both in Government and in Opposition to come together.

I will also take into account that there have been a number of initiatives in amending the Constitution. We have the *Okoa Kenya* Initiative, the governors' initiative and we might also have county speakers. It may very well be that as a way forward, we should look carefully at the issues because some of the issues proposed for amendment here, the governors and the county speakers are also interested in. The *Okoa* Initiative has many other proposals which are not part of this but it may very well that in order to move forward in a non-partisan way and bring the entire country moving together, we may consider the most important amendments and proceed in a non-partisan way on those non-partisan amendments.

This means that we need an environment in which a constructive dialogue can take place between the Government, CORD and all other stakeholders to agree that these amendments are necessary. Indeed, the proposals that have been made are proposals which everyone feels that they should be there. With that agreement, we can move forward together and we would clear the argument that we cannot have a referendum now because that would be a rehearsal for the actual election. That is an arguments that I have heard being mention, and since we are in a political situation, if that argument comes forward, we may not push this good amendments through.

That is why my strong plea is whether we can carry out this matter forward in a non-partisan and non-political way together as nation, because these are amendments which we all agree are necessary to underpin the Constitution.

Mr. Deputy Speaker, Sir, coming to the actual amendments regarding the role of Parliament; in the last two years, both Houses of Parliament have wasted a lot of time and energy arguing on irreverent issue such as which House is superior, all because the Senate appeared to have been limited to discussing matters concerning counties.

Matters concerning counties had a narrow and broad interpretation. I am glad that

the advisory opinion of the Supreme Court was for the broad interpretation more saying that; there can be no Bill which does not concern counties. Being in a situation in which we were at that time and with the law as it is, the problem was not solved, because of those who believe that the Senate must be restricted and limited in the type of legislation that they discuss and enact.

That is why I am in a total agreement with what has been said here that we must discuss all Bills so that we do not waste a lot of time and energy on irrelevancies. We then know that all Bills from the National Assembly will come here and that all Bills originating from here will also go to the National Assembly and afterwards be presented to the President by both Speakers.

The problem with our current Constitution is that they gave the Senate powers over counties when they use the word “concerning counties on legislations and matters concerning counties” as the report says in paragraph 25:-

“That in all countries where we have a Senate, the Senate has legislative powers on all Bills”

This is a leaf they borrowed from South Africa which has a House called - it is not even called Parliament - it is called the National Council of Provinces (NACOP). That is set out in Paragraph 25 of the report and this National Council of Provinces has the mandate to participate in the national legislative process and provide a forum for public debate on important issues. Where the Constitution went wrong is that it did not take into account the fact that this National Council of Provinces is not an elected body like the Senate. The National Council of Provinces only consists of nominated delegates - I do not know through which process - by provincial legislators.

If I were in South Africa, I would not have been elected by thousands of residents of Busia who cast their one vote for Amos Wako to be a Senator. I would have been elected by thirty something Members of the County Assembly to be their delegate. In South Africa, they are delegates, they are not elected. As delegates they go to represent the county assemblies in that National Council of Provinces and they have to reflect the wishes of the county assemblies. They are not independent with a free will of their own.

The Deputy Speaker (Sen. Kembi-Gitura): Your time is up but I am giving you one minute to wind up.

Sen. Wako: Thank you, Mr. Deputy Speaker, Sir. My comments go to all other amendments that have been proposed. The issue of approving constitutional office holders is very important, because the Senate at the end is the guarantor of the Constitution. These constitutional commissions and independent offices have been given a specific role of implementing the Constitution, the way it is. Just like the other House approves the appointment, we must also approve the appointment of the officers.

With those few remarks, I beg to support.

Sen. Adan: Thank you, Mr. Deputy Speaker, Sir. Let me add my voice in supporting this particular proposal for amendment. First, I would like to congratulate and commend the team that worked on this proposal. This team has a lot of experience and wealth of knowledge. It is important for us to appreciate the work they have done.

Let me let talk about the budget-making process. As a country and as a Senate, we have been having problems, when it comes to the budget making process. The Senates is involved at the last minute especially when it has remained a very short time to the conclusion of the process. As a result, the Senate is denied the oversight role which is

very critical, because if we are not involved from the initial stages in the budget-making process, then we lose the right of oversight.

Mr. Deputy Speaker, Sir, last week, I was in the county with the *ad hoc* Committee on infrastructure and what is happening in those counties it is like there are a lot of problems. Monies allocated for certain services, are diverted for other processes. It is because the Senate is not involved in prioritizing the activities and the areas that require funding. This is very critical. Members of the public are also denied the responsibility of oversight, especially in the usage of their budget within the counties. The Governors and the people in the county do not involve members of the public in terms of how development is supposed to take place. This is a constitutional provision and the public is denied its right. That is why it is important for us to enforce and emphasize that the Senate should be at top or be involved at the initial budget-making process.

Secondly, I would like to talk about appointments to public offices. Last month, we visited Moscow as the Senate Committee on National Security and Foreign Relations. We learnt that the Federation Council of Russia is involved in the appointment of public officers at that high level. It is important for this Senate to be involved in this activity because that is the practice worldwide. If the Senate is denied this opportunity, it is sad. For example, it is important that the appointment of the Cabinet Secretary be brought to this Senate. We need to appoint people who are conversant with issues of the county and the aspect of devolution. If the Senate is denied this opportunity, then in future we might not get the right people to spear-head the principle of devolution.

Mr. Deputy Speaker, Sir, there are so many other aspects that we need to look at in terms of appointment to these senior positions. It is time the Senate is given this responsibility to do this, alongside the National Assembly.

Thirdly, we want to look at the issue of the welfare of the Senate and the county assemblies. This is important because from practice, having done almost five years in the implementation of the Constitution, of course, there are gaps which need to be looked into. Concerning the welfare of the Senate, we have tried to pass several proposals and policies in this House but unfortunately our hands are tied because of the provision of the Constitution. It is time that the independence of the Senate is guaranteed so that we have our own commission in this Parliament.

In addition, there are issues of welfare in the county assemblies. Nobody knows what happens to them. They do not have a welfare system. This will bring crises, for example, what we have experienced from retired councilors who brought a petition before this House.

Mr. Deputy Speaker, Sir, we are good at creating institutions but it is important for us to look at how these institutions operate and their welfare.

Fourthly, the removal of the governor, the deputy governor and the relationship between them should be looked at. We had an experience of impeaching Gov. Wambora. Unfortunately, after having gone through that process, he is still in office. This is against the constitutional provisions and the wishes of Kenyans who vote in these individuals and also their right to remove them.

In terms of the relationship between the governor and his deputy, there are many problems. For example, from the experience of Gov. Wambora and his deputy, there were many challenges. This needs to be ironed out. Another example is the case before

the Committee on Legal Affairs and Human Rights where after efforts to impeach the Deputy Governor, Mr. Kiala, failed, the Governor has refused to allocate him responsibility. There is a lot harassment which is coming out of that. This is an area that we need to look into. If we want to retain those offices and for them to properly serve Kenyans, these issues need to be ironed out. We are wasting taxpayers' money due to the wrangles in those counties. It is important for the office bearers to work together amicably for the benefit of those counties.

Also, I want to speak to the treaties and conventions that are being established. There are several treaties and conventions that are ratified in this country. Most of them affect counties. Before ratification the counties are not involved in contributing to them. This has to be corrected because without input of the counties to point out the areas in which they will be affected by these treaties and conventions; there will be a dilemma which will affect the counties seriously. So, it is important for us to involve the counties in the process before these treaties and conventions are ratified.

Finally, the independence of this Senate is critical. If we are not given this opportunity then we do not have a reason why we should be in this office. There are several bodies that have proposed amendments. It is time for this country to accept that there is a problem in the current Constitution. We should amend it so that we can implement and enforce it without hiccups.

Mr. Deputy Speaker, Sir, with those remarks, I beg to support the amendment.

Sen. (Dr.) Machage: Bw Naibu Spika, asante kwa kunipa nafasi ili niunge mkono Hoja hii iliyopendekezwa na Sen. Murkomen. Wakati mwingi majuto ni mjukuu. Sio kwamba hatukujua kwamba kulikuwa na udhaifu kwa Katiba. Haya yalisemwa na wahenga wakati ule lakini sikio la kufa halisikii dawa; hawakusikia. Tunayoyaona leo kuhusu mamlaka ya Seneti ni udhaifu uliotabiriwa kwamba tunaunda Seneti ambayo haitakuwa na mamlaka na kutakuwa na upotevu wa pesa za umma.

Sasa imebidi tuanze kufikiria ili tutekeleze yale ambayo tungeyatekeleza jana. Tumefikiria kwamba kura ya maoni ni muhimu wakati huu ambapo Serikali iko taabani, haina pesa. Kura ya maoni ni gharama kubwa. Tuna pengo la deni la zaidi ya Kshs1.3 trilioni. Serikali imeanza kukopa kutoka kwa benki nchini ili kugharamia huduma za kila siku. Sisi tuko na matatizo ambayo yanalenga ukweli na umuhimu ili kuliziba hili pengo ambalo limefanya Serikali na nchi ya Kenya kuwa na shida ambayo tumepata kwa sababu ya udhaifu wa Bunge la Kitaifa. Bunge hili limepitisha Miswaada kiholelaholela bila Seneti kuwajibika, kuangalia na kuchunguza kwa undani na dhati yaliyomo. Umuhimu wa Mswada huu lazima utiliwe maanani. Wakati umefika lazima mamlaka ya Seneti yaangaliwe na yarekebishwe vilivyo kwenye Katiba. Kwa mfano, Kaunti ya Migori imewaka moto sasa hivi. Jana na juzi katika runinga, Spika wa bunge anadaiwa ameiba pesa kiasi cha Kshs12 milioni.

Kamati ya Bunge ya Kaunti ya Migori iliketi, ikachunguza na kupata kwamba hela hizo zilitumika vibaya kwa sababu ya Spika. Spika mwenyewe alienda kutafuta vijana kutoka sokoni na kuwajaza Bungeni. Wabunge wa Kaunti walipotaka kuanza kupiga kura, vijana walianza kupiga kelele na Spika akahahirisha Bunge.

Bw. Naibu wa Spika, mambo kama hayo yasingekuwa hivyo kama Bunge hili la Seneti lingekuwa na nguvu hata ya kusema: "Bw. Spika, kwa sababu umefanya dhambi kama hiyo, wakati ukichunguzwa kaa kando kwa mujibu wa amri ya Seneta." Wajua Seneti ina amri hiyo lakini lazima sasa njia ndefu ifuatwe. Mara kupitia *petition* na haya

ni mambo yasiyopendeza. Baada ya Spika huyo kufanya hivyo, aliandaa msafara mrefu kupita miji yote katika Kaunti ya Migori akijitukuza kana kwamba amefanya jambo nzuri sana.

Haja hii inaipa Seneti nguvu za kuangalia uteuzi, sio wa Mawaziri tu bali pia viongozi wa tume mbalimbali, kabla ya kupewa wajibu huo. Hizi ni tume muhimu ambazo uteuzi wao si wa kiholelaholela. Lazima usomwe, uangaliwe na aliyeteuliwa achunguzwe na wazee wa Seneti. Tuliitwa “Jumba la wazee” na sio tusi wala kosa kwa sababu ni Bunge lililojaa watu wenye hekima. Kwa mfano, lazima Seneti hii iangalie ni nani huyu ambaye atahudumu kama mwangalizi wa mambo ya kaunti au hata mkuu wa polisi. Serikali ikitaka kuenda vitani, Seneti hii iangalie ni kwa nini. Kuna umuhimu wa kufanya hivyo. Serikali ikitaka kutumia jeshi kufanya kazi ya polisi, Seneti iamue. Ni kwa sababu hapa kuna watu walio na kipawa cha umri na wala sio kukimbilia mambo, kuyasema na kuyatelekeleza bila kufikiria na kujua undani wake. Ninaomba Seneti hii ipewe uwezo wa kutekeleza hayo yote.

Bw. Naibu wa Spika, sasa hivi mimi na ndugu zangu tunakaa tu kama kuku aliye na pua wazi lisilo na kifuniko na chochote chaweza kuingia. Bunge la Seneti! Hata huna uwezo wa kutekeleza wajibu wako hata tu kufanya mkutano. Huwezi kuitisha kikao cha viongozi wote wa kaunti ukae nao siku mbili au tatu mchambue mipango ya maendeleo ambayo inahitaji kufadhiliwa. Kazi ya kuombaomba utafika nayo wapi? Tunahitaji hela zitakazowekwa wakfu na Serikali ili kuhakikisha kwamba Seneta ana uwezo wa kutekeleza wajibu wake mashinani. Huo ndio ukweli. Lakini sasa yatatendeka vijijini na wewe ukiwa Seneta utayasikia tu. Hata unatumia gari lako kwa sababu huna gari la Serikali na labda umetoka katika kaunti kubwa.

Kama mimi hapa, Migori nina maeneo Bunge nane. Utoke Kusini, Kaskazini, Magharibi hadi Mashariki, utakuwa umetumia petroli na tairi umemaliza kiasi gani na pesa kutoka kwa mfuko wako? Kule vijijini pia kuna ombaomba ilhali mshahara wako ni ule ule tu. Haiwezekani kwa sababu hata ukiwa mzuri sana, kuna wakati ambapo unaishiwa, unarudi na kuketi kitako kisha mambo yanaharibika vijijini.

Kwa hivyo, Hoja hii sio tu kuangalia wajibu wa Seneti kwa uteuzi wa viongozi kadha wa kadha, lakini unataka pia Seneti ipewe uwezo wa kuamua mambo muhimu kwa Bajeti. Juzi, Bunge la Kitaifa lilipitisha Bajeti kubwa ya Kshs2.3 trilioni kiholela tu bila kujua hela hizo zitatoka wapi. Tunasikia tu: “Tunataka kufanya hivi.” Barabara na reli zinajengwa huku, viongozi wanaruka kwa ndege huku na huku, magari makubwa yanatumika na ndege zinapaa kushoto na kulia. Mbio za sakafuni huishia ukingoni. Hela zimekwisha kwa sababu pia midomo imekuwa mingi. Mirija imewekwa ndani kwa sababu Seneti haina uwezo wa kukata mirija hiyo. Hamna nguvu.

Hela zimekwisha na sasa ni kutapatapa kama kipofu na upofu utafika nao wapi ukitaka kuongoza nchi? Sasa ni kilio kushoto na kulia; madaktari huko wanalia kwamba hawalipwi mishahara yao, hakuna dawa hospitalini, polisi hawana mafuta ya magari yao na hata Bunge linakatiwa umeme. Juzi Mbunge mmoja amelalamika kwamba hata hakuna maji ya kujitawaza chooni. Bunge la taifa! Aibu! Kuna viongozi 349 waliochaguliwa katika Bunge la Kitaifa na 67 katika Seneti na haya yanapita katikati ya vidole bila kuonekana.

Bw. Naibu wa Spika, ni kwa sababu sheria ilichujwa hadi Seneti ikakosa uwezo. Seneti iliyaona haya wakati Bajeti ilipoletwa ndani ya Bunge tukiangalia tu na wengine tukasononeka. Tukauliza hata hela za kushughulikia zahanati au hospitali kubwa, lakini

hatukupata. Tuliwauliza watenge Kshs10 bilioni tu zishughulikie hospitali za *Level 5* lakini walikataa kusikia. Walipitisha Kshs3 bilioni tu na sasa hospitali zimekwama. Ni wehu! Wamejazwa na uwehu wa nguvu za Katiba ambayo ina dosari na lazima irekebishwe. Lazima hela zitafutwe kwa hima. Katiba ilivyo sasa hivi, haitatupeleka mbali. Lazima Seneti ipewe uwezo wake wa kuongoza nchi hii kusudi jambo likitendeka katika Bunge la Kitaifa, likifika kwa Seneti tutaliangalia, tuliangazie mawazo yetu na kuona hili halifai wala halitekelezeki.

Hili ni shimo kuu la kuvunja umma kusudi na wao pia wasituambie basi walimbuke. Tunawaambia, limbuke, mwamke kutoka usingizini. La sivyo, basi, Jumba la Seneti halistahili kuwepo. Hakuna budi basi tuseme Bunge la Seneti livunjwe kama ilivyokuwa zamani. Kwa sababu halina nguvu, haina haja kuwa na Seneti. Kama nikuketi hapa kuangalia mambo yakiharibika, huna uwezo, mwishowe unakula mshahara mwisho wa mwezi, huwezi hata kufika uko mashinani ukatekeleza wajibu wako kwa sababu hamna vifaa vya kufanya hivyo, basi livunjwe. Livunjwe kwa sababu laongeza utumizi wa mapato ya Serikali. Livunjwe na maeneo ya Bunge tena yapunguzwe, na safari za kiholelaholela mpaka hata za Rais zipunguzwe, kusudi, ---

The Deputy Speaker (Sen. Kembi-Githura): Time is up Sen. (Dr.) Machage. One minute you wind up.

Sen. (Dr.) Machage: Nashukuru, Bw. Naibu Spika. Kusudi taifa letu tulijenge sote kwa dhati na kwa uangalifu, tukuze uchumi bora, maendeleo yawe ya kisasa na bora, watoto wafundishwe bila walimu kuenda mgomo, watu wapate matibabu kwa wakati uliofaa, tusiwe na vifo ambavyo havifai kama juzi wakati mgonjwa aliachwa ndani ya ambulansi kwa masaa kumi na nane, aibu. Ni wajibu wetu sisi tukiwa viongozi kuangalia udhaifu kama huu kwa Katiba na kurekebishwa. Naunga mkono.

The Deputy Speaker (Sen. Kembi-Githura): Maybe now you can be able to withdraw the one you said that *nakuonea*.

Sen. (Dr.) Machage: Mheshimiwa Naibu Spika, nashukuru. Wewe ni mtu mwenye hekima na huna uonevu hata kidogo.

The Deputy Speaker (Sen. Kembi-Githura): Asante sana nashukuru. Sen. Mukiite.

Sen. Nabwala: Thank you very much, Mr. Deputy Speaker, Sir. I would also like to join my colleagues to add my voice to this very important Motion by the Select Committee on the Constitutional and Legal Review that was laid before this House on the 23rd September 2015.

The Committee did a great job as seen from the comprehensive report read on the Floor of the House. If looked at critically, I think it will help our country to move forward.

First and foremost, I would like to talk about the financial crisis that is facing our country right now. We need to know from the Treasury Cabinet Secretary what happened to the envelop that we allocate at the end of July 2015; that was the new Financial Year. We were told that there was over Kshs1 trillion, we sat down as the Committee on Finance, Commerce and Budget and allocated the money. The Bill came to this House and the House approved the allocations, it went to the National Assembly, and now we are being told there is no money and counties are facing a problem.

Counties have further been instructed to borrow money from banks. This is going to be abused, and before we realize it, counties will be in more debt than what the

Government has borrowed. I think this country needs to be given answers to what is happening. Secondly, we have also realized that two banks have collapsed; Dubai Bank and Imperial Bank. That is not a very good sign particularly to the investors. If banks start to collapse, the next thing you will hear is that things have come to a halt. Like we have seen, electricity and water to Parliament had been disconnected which is a very distinguished House. One wonders if the county government can disconnect water and the Kenya Power disconnects power for the Parliament, then there is something seriously wrong which needs to be addressed.

The other problem is the passage of Bills which has been mentioned in the Report. In the past, this House has looked at money Bills, which go to the National Assembly, they also agree with us that that is how the money should be allocated, but where there is a disagreement, we have had to go to the Mediation Committee. But even after Mediation Committee, when the Bill is taken back to the National Assembly, they go ahead to reallocate the funds and you realize that some institutions, organizations and the Senate are disadvantaged.

When they say that the Senate is not doing the oversight role, it is because we do not have funds. We proposed that Senators be given Kshs1 billion and the same National Assembly went ahead, removed the money and reallocated it elsewhere. For somebody to say that the Senate is not performing its mandate, I think it is the other House that is trying to frustrate this Senate so that devolution does not work. Devolution is the best thing that happened to the people in this country because it addresses the inequalities which were being felt in the rural areas because development was concentrated in Nairobi or the major towns.

Mr. Deputy Speaker, Sir, oversight of money which is being allocated to counties is very important. So, the Senate must be strengthened. How else are we going to oversight if people do not have the means to hire researchers or to carry out forensic audits in those counties that are having problems?

Article 96 is very clear about our mandate. We look after counties. We legislate and yet the National Assembly passes Bills that affect counties and those Bills do not pass through this House. The proposer of the Committee said Bills should now be managed by both Houses. I would support that the Senate takes up its role as the Upper House. If we do not lead, then I am afraid we are in a lot of trouble. Yesterday I also read in the newspaper although we are not supposed to quote the media, that there is a problem in the "Lower House". I do not see why someone should look and remove the speck in our eyes before he removes the log in his eyes.

With that, I should add that under Article 94 (3)---

The Deputy Speaker (Sen. Kembi-Githura): Sen. Mukiite, you are aware that the Speaker did make a ruling on that earlier.

Sen. Nabwala: Mr. Deputy Speaker, Sir, yes, but I have not mentioned it.

The Deputy Speaker (Sen. Kembi-Githura): And he made the observations specific to that issue. So, may I request you to be very careful not to transgress Standing Order No.90?

Sen. Nabwala: Point noted, Mr. Deputy Speaker, Sir. Under Article 94 (3), Parliament must consider and pass amendments to this Constitution, hence the reason we have this Report on the Floor of this House.

For instance, one of the proposed amendments under Article 245 (2) is: “The appointment of the Inspector General requires the approval of both Houses of Parliament.” I think in the past, Parliament has been misconstrued to mean the National Assembly, which is wrong because under Article 93 (a), “There is established the Parliament of Kenya that constitutes the National Assembly and the Senate.” So, both Houses should actually be able to vet the Inspector General or the person who is being nominated to that position.

Article 202 of the Constitution calls for equitable sharing of the National Revenue as follows:-

1. Revenue raised nationally should be shared equitable between the national and county governments.

Looking at this Sub-Article, it is clear from the clause that there should be no inequities; that is why the Senate Committee has recommended an increase of the revenue shared vertically from 15 percent to 40 percent, which I support.

I support that the Senate should be empowered and strengthened in order to carry out its mandate of protecting the counties.

Mr. Deputy Speaker, Sir, finally, since the Committee has recommended for a popular initiative, I recommend that we choose a channel of communication through the print media to explain ourselves at length on what the Senate needs to do at the county assemblies and create awareness and understanding through the vernacular stations. We, as Senators, have to take it upon ourselves to go to the counties and sell these ideas so that people understand and know that we are doing it for the good of the county.

Thank you, Mr. Deputy Speaker, Sir.

Sen. Murungi: Mr. Deputy Speaker, Sir, thank you, for giving me the opportunity to support this Motion which seeks to adopt the report of the Select Committee that was appointed by this House for purposes of looking at the Senate with a view to amend the Constitution and give the Senate a strong foundation in the Constitution.

I was a Member of this Committee, Therefore from the outset, let me say that I am familiar with the report and I support it. However, allow me to point out a few things in support and for emphasis of certain aspects of the report. The broad terms of the Committee as stated in page eight of this report states that the Committee was to inquire into the design of legislature and in particular the institutions set out in the Constitution with a view to protecting the interests of the county governments and safeguarding the system of devolved government established in the Constitution and make recommendations of the appropriate roles to be played by the Senate in budget making process, revenue allocation, legislative process and oversight over the national and county governments.

Mr. Deputy Speaker, Sir, without going further, it is very clear that the Senate, as presently constituted under the Constitution, and as operating currently, does not have sufficient capacity to make laws or carry out oversight functions in any meaningful manner that can benefit our people in the counties. If we continue with the present trend, the Senate will be as good as dead. I know that many Senators are not here today because they have travelled to Mombasa, but there is a creeping feeling that this House is acting in futility in a number of issues.

We have become a mere debating club as opposed to a House of Parliament. We have now been in existence for more than two years yet the President has only assented to five Bills from the Senate. I know that we are busy generating more legislative proposals, but unless this House is taken much more seriously by the Executive, it will not play the important roles that Kenyans expected would be played by the Senate.

We are aware that it was originally imagined by “*Wanjiku*” in the making of the Constitution that the Senate would be a very powerful body like that of the United States of America (USA), Nigeria or India where all the laws debated in the Lower House are finally confirmed in the Upper House. In terms of personnel, the Senate has the capacity. We have the most experienced leaders of this country sitting here, including former ambassadors, like you. We also have former Ministers of Government like I and others. We also have many other professions who include surgeons, lawyers, former chief whips, professors and many others. This House is full of talents and experience. However, all the qualifications and talents here are going to waste because this House is held and trapped in various ways.

Mr. Deputy Speaker, Sir, we have made many attempts to empower this House which did not succeed. I remember the Bill that was sponsored by Sen. Sang. The oversight function of the Senate cannot be postmortem. We cannot wait for funds to be looted or wasted by governors, then sit here and listen to postmortem reports of how things happened. The oversight role should start at the planning stage. Planning should be done by the governors in accordance with the Constitution. We should check that governors endorse public participation. Half of the projects that we would like to be done in the counties should be captured in the County Integrated Development Plans (CIDPs). Otherwise, implementation cannot be right because you might be implementing wrong projects. The Governor might be busy spreading funds on wrong projects. Therefore, Senators must be involved at the conception of every project to ensure that those projects are of value to the communities that we represent.

The Bill that was sponsored by Sen. Sang was supposed to correct that mischief by creating a County Development Board (CDB) which would bring all the leaders of the county and chaired by the Senator. The leaders would then discuss the needs and aspirations of the county. Once the designs have been conceptualized, the governors would then implement. However, governors in their own wisdom or lack of it went and killed that Bill. It is a tragedy for this country that the courts agreed with them. That was a very big blow to the Senate.

Therefore, Mr. Deputy Speaker, Sir, the Senate needs to be liberated from the dark forces if it has to play a meaningful role in the development of the counties. Under Article 96, the Senate has a role of protecting the interest of the counties. What interests are we talking about? How will a Senator know about the interests of counties that he or she represents if he or she cannot sit down with people and define the interest of the counties?

Mr. Deputy Speaker, Sir, we complained, from the beginning, that Senators are under-resourced. We are being treated like Constituency Members of Parliament (MPs). As I stand here, I represent nine constituencies in Meru County. However, the facilities that I am given by the Parliamentary Service Commission (PSC) are exactly the same I used to get when I was the MP for South Imenti Constituency. Even if you are the top surgeon in this country, you can never perform a successful operation unless you are

given tools and an operation theatre. We have very competent Senators and great leaders but without tools with which they can perform tasks that they are supposed to do.

Mr. Deputy Speaker, Sir, we have tried to correct that anomaly through the Task Force which I chaired and of which you were a very able Member. We consulted and it was widely agreed, even by the Executive and the National Assembly, that a token support of Kshs1 billion which amounted to an average of Kshs24 million per county was sufficient for us to start consultative fora in counties to find out whether the *wananchi* are getting value for money from the enormous funds that are being transferred from the centre to the periphery. However, a disagreement between a few Members of the National Assembly killed that very important project. There is a suggestion that people who should be caring for the constituencies are the ones disempowering the Senate so that massive looting of funds continues unchecked. If that is the case, why would we have the subject of oversight? I think that is the mischief being corrected by this Report. What is the role of county assemblies in overseeing the national resources transferred to the counties?

Mr. Deputy Speaker, Sir, Members of County Assemblies (MCAs) are like boys running errands for governors. When you listen to meetings attended by MCAs nowadays, there is no difference with the old days during the Nyayo Era when a politician was meant to sing like a parrot. From morning to evening, you will find MCAs telling people what the governor has done and they would want people to clap for the governor. How can such an MCA be the one to oversight the governor?

The reason why MCAs have become ineffective, as agents of oversight, is because they are depended on the governor for development in their wards. I am very happy to see that some counties have come up with ideas of the Ward Development Fund. This is because we transfer resources to counties but when you go to your county, you will find that certain sections do not get the resources because they are distributed in a skewed manner. You will find that resources go to where the governor has his sycophants but they do not reach places where the governor is being challenged.

Therefore, the ward development funds are important tools for liberating MCAs from capture by governors. At least, at the very minimum if we have such funds, an MCA will be sure of a minimum amount of Kshs10 or Kshs20 million per annum going to his ward, whether or not the governor likes it. Right now, we have left it to the discretion of the governor to decide which area should be developed and which one should not. In fact, roadside declarations which used to be there during former President Moi's time have come back through governors. You may find a governor passing through a village and announcing that they will build a school or construct a bridge. Governors say things which are not budgeted for, discussed or taken through public participation. Is the governor giving largesse like the kings of the 18th Century?

Therefore, Mr. Deputy Speaker, Sir, I support the idea that the county assemblies also get a county assembly service commission, like Parliament has the Parliamentary Service Commission (PSC), for looking at the welfare of MCAs and empowering them to do their work. I know that these attempts are being fought very hard by the governors because they want to continue using resources for political purposes. Governors seem to be meeting somewhere to decide how they will install themselves into petty kingdoms. Many of them have turned themselves into varying tyrants. However brilliant you are as a

person, however powerful you may think you are, you can never develop a county alone. You need the knowledge and support of others for you to succeed.

Mr. Deputy Speaker, Sir---

(Sen. Murungi's microphone went off)

The Deputy Speaker (Sen. Kembi-Gitura): Your time is up, Sen. Murungi.

Sen. M. Kajwang: Mr. Deputy Speaker, Sir, it is quite difficult to contribute to a debate once the King of Meru has made his contribution. However, I would like to start by congratulating the team that worked on the proposals that we are debating today. I also would not want to forget the secretariat. Many a times, we forget them yet they are the ones who do a lot of the heavy lifting in the background. We gave them quite a short timeframe to execute their mandate and they have done the job fairly well.

Mr. Deputy Speaker, Sir, there has been a historical concern on revision and strengthening of the role of the Senate. I know that even in this Senate, my predecessor, the late Sen. Gerald Otieno Kajwang, was one of those who were passionate about revisiting and revising the role of the Senate. I know many Senators here who have also been passionate about that and even those who sit in this House and are part of political party leadership. I know that the Senate Minority Leader (Sen. Wetangula) has been very vocal about looking at the Constitution and making sure that it is realigned with the realities of Kenya. Therefore, I give a lot of credit and respect to the people who have seen that we cannot be static and that there is need to make some changes to see to it that the Senate becomes relevant.

Mr. Deputy Speaker, Sir, when I joined this Senate around March; I remember I was sworn in, in March around the time when the Division of Revenue discussion came.

The Deputy Speaker (Sen. Kembi-Gitura): Which year was that?

Sen. M. Kajwang: That was this year, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): It is important for the record.

Sen. M. Kajwang: It was around the same time that the discussion of the Division of Revenue Bill was taking place. I sat quietly and watched. I asked myself what problem there was, if the Senate has taken a position that is aimed at assisting counties and constituencies that reside in those counties. How could someone say that by taking more money to the counties; that will make someone poorer? Sometimes, our people ask; "This gazelle is not your goat. Therefore, what is the problem if I eat it?"

The essence was to take more money to the counties. This money would have benefited our brothers in the National Assembly. This is because you are taking money to the counties to be used to support the Level 5 hospitals or set up the courts. I met a judge in Homa Bay who told me that the court they are building in Kendu Bay will not be completed because of inadequate money that was sent to them. That means people have to travel very long distances to get justice. When the Senate made very good and gallant suggestions, we were rubbished. These are bad manners and something needs to be done to see to it that we do not find ourselves in this situation in future.

Mr. Deputy Speaker, Sir, it is on record and in this Report that the discussions by the National Assembly on the Division of Revenue Bill were full of vendetta, element of vengeance and malice. Let it not be said that the Senate today is acting in the same spirit. By coming up with recommendations to strengthen and to define the role of the Senate,

let it not be seen that we are responding to the malice or the vengeance and the vendetta that came out of the National Assembly. Let it be said that the Senate decided to put Kenya first to save Kenya from unnecessary squabbles and disagreements when it comes to the Division of Revenue Bill and legislation in this country.

Mr. Deputy Speaker, Sir, when President Obama addressed the nation at Kasarani Stadium, he made a statement which I found quite interesting. He said before he decided to become the President, he read the job description of the President of the United States of America (USA) keenly and he knew what he was going into. The question I want to ask ourselves is: Did we read the job description of a Senator? The reason I am asking this is because an old lady came to my office in my county seeking financial support. My diligent office manager sat her down and told her that the Senator has got such a huge domain with eight constituencies and a population of one million people. Therefore, he cannot sort out the financial needs of everybody. He advised her to approach her Member of the National Assembly or Member of County Assembly for assistance. The old lady asked the office manager: "Did the Senator not know what he was signing for when he sought this job?" That is the reality. Did we not know what we were getting into?

Mr. Deputy Speaker, Sir, it is interesting for those of us who have gotten into politics recently. How did the cream of Kenya's politics, leadership and the best of the best in Kenya end up in a House which has been defined as toothless, ineffective and a retirees' Chamber? When we were campaigning, I remember the late Sen. Kajwang justifying why he was running for the Senate, he used to regale us with tales that as a Senator, his job would be to defend and protect the presidency. He used to say: "We are the ones who will be sitting with the President in the evening by the swimming pool at State House as we analyse the political weather forecast of the nation." Shock unto us because even the king of Meru who is a very senior Member of the ruling coalition, I doubt whether he spends that time with the President, analysing the political weather forecast of the nation.

Mr. Deputy Speaker, Sir, there was exuberance and thinking that the Senate was going to be a very serious institution. We should have read the job description, but all is not lost. I believe that as a Senate, now that we know where the shoe pinches, we can make the right and relevant proposals to improve the status of the Senate.

The question I have asked myself when looking at this proposal from the Sen. Murkomen's committee is; do these proposals strengthen devolution or are they meant to lift our egos? Are these the proposals that we will be happy with when we become governors? I know and it is on record that a few of the Members will be on the other side of execution come 2017. I know many of us will become governors in the next general election. Is this the Senate that we will live with when are governors, when some Members recede to the National Assembly or God forbid, when some people decide to go to the county assemblies? Does this strengthen devolution?

Mr. Deputy Speaker, Sir, there are good proposals that have come up here. In my logical thinking, I want to partition them as practical proposals and some that are fairly abstract that are meant as more of housekeeping for making sure that we, as Senators, our job is much easier.

Mr. Deputy Speaker, Sir, let me address the practical proposals. One, this Committee has proposed that we raise the revenue allocated to counties to 40 per cent. I

love that proposal. It resonates with what we have been saying out there, that we need to send more money to the counties. In fact, if there was one issue that will be passed at the referendum without any quarrel among Kenyans, it is this proposal to raise revenue to 40 per cent. If you look at other parallel initiatives, the Coalition for Reforms and Democracy (CORD) and the Council of Governors is talking about more or less the same thing. This is one proposal that will unify us, as a nation.

Mr. Deputy Speaker, Sir, when we go to the counties, I usually ask what; is it that is happening to the 85 per cent of the revenue that remains in Nairobi? There are those who think that majoring in minors just by looking at 15 per cent and forgetting about 85 per cent which every other day you wake up and hear Kshs 800 million disappeared from a state organization---. I went to a funeral and I was asked: "Who is this lady with Kshs800 million? What kind of lady is this?" I said I did not know whether it is a lady who disappeared with it, but the record is there that Kshs800 million disappeared from the 85 per cent that remained in Nairobi.

At the grassroots level, our women are still suffering because of lack of water and yet we have the Ministry of Water and Irrigation. The water sector is supposed to be devolved, yet billions of shillings are retained at the National Government when such money should be used in the counties for de-silting dams and in providing water to our women. We need roads to penetrate areas. I went to the foot of Gwasi Hills; an extremely beautiful place in Nyanza, a place where the hills touch the skies. When you get to the top of the hills, you feel very elated. We just need to open up roads so that we create opportunities there yet 85 per cent of the money still remains with the National Government.

Mr. Deputy Speaker, Sir, I support and I love this proposal that we increase the revenue to counties by 40 per cent. The question is: when we push more money to the counties, do we have the capacity to oversight and to look after it? If we are struggling to oversight the 15 per cent, what tells us we will be able to oversight the 40 per cent? I wish this Committee could have come up with actionable proposals that can strengthen our oversight role over that 40 per cent.

The other thing that I like in this proposal is the involvement of the Senate in budget making. It is ridiculous that the Senate does not have a role in budget making yet this 85 per cent that remains in the National Government affects the counties in one way or the other. I have given the example of monies that are allocated to water. There could be other examples like money allocated to agriculture and health sectors that are devolved. This Senate must have a role when it comes to budget making. The Committee has given some very good proposals on that. It has also proposed to do away with the narrow definition of Bills affecting counties.

Mr. Deputy Speaker, Sir, today the headlines are awash that the National Assembly has let Kenyans down by passing the Parliamentary Powers and Privileges Bill that has two clauses that are an affront to media freedom. The entire nation is expecting that this Senate will stand up to be counted and be the saviour of this nation. That is how we should brand and cast ourselves. The Senate should be a House of sober second thought on weighty matters affecting the nation.

Mr. Deputy Speaker, Sir, I, therefore, support the proposal that all Bills can originate from the Senate or all Bills must go through the Senate, except the Division of

Revenue Bill, the Appropriation Bills and the Supplementary Appropriations Bills which will originate from the National Assembly, but must come to the Senate.

I also support the proposal that the Senate must be involved in approval of the nominees that enjoy security of tenure. We have seen a lot of jokes in this nation. We saw the Governor Central Bank of Kenya appointed without following the proper requirement. The law says that Parliament shall vet and approve. It went to the National Assembly and that was it. It is a good thing that we got a very good Governor with very strong values that it would be difficult to find a Kenyan who does not like him. However, what if we had a rogue guy who would print currency excessively, thus messing up our economy? So, I support this proposal that officers with security of tenure must be vetted and approved by the Senate.

Mr. Deputy Speaker, Sir, in my view, there are proposals that are abstract. There are proposals like the Parliamentary Service Commission (PSC); yes it is good for us. We know the pain we have when there is one PSC. Sen. Murungi came up with a Bill to set up a Committee. That Committee is not enough. It would be nice to have a service commission for the Senate.

These are things that I do not think they have to go for a referendum, because if you take it out there the *mama mboga*, will not care whether you have one or two PSCs or whether there will be additional costs or not. There are things like the Senate being involved in signing of treaties; legally and intellectually, it is very important. Involvement of the Senate in declaration of a state emergency and deployment of the military is also important.

Mr. Deputy Speaker, Sir, it is also providing very clearly that the Senate shall have a leader of majority and a leader of minority. The juicy things that we need to take to the public, is to tell them that we are increasing the money going to the grassroots by 40 per cent. We are involving the Senate in budget-making process and the legislative agenda of this country.

Mr. Deputy Speaker, Sir, could we at some point imagine a Kenya without a Senate? There are people who have said disband the Senate so that the teachers can be paid or disband the Senate to create a devolution committee in the National Assembly. If this happens, Kenya will be worse. The Senate is the only forum where each county has got one vote. The Senate is the equalizer of this nation. Whereas the President is the symbol of national unity, I view the Senate as an institution that promotes that national unity by its very construction and by the equity that we have as Members. It will be an extremely bad and dangerous idea for anyone to think about killing the Senate.

[The Deputy Speaker (Sen. Kembi-Gitura) left the Chair]

[The Temporary Speaker (Sen. (Dr) Machage) took the Chair]

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Temporary Speaker, Sir. I will be very brief. This is a report from the Committee that we went through in a retreat and every Senator who attended supported that it is necessary to pass the report, approve it and move on to look at the Bill.

The Constitution of Kenya 2010, created a new structure of governance, legislation, judiciary and devolution in this country. There is no doubt that over 70 per

cent of Kenyans overwhelmingly approved the Constitution in the referendum. They were driven by the attraction of devolution. Devolution came as matter of necessity with a bicameral system of Parliament where we have the National Assembly and the Senate. During the time of Constitution making, many of the participants did not appreciate what the Senate ought to be and what devolution stood to gain by the existence of the Senate.

Mr. Temporary Speaker Sir, many of the Members of the Committees in Naivasha were Members of the then Parliament, which is now the National Assembly. One can understand how and why they were not able to appreciate the structure of the Senate, its role and mandate. There was a debate in Naivasha as to whether the Senate as currently constituted, should have been called "House of Chiefs" or "House of Elders." Somebody even had an outrageous proposal that the Senate was supposed to sit for two months in a year. Another one was proposing that there should not be a Senate, but an ad hoc Committee, that would be called upon from time to time to perform certain national functions.

Obviously these were statements, borne out of, not necessarily ill-will, but lack of knowledge and appreciation of the new dispensation that the country was walking into. Now that we are there, and have crossed the Rubicon, if you remember the Roman war days, once you cross the Rubicon, you either came back as a hero having won the war, or came back as a corpse having been killed at war. There was no running back. In this case, the Rubicon has been crossed. We now have the Senate and the National Assembly. For us to pull through what we are prosecuting now, we will need the concurrence of the National Assembly because constitutional Bills must pass through both Houses of Parliament. Therefore, we have this very beautiful idea that we must market to our colleagues in the National Assembly, and where there will be a necessity for a referendum, to market to Kenyans.

Fortunately, if you speak to ordinary Kenyans out there, at least the ones I normally speak to, and from all over the country, there is a distinct impression that Kenyans are quite appreciative of the existence, performance and the role of the Senate. This with the little authority vested in the Senate notwithstanding, it is with the enormous constraints that the Senate suffers and the difficulties under which the Senate operates.

Mr. Temporary Speaker, Sir, this House has been operating with very reasonable degree of restraint in trying to respond to some of the machinations, the malice and the belittling that we receive from many quarters within and without Parliament. We have been called all manner of names. There have been deliberate attempts to curtail any opportunity that may arise to make the Senate stronger. You cannot talk about the Senate without looking at comparable jurisdictions. Look at the structure of the Upper House in America, Canada, Australia, the United Kingdom (UK) and everywhere.

Those who created and structured this Senate forgot to give it adequate clothing and capacity to be what it ought to be. Hence the profound duty by none other than the Senate itself to start a process which is not self-serving, not selfish, not to besmirch anybody, but a process that posterity will judge this current House favourably

As those who spoke before me, including, the distinguished Senator for Homa Bay, said; this is the House where the equality of counties is demonstrated. The distinguished Senator for Nairobi who represents a county with a population of close to five million people and the distinguished Senator for Lamu who represents a county with just about 100,000 people, have an equal vote. The Senator for Nairobi with 17 National

Assembly constituencies and the Senator for Lamu with two National Assembly constituencies have an equal vote. When they come here, they are a delegation. Each county has a delegation that is equal to the other. That is a very good start for the country.

There are variables in the manner in which counties are allocated resources taking into account the criteria of population, poverty index, levels of marginalization and neglect through the years and so on. However, when it comes to casting a vote to approve or disapprove any issue, Lamu and Nairobi have equal strength. That is very important to the extent that when any county issue is to be canvassed, prosecuted and agitated on this Floor, every head of delegation does so with full awareness that there is no superior county, no veto held by any county. There is no county that can hold sway on the Floor of this House other than by convincing every delegation to see things the way you see them.

Mr. Temporary Speaker, Sir, that is why you may have noted, and I know you do, that in this House, apart from a few excesses and irritations that we see from time to time on partisan issues, this House has largely been operating in a bipartisan manner. Issues are looked at differently. I have never heard of the obscenity of tyranny of numbers in this House. Indeed, there is no possibility of tyranny of numbers when we have equality of delegations. Therefore, neither the Jubilee side, nor the CORD side, that I lead, can stand on its own in this House and win any vote. We have to bargain with each other. The Senators realised this very early; I salute and congratulate them. In every aspect of our work we need each other. Now is the time that this Senate needs itself. The Senators and delegations need each other more than ever before.

Mr. Temporary Speaker, if you watched a film called *The Verdict*, starring Paul Newman, you can recall when Paul Newman was speaking as a lawyer preparing to go to court to argue a case and he said there is no other case, this is the case. For this House, I dare say this is the case. The case to convince Kenyans, our colleagues in the National Assembly, ourselves and county assemblies that the protector and defender of counties and their governments under Article 96 of the Constitution, needs to be capacitated to defend and protect counties and their governments properly, adequately and satisfactorily.

Mr. Temporary Speaker, Sir, the proposals made are very important. Participation in budget-making is critical. We have 48 dependent and interdependent governments in Kenya. Those 47 governments have rights, responsibilities and privileges enshrined in the Constitution. We are a unitary State, but we have created those units to cure the ills that this country has been visited upon where in some counties the life expectancy is 43 years when in other counties it is 78 years; in the same country. President Obama said that a child born in Nyanza; I do not know why he forgot to say Western as well or Eastern has a serious possibility of never seeing the fourth birthday as compared to a child born in Central Kenya. These are part of our historical contradictions that we need to use devolution to cure. They are part of historical contradictions, neglect and unsatisfactory manner in which our public affairs have been run to the level where you visit some regions and think you are in a first world country. You visit others and you think that you are in prehistoric times.

You have heard the facts placed before us, of counties, like Mandera, being able to carry out the first caesarean birth because of devolution; 51 years after Independence. You have also heard cases of this county seeing the first inch of tarmac after devolution was started. Even those who have been Ministers of Government, for example, my sister

Sen. Mugo and I, carry the collective guilt of having been unable to do what devolution is doing by looking at the whole country and making sure that equity becomes the norm other than the exception in dealing with national affairs.

Mr. Temporary Speaker, Sir, having reached that level, one then can speak without any fear of contradiction like I am doing, that this House must participate in budget-making at all levels. Whether it is the 85 per cent of the trillions that are left at the centre or the paltry Kshs283 billion that goes to the counties, whatever the national Government is holding is also being expended irrationally and inequitably, is also being spent in the counties. So, we, as Senators, must have a representation at the table when those trillions of shillings are being shared out.

You have heard, seen and known how Ministries like Devolution and Planning are busy churning out contracts for construction of water pumps, dams and so on, which are devolved functions. You have heard how the Ministry of Environment, Water and Natural Resources is clawing back functions that have been devolved under Schedule Four. You have heard how the national Government is procrastinating on the issue of health to the extent that you go to counties today and health personnel have not received salaries for the last six months. These are the same people that are supposed to build a healthy nation to become a productive nation.

Mr. Deputy Speaker, Sir, you have seen how the national Government has stuck to agricultural issues like a tick on a cow, including procurement of the so called subsidized fertilizer that farmers do not get to see. They purchase subsidized fertilizer and end up distributing it to the privileged few in privileged areas when the bulk of the small farmers in Machakos, Makueni, Trans-Nzoia, Nyeri and wherever cannot access this fertilizer. The only reason that is happening is because we are not involved. We are the protectors and defenders of interests of counties. So, we will ask pertinent questions as to how the fertilizer is shared, how the budget is being administered and so on. We will insist on equitable sharing of national resources. That is why it is critical that we participate in budget making to know that the little that we have sent to counties, how much of the bulk that is left at the centre will go to Migori, Kiambu, Vihiga and every county.

Unless this is changed, we will have devolution as a concept, constitutional provision and mirage. This is because until and unless we nourish and nurture this baby called devolution, it will very soon be very visible that the child has contracted kwashiorkor, scabies, excessive diarrhoea, dysentery, jiggers and all the diseases that come with lack of a good life. This is because you have given birth to a child and as a parent you have been negligent of that child.

Mr. Deputy Speaker, Sir, devolution can grow. The other day I said that it appears like there is a conspiracy between the national and county governments. The national Government is telling county governments: "We will perpetrate our own corruption at the top, you perpetrate your own at the counties and we shall see, hear, say and do nothing." That is what is happening. How do you explain the national Government after hearing all the cries going on in the country, the President himself coming to address Parliament and just falling short of declaring corruption a national disaster? Immediately after he receives a standing ovation from Parliament, he starts dismantling the authority that fights corruption. How do you run a country like that? There are many other things that are going on.

This House must be empowered to carry out its oversight. The stories that you hear about the levels of compromise, back peddling and all manner of things that go on are shuddering. That is why culpable officers appearing before Committees of Parliament, instead of being grilled for their wrong doing, they are asked to shed light on their wrong doing. How do you ask a criminal to shed light on his criminal acts instead of taking stern action and dealing with them? It is most disheartening. You have seen even as we are extending the olive branch and saying we want to carry everybody to reach where we are going. I do not believe that if the Senators were sitting on the Budget Committee, they would allow themselves to be allocated Kshs60 million each to do whatever they want in their areas of jurisdiction without proper audit, proper planning and without anything.

Mr. Temporary Speaker, Sir, what the Senate is trying to do is, in fact, to bring prudence, care and accountable management of resources. When you participate in budget making, then it becomes even more pertinent that you do proper oversight because it is in the process of budgeting that you know how much money you have given to your county, that you then have a duty to find out how that money you have given is being spent.

Mr. Temporary Speaker, Sir, this is simple logic. In all other comparable jurisdictions, the Senate is a House of reference; some jurisdictions call it the House of revision. Bills that are passed in the National Assembly must as of necessity come to the Senate for revision. You may recall when we went to the Supreme Court for an advisory opinion, the Supreme Court, in their wisdom, said they cannot envisage any legislation, including the Money Bills in this country that does not affect counties, yet we have been saying, since our inception, we have passed and sent only six Bills to the President for assent.

The Government, in its lopsided wisdom or total lack of it, has decided that they have to emanate and originate all Bills from the National Assembly. After originating from there, they then choose whether to send any of them even when they obviously affect counties to the Senate or not. You have heard arguments when Water Bills are supposed to be started and ended at the National Assembly. You have heard when the Bills on security that cost some of us to go to court and fight to clear out these draconian laws.

Mr. Temporary Speaker, Sir, how can anybody in his right frame of mind think that security does not affect counties? How can anybody in his right frame of mind think that a Bill on Water or Land does not affect counties? You have heard an argument already being engineered and perpetrated, that the Community Lands Bill does not need to come to the Senate. Can you imagine a situation as outrageous as that? Community land is former Trust Land. Former Trust Land was owned and managed by county councils. The successor entitled county councils is the county government.

Mr. Temporary Speaker, Sir, how can you at any level of thinking, however, lopsided think that community land does not affect counties? There are many examples I can give. That is why; to avoid the ping pong that we have been seeing, to avoid the pushing and pulling, the shoving and so on, we, as Senate, have the humility to say that it does not matter where the Bill originates, but all Bills originating from the National Assembly must come to the Senate.

Mr. Temporary Speaker, Sir, already there is a provision that all Bills originating from the Senate must go to the National Assembly. So, we want reverse osmosis that creates equity and civility, good order and respect for the two Houses.

Mr. Temporary Speaker, Sir, I also want to support the proposition that the vetting of constitutional office holders be the function of this House. You may recall the vetting of some of the officers of Government where the vetting authority rises in the evening to say that a candidate is unsuitable and rises in the morning to claim that he candidate is suitable. I do not think such a thing can happen in this Chamber. The vetting of judges and other constitutional office holders will be best done in this Chamber. If you have seen the kind of vetting that goes on in the USA; it is a full trial. People employ professionals to dig into the lives of nominees to establish whether they merit sitting in the positions they occupy. That is why it is appalling to see a vetting panel asking a nominee with a notoriously stinking public record, to shed light on allegations against him or her instead of confronting them with facts, events, dates and places.

Mr. Temporary Speaker, Sir, I support that 40 per cent of annual budget be allocated to counties. This is an area that I have spoken about often. When the national Government rolls out a budget of Kshs2.1trillion, one would want to support that 40 per cent goes to the county governments. In fact, if I had the leeway, I would want it shared 50-50 or 52-48 per cent for the counties as is the case in Nigeria where the state governments which are devolved units get 52 per cent of the national budget while 48 per cent is left to the national Government to run matters of defence, foreign relations and internal security.

I would also like to see a situation where the Senate participates in the budget making process more aggressively and empowered in oversight. The things that are going on in most of the counties today according to the report of the Auditor-General and county assembly, there is a lot of uncomfortable happenings out there. This House should never be left to get into a status of a mortician. We should not be going out there to carry out postmortems of misappropriation of funds that are two or three years old. It must be contemporaneous in what is now commonly referred to as budget tracking. This House must be capacitated to do that.

Mr. Temporary Speaker, Sir, I also support that signing and approval of international treaties should be a function of this House. When the Government signs or accedes to a treaty, it must be placed before the Senate for evaluation and adoption as the Constitution provides that treaties entered by our country must, as of necessity, be part of our laws. That then means that before the Government puts its hand on any international treaty, it should not be vice versa, to sign the treaty which automatically become part of our law under the Constitution then bring it to the Houses of Parliament to be looked at. Drafts of those treaties should be brought way in advance so that the level of comfort, sanctions and approval by Parliament is given as a stamp of authority before the Executive goes to sign the treaty. Once the treaty is signed, they quite easily find themselves in a *fait accompli* that we do not know whether to say it is right or wrong because the Government has already committed the country to a treaty that may not be worth binding our country.

Mr. Temporary Speaker, Sir, this House has a lot of issues to address. For instances, forests are found in counties yet the other day the Government said that the national forests fare under them. Who should be the custodians of these forests? I suggest

that forests should be as of necessity within the jurisdiction of the counties where they are placed with the national Government having an overwhelming interest; in which case, there is a collaborative approach in the planting, development, expansion, protection and management of our forests coverage.

We, as a House, need to obligate our counties so that, probably in the next 10 years, there should be no county with under 10 per cent forest cover; and then increase another 10 per cent forest cover after that is achieved. Yesterday, you heard me say that a country like South Korea, in 1963 had about seven per cent forest cover. Today it has 71 per cent forest cover. This is because of the progressive goals that you said yourself; set, achieve and set another target. In this country, when you fly over forests, you would think that this country is at war. There is massive destruction of forests by charcoal burners, landless invaders and sometimes, it is just rogue forest officers doing all manner of things to undermine the ecological future of our country.

Mr. Temporary Speaker, Sir, this House should be vested with the necessary authority. We have been asking the Jubilee Government to effect the provisions of the Constitution. We cannot have a country that has no definition of its international boundaries. The counties of Turkana, West Pokot, Trans Nzoia, Bungoma, Busia, Siaya, Kisumu, Migori, Homa Bay, Narok, Taita-Taveta, Kwale, Mombasa, Kilifi, Lamu, Garissa, Wajir, Mandera, Moyale and Marsabit are all enjoined with the responsibility of being custodians of our international boundaries. We need to define it in the Constitution.

Mr. Temporary Speaker, Sir, if you look at the Constitution of Uganda, you will see that it defines Uganda's international boundary up to the hills, small rivers and many features to the extent that nobody can make a mistake. We have simply said that our international boundary shall be described in an Act of Parliament. Where is that Act of Parliament? We have nothing three years after the Constitution was promulgated and there is still nothing. That is why we have asked the Government to move quickly and bring a Bill to this House for debate.

Today, it is arguable as to whether the Elemi Triangle is our territory or not. I know that it is our territory. However, when you go to South Sudan, the Elemi Triangle is defined in their Constitution and national map as part of their territory. This is a powder keg waiting to explode in future. If we let our neighbours draw maps that obviously claim our territory as theirs and we do nothing, in law, we could easily – in the event of a dispute in future – be told that; “You are estopped from raising this argument because you sat on your rights and did nothing.”

Mr. Temporary Speaker, Sir, the boundary between Kenya and Uganda was said to be at the centre of the mouth of Sio River. The River has since changed course and moved two kilometres inside Kenya. Therefore, is the centre of the mouth of Sio River still the international boundary between Kenya and Uganda?

Mr. Temporary Speaker, Sir, there are also arguments about Migingo Island that if some of us were not there to exercise restraint, could have led to a conflict. If Kenya wanted to fight back with equal or even greater force when Uganda sent its army to Migingo Island, we, probably, would have had a serious conflict between Members of the East African Community (EAC). However, we, the advisors, restrained. We agreed that we are brothers and, therefore, we needed to talk and agree. We agreed that joint survey teams from Uganda and Kenya be put together to survey and bring the coordinates of our

international boundary between Kenya and Uganda. However, nothing has been done to date.

We have Lake Jipe in Taita-Taveta. Some sections of the lake that are in Kenya are supposed to be part of Tanzania while some sections that are in Tanzania are supposed to be in Kenya. Tomorrow, you might find that a small lake like Jipe is sitting on phenomenal quantities of natural gas or oil and a conflict could start. We have seen what is happening between Tanzania and Malawi over Lake Malawi. Tanzania claims that the boundary is in the middle of the lake while Malawi claims that Tanzania has no share of the lake. Why has this argument arisen this late? It is because they have found that there is oil at the base of the lake. Everybody wants a piece of the pie. Each has a favourable argument to say the lake is shared. In fact, in Tanzania now, they do not call it Lake Malawi anymore. They call it Lake Nyasa, so that it does not appear to belong to Malawi.

Mr. Temporary Speaker, Sir, such things can bring irreversible conflicts. I have just counted in this House the counties, including your own, that are enjoined to defend and protect our international boundaries. More than half of the counties share international boundaries. It is, therefore, absolutely necessary and incumbent upon this Senate to legislate and define our boundaries so that we avoid future conflicts. For example, what Somalia is doing.

Mr. Temporary Speaker, Sir, it is very upsetting to hear that Kenya is being challenged to a duel by Somalia with all that this country has done in furtherance of the abilities to make Somalia a viable country after having the status of a failed state for long. I participated in defining our maritime boundary and filing with the African Union (AU) and the United Nations (UN) to show, especially after the UN under the United Nations Convention on the Law of the Sea, allowed the extension of our maritime boundary by 250 kilometres. Today, Somalia which is our neighbour is engaged in most provocative acts, saying that a huge chunk of our ocean in the Indian Ocean is Somali territory. Why have they come up with this after seismic data shows that there are massive deposits of natural gas, oil and fresh water under the salty water of the sea?

Mr. Temporary Speaker, Sir, all of a sudden, I doubt if the Government of Somalia is acting on its own to provoke Kenya on this boundary. I believe vested interests by those who want to exploit these resources could be instigating this. If our country and this Parliament do not move quickly to properly and clearly define our boundary, we are headed to some uncomfortable headwinds in the near future.

Mr. Temporary Speaker, Sir, the management of our roads is also a matter that will have to be looked at. Every road whether it is an international highway or not, passes through some territory of the county. Therefore, there is need for a collaborative approach between the county governments and the national Government in the management of our roads. You do not have to wait for the benevolence of somebody from Nairobi to know that a road in Meru County has been dilapidated. Those who live there will see the road wearing away and will cause action to repair, maintain or reconstruct the roads. We must work together. This House has a duty to ensure that corrective measures are taken to ensure that county governments and the national Government work together.

I cannot fathom a situation where for example Ndakaini dam in Murang'a supplying water to Nairobi - we thank the people of Murang'a for protecting and

conserving that dam - is said to be a national asset. It is fallacious to say that the dam is a national asset. It must be a national asset co-owned by the county government so that when we are pumping water from Ndakaini to Nairobi, we also take care of the Murang'a people. All the swift rivers running from Tigania, Meru and all those places to fill up Tana River must be jointly managed and protected by both the national and the county governments.

I am saying this because the paltry sums of money we are taking to the counties can never be enough to look after all these important resources that make our lives, those of our children, grand-children and our future generations to survive. Therefore, it is important that the trillions at the centre be dispersed to the counties with an attendant responsibility and accountability.

Mr. Temporary Speaker Sir, we are seeing these ridiculous stories of purchasing curtains, wheelbarrows, meat hooks and all manner of things at prices that are a total outrage. This country must make corruption uncomfortable at all levels. We know the purveyors and consumers of corruption at the top. We are now seeing this happening at the counties.

Mr. Temporary Speaker Sir, Nigeria normally does not provide good examples. In Nigeria, after the first term of devolution, half of the governors were jailed. Some are still in jail for life. There are those who fled to England. You remember there is one who was extradited the other day, he had stolen the entire allocation of his state. He had packed and left to live like a king in United Kingdom (UK). They caught up with him and brought him back. This country must make corruption very painful for those who perpetrate it. Otherwise, you will go to the countryside and find that every time you talk about devolution, it is the convoy of the governor, the sirens as they blow around. If you go to Imenti and ask the people what devolution has achieved, they will tell you they see the governor driving in big cars. He tells you our governor brought *Kanda Bongoman* to play music in our county. That, their governor bought wheelbarrow worth Kshs109, 000.

There is a musician who has sung a song entitled: "*Machakos kaunti ni kaunti ya sinema*" - showbiz and obscene display of things that are not happening to appear like they are happening. That is not the devolution we envisaged. That is not the devolution Kenyans want. If you go to any village and ask the youths whether they have been awarded a contract of about Kshs2 million, you will find none. Contracts are just shared. Procurement rules are broken, the Auditor-General is busy telling us the money has not been properly spent and that ends there. The Controller of Budget is saying the rules have not been adhered to and it ends there. The Ethics and Anti-Corruption Commission (EACC) will move in, statements recorded and that is the end of the case.

Mr. Temporary Speaker Sir, we need value for money. Even if this Senate was not to do anything else other than legislation and dividing ourselves into effective groups to look at how the monies we are sending to counties are being spent we will be doing a lot of good to this country. Even if we spent 60 per cent of our time working as Senators to make sure money is correctly spent, that will be worth it. Like I have pointed it out, the little money that is going to the ground in certain counties like Wajir, the reports you see are indicative that something can be done. In fact, the offending counties are counties that were pampered before. They had good offices, roads and towns. The money that is coming in now is like pouring a glass of water into the sea. You do not see it.

Mr. Temporary Speaker Sir, this calls upon all of us and Kenyans of good will, including our colleagues in the National Assembly, to see the sense in what the Senate is saying and trying to craft the further of this country. I am sure some of our colleagues in the National Assembly will want to become Senators in future. Some of our Senators here will want to be Members of the National Assembly in future. Some of our Members here have already expressed their wish to become governors. For all these interchangeable and variability of interest, we need a seamless flow of systems anchored in law, rules and proper positive public and private morality that makes people understand that public property is not private property and private property is not public property. If you want to own your property, work for it, but do not play with public property that belongs to the people of this country.

Mr. Temporary Speaker, Sir, in the last two years, it has been very frustrating. You may recall that over 25 Bills passed by this House and sent to the National Assembly have been placed on the shelves to gather dust. Nobody is giving them priority or looking at them. Until and unless the National Assembly passes them in concurrence with what we have done, they will never become law. However, you have seen how we break our heels here to herd everybody into the Chamber to receive Messages from the National Assembly, debate Bills from the National Assembly and vote on them in record time. Bills from the National Assembly coming to this House never stay for more than a month or two months. My brother in front of me and I sit in the Rules and Business Committee (RBC); we always prioritise those Bills.

We want a constitutional provision that obligates either House to deal with legislation from the other House expeditiously, reasonably and within a time frame that must be defined. We have had serious difficulties and arguments about the application of Article 110(3) of the Constitution. The provision that obligates the two Speakers to sit and determine any Bill; it does not say some Bills. Any Bill brought to any House must be placed before the two Speakers to determine whether such a Bill affects counties or not. I have already said that there is hardly any Bill that does not affect counties.

Even the so called Money Bills affect counties, where do they get the money that are then converted into those money Bills? They tax people in Meru, Migori, Mombasa and Nairobi. So, Money Bills are even more relevant to counties than any other because the national Government collects revenue from business people and residents of counties. Everybody lives in a county.

We want to see a situation where the Speaker of the National Assembly, my friend Justin Muturi and his team do not keep sneaking with Bills to the President for assent without the President being obligated by the Constitution to check and ensure Article 110(3) was complied with. This must be with an attendant certificate signed by both Speakers. It matters not, that both Speakers should be there. However, there must be a certificate placed before the President with the signatures of the Speakers of both the National Assembly and the Senate to show that they have complied with the law and the Constitution in regard to process of legislation. The President can and will assent to the Bill.

Such things look irritable, like one is trying to undermine the comfort of some people. However, posterity will tell you that these things make countries build foundations that become unimpeachable in future. Foundations that make the country run in an orderly fashion in present and in future.

The law says, as the distinguished Senator for Homa Bay mentioned, that just like the Inspector General of Police, the Governor of Central Bank of Kenya (CBK) shall be vetted by Parliament. That means that they must be vetted by both the Senate and the National Assembly. That vetting does not have to be joint. The two Houses must vet. There has to be a provision that if one is vetted by one House and approved, but rejected by the other, then there is the usual mediation to see whether a middle ground can be found on the individual proposed for a certain position.

The CBK Act provides very clearly, this House must have participated in the vetting of the Governor. Some of us may find it very convenient that the Governor was nominated by the President, who is from our coalition, and therefore, he has been vetted and placed in office thus they do not care. However, tomorrow the boot will be on the other foot. Justice Aaron Ringera used to teach us that if you want to test the goodness and safety of any law, imagine that law in the hands of your worst enemy. If you feel safe, then it is a good law. So, every law we pass, we must always think, for instance, you the distinguished Senator for Migori, if your most formidable opponent took hold of the sword, will you be safe? If so, then that is good. If by the same opponent picking the sword you have to leap across the border to Tanzania, then you know there is no safety. That is not a good law.

We cannot endlessly blame the President for signing those Bills. We should blame the people who take the Bills to him. The President is looking after a country with a myriad of problems. However, he must also ensure that the Constitution is followed. That is why the Attorney General (AG) is there. He has heaped all manner of advisors in State House; advisors in law, education, and other sectors. They must advise him correctly. People who hold public offices and offer negligent and defective advice to their bosses must also be criminally culpable. They are paid to give good advice and make sure the law is followed.

I know the Constitution has whittled down the office of the AG to what it is today. However, I would want to see the hand of the AG and his presence in the final product of the law. The only office with adequate capacity to research and advise on the constitutionality, morality and other values in Bills that come to this House, is the AG's office. It is a public office paid for by your taxes and mine. I would like to see a situation where there is a nexus between the myriad of Bills coming to the House and the office of the AG.

In the old regime, even when you brought a Motion and were allowed by the House to draft a private Member's Bill, like the Constituency Development Fund Act of Sen. (Eng.) Muriuki and others that came---. If you had such an opportunity, that Bill was also gratuitously placed before then AG to give you some free advice. That is what we pay him for. In fact, if the AG's office was working, some of these standoffs between the two Houses would not be there. It is an act of abdication. We want to see things working and functioning properly.

If we pass this report, then we move on to the harder part, I would encourage my brother. Sen. Kiraitu, you, and all Senators, to then engage all the Members of The National Assembly from their jurisdiction, their parties, political formations---

Temporary Speaker (Sen. (Dr.) Machage): Order, Senator! I did not give you two minutes.

Sen. Wetangula: Mr. Speaker, Sir, I beg to support.

ADJOURNMENT

Temporary Speaker (Sen. (Dr.) Machage): You will have the two minutes on Tuesday, 20th October, 2015.

The House now stands adjourned until Wednesday 21st October, 2015, at 2.30 p.m.

The Senate rose at 6.30 p.m.