

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 23rd June, 2015

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

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

PRAYERS

MESSAGE FROM THE NATIONAL ASSEMBLY

PRESIDENTIAL MEMORANDUM ON THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL (NATIONAL ASSEMBLY BILL NO. 40 OF 2014)

The Speaker (Hon. Ethuro): Hon. Senators, I am in receipt of a Message from the National Assembly to the Senate, dated 19th June, 2015 and received in the Senate on the same day, regarding the Presidential Memorandum on the Public Procurement and Asset Disposal Bill (National Assembly Bill No.40 of 2014). It is signed by the Speaker of the National Assembly.

In accordance with Standing Order No.40(4) of the Senate Standing Orders, I hereby report to the Senate the Message of the National Assembly which is as follows:-

PURSUANT to the provisions of Standing Orders 41 and 142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly-

THAT WHEREAS, in exercise of powers conferred on him by Article 115 of the Constitution, His Excellency the President refused to assent to the Public Procurement and Asset Disposal Bill (National Assembly Bill No.40 of 2014) and referred the Bill to Parliament for reconsideration;

AND WHEREAS, the National Assembly, on Thursday, June 18, 2015 reconsidered and passed the Bill, fully accommodating the President's reservations and without proposing any amendments to the said reservations;

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NOW THEREFORE, in furtherance of the provisions of Article 115(3) and (4), I hereby forward the Memorandum of the President, containing his reservations to the Bill, to the Senate for reconsideration.

Hon. Senators, as you are aware, Article 115 of the Constitution provides for the process of Presidential assent to Bills and referral of Bills by the President back to Parliament for reconsideration. In particular, Article 115(1) provides as follows

Within fourteen days after receipt of a Bill, the President shall-

(a) assent to the Bill; or

(b) refer the Bill back to Parliament for reconsideration by Parliament, noting any reservations that the President has concerning the Bill.

The Message from the National Assembly indicates that His Excellency, the President, in exercise of the powers conferred under Article 115(1)(b), referred the Public Procurement and Asset Disposal Bill, 2014, back to Parliament for reconsideration by Parliament.

I will allow the hon. Senators standing at the back to get in.

(Several hon. Senators entered the Chamber)

Order, hon. Senators! When the Chair indulges you, you must perform that task in the quickest manner possible.

Article 115(2) of the Constitution provides that where the President refers a Bill back for reconsideration, Parliament may either:-

(a) amend the Bill in light of the President's reservations; or

(b) pass the Bill a second time without amendment.

Where Parliament amends the Bill fully accommodating the President's reservations, in terms of Article 115(3) of the Constitution, the appropriate Speaker is required to re-submit the Bill to the President for assent.

However, pursuant to Article 115(4), Parliament may resolve to pass the Bill a second time without amendments or with amendments that do not fully accommodate the President's reservations. To do this, Parliament requires a vote supported by;

(a) two-thirds of members of the National Assembly; and

(b) two-thirds of the delegations in the Senate, if it is a Bill that requires the approval of the Senate.

Article 115(5) and (6) of the Constitution then provide for the re-submission of a Bill passed in accordance with Article 115(4) of the Constitution to the President and for the process and timelines for assent of such a Bill. On a purposive interpretation of the Constitution, it can safely be concluded that the same procedure and timelines apply to a Bill that is amended by Parliament to fully accommodate the President's reservations in terms of Article 115(2) of the Constitution since no reference is made to the procedure to be applied.

Hon. Senators, the Chair is very generous today. I will allow the hon. Senators standing at the back to enter the Chamber.

(Several Senators entered the Chamber)

Hon. Members, the Public Procurement and Asset Disposal Bill, 2014 is a Bill that concerns county governments in terms of Article 110(1) of the Constitution. Consequently, the Presidential Memorandum on the Bill is to be considered by both Houses of Parliament. In accordance with the provisions of the Constitution, the Bill cannot become law until both Houses of Parliament have re-considered it in light of the Presidential Memorandum. This point is important to note as a Bill not properly considered by each House, regardless of the outcome, cannot receive Presidential assent. If it did, it would be a nullity for all purposes.

Hon. Senators, I note that this is the first time in the life of the Eleventh Parliament that a Presidential Memorandum is to be considered by both Houses of Parliament. As such, it is necessary that in this Communication, I set out the procedure that is to be followed by the Senate upon receipt of such a Memorandum.

Standing order 158 of the Senate Standing Orders, which is replicated as Standing Order No.155 of the National Assembly Standing Orders, sets out the procedure for consideration of a Presidential Memorandum.

(1) Whenever the Senate receives the President's reservations on a Bill pursuant to Article 115 of the Constitution, the Senate shall, within seven days of the receipt refer the President's reservations to a Joint Committee appointed for that purpose.

(2) Within fourteen days of referral under paragraph (1) of the President's reservations to a Joint Committee, the report of a Joint Committee shall be laid on the Table of the Senate by a Senator who is a member of the Joint Committee appointed for that purpose, authorised by the Committee in that behalf.

(3) Where the report of the Joint Committee appointed for that purpose includes an agreed version of the President's reservations, the Senate shall consider the report of the Joint Committee upon a Motion **"That the report of the Joint Committee on... (subject) be approved"** and the Senate shall vote to approve or reject the Motion.

(4) If the Motion under paragraph (3) is-

(a) rejected, the Clerk shall send a message to the National Assembly conveying the resolution of the Senate and paragraph (5) shall apply; or

(b) agreed to, the Clerk shall send a message to the National Assembly conveying the resolution of the Senate. If the National Assembly has similarly agreed to the Motion, and the Bill originated from the Senate, the Speaker shall, within seven days of the resolution of the Senate, resubmit the Bill to the President for assent.

(5) Where the Joint Committee fails to submit a report under paragraph (2), or the report of the Joint Committee is to the effect that the Committee has failed to agree to the President's reservations or where the Joint Committee fails to agree on a version of proposed amendments to the President's reservations, the President's reservations shall be taken to have been approved by Parliament upon the laying of the report on the Table of the Senate under paragraph (2).

Hon. Senators, it should be observed that the Standing Orders of both Houses provide for the establishment of a Joint Committee to consider the President's

reservations on a Bill. The mechanism of a Joint Committee to consider a Presidential Memorandum on a Bill is a most important one. It is based on the recognition that the Presidential Memorandum comes at the end of a legislative process in which Parliament (by which to say both Houses of Parliament as a single entity) has considered and concluded the legislative process and agreed fully and in every respect on the version of the Bill that is to become law and has presented it to the President for assent.

The President, in returning a Memorandum for reconsideration, is addressing Parliament on the outcome of its legislative process. Therefore, the two Houses, having previously concurred on the Bill, need to have opportunity to jointly consider the President's reservations on their Bill. However, this does not take away the prerogative of each House to make a separate decision on the Presidential Memorandum. But such a decision must be informed by the views of the other partner to the process of making that Bill. This is particularly useful for legislative efficiency because the consideration of a Presidential Memorandum, unlike the consideration of a Bill, has no opportunity for mediation in a Mediation Committee.

The Joint Committee, even though it has some similarities with a Mediation Committee, is not a Mediation Committee. Its only role is to enable both Houses to discuss the President's reservations on a Bill and to see whether an agreed version on the President's reservations can be arrived at. This is so only for the purpose of avoiding a situation where the Houses might have agreed on the manner in which to proceed on a Memorandum, if only each House had known what the other would propose.

The Joint Committee's role must also be understood in the context of Article 115 of the Constitution, which provides for such a high threshold for amendment of a Presidential Memorandum, that anything short of full agreement by both Houses leads to the President's reservations prevailing over Parliament's position. Unlike the Mediation Committee in which disagreement leads to the defeat of a Bill and technically allows the Houses another chance at fresh legislation, failure to agree on a Presidential Memorandum leads to the enactment of the Bill in a manner sought by the President despite any reservations that one or both of the Houses may have. The importance of seeking a collective parliamentary position at the outset cannot, therefore, be gainsaid.

Hon. Senators, concerning the process of disposal of a report of a Joint Committee once laid in the Senate, I have noted that standing order 158(5) provides for a scenario where the President's reservations shall be taken to have been approved by Parliament upon the laying of the report of a Joint Committee in the Senate. This is to occur where the report of the Joint Committee is to the effect that the Committee has failed to agree to the President's reservations or where the Joint Committee fails to agree on a version of proposed amendments to the President's reservations. While this may be aimed at ensuring the expeditious disposal of the Presidential Memorandum, I do not find that it accords with the Constitution which requires at Article 115 that Parliament as an entity, and each House specifically, pronounces itself on the Presidential Memorandum by-

- (a) amending the Bill in light of the President's reservations; and,

(b) passing the Bill with amendments that do not fully accommodate the President's reservations.

To the extent that Standing Order 158(5) of the Senate Standing Orders provides for a "*deeming*" of approval of the President's reservations upon laying of the Report on the table of the Senate, without consideration by the Senate, it does not accord with Article 115 of the Constitution and it must, therefore, yield to Article 115.

I must hasten to add, however, that this finding extends only to Standing Order 158(5) of the Senate Standing Orders and not to the entire Standing Order 158.

Accordingly, pursuant to Standing Order 1, I rule that if the Joint Committee fails to submit a report, or the report of the Joint Committee is to the effect that the Joint Committee has failed to agree to the President's reservations, or where the Joint Committee fails to agree on a version of proposed amendments to the President's reservations, the Senate shall consider a Motion to be moved by a Senator, who is a Member of the Joint Committee, "That the Senate approves the Bill fully accommodating the President's reservations". A Message communicating the resolution of the Senate on the Motion shall thereafter be sent to the National Assembly.

In accordance with Article 115 of the Constitution, it should be noted that a Motion to approve the President's reservations, fully accommodating the President's reservations is approved if-

- (a) it is passed by a majority of the delegations in the Senate; or,
- (b) no amendment to it secures the affirmative vote of two-thirds of the delegations in the Senate; or,
- (c) the requisite majority of 24 delegations to pass it is not obtained when a vote is called.

I wish to observe that the Message received from the National Assembly, apart from notifying the Senate of the receipt by Parliament of the Presidential Memorandum, as it should, appears to suggest that the National Assembly after receiving the Presidential Memorandum proceeded to consider the Memorandum and pass the Bill fully accommodating the President's reservations. This appears to have proceeded in a manner otherwise than that contemplated under Standing Order 155 of the National Assembly Standing Orders, which is replicated as Standing Order 158 of the Senate Standing Orders.

With tremendous respect to the other House, this failure to observe the provisions of the Standing Orders which apply to both Houses puts us in some difficulty. We, as a Legislature, it is imperative that we ensure compliance with the law and with our respective Standing Orders, more so where the Standing Orders provide for procedures governing Joint Committees. While the National Assembly is perfectly in order to determine for itself how it shall transact the business peculiarly in its own domain, no such prerogative can extend to a process which by the Standing Orders of both Houses requires Parliament, as an entity, to undertake a particular action or process.

In this case, Standing Orders 158 and 155 of the Senate and the National Assembly, respectively, expressly require that both Houses appoint a Joint Committee to consider the Presidential Memorandum. I am unable to see how the National Assembly,

without recourse to the Senate, unilaterally ignored, bypassed and/or neglected to observe its procedures and went ahead to dispose of the Bill, as if this procedure did not exist, and now invites this House to complicity in that scheme, after the fact.

A correct reading of Article 3(1) of the Constitution leads to the conclusion that the obligation to “respect, uphold and defend” the Constitution, including the Standing Orders which are made pursuant to Article 124 of the Constitution, is an obligation on all persons, jointly and severally. It would, therefore, afford no defence to any person on a charge of violation of the Constitution to claim that another person had similarly violated the Constitution or the laws.

Hon. Senators, in the event, I hereby rule that the Presidential Memorandum on the Public Procurement and Asset Bill, 2014 be considered in accordance with Article 115 of the Constitution and Standing Order 158 of the Senate Standing Orders, subject only to the qualification that I have made regarding Standing Order 158(5).

Accordingly, for the Senate, in accordance with Article 115 of the Constitution and Standing Orders 158(1) and 216 of the Senate Standing Orders, the Rules and Business Committee, in consultation with the parliamentary parties have nominated the following Senators to serve on the Joint Committee on the Presidential Memorandum on the Public Procurement and Asset Disposal Bill, National Assembly Bill No. 40 of 2014:

- (1) Sen. Billow Kerrow
- (2) Sen. Beatrice Elachi
- (3) Sen. Mutahi Kagwe
- (4) Sen. (Prof.) Anyang’-Nyong’o
- (5) Sen. (Dr.) Agnes Zani

A Motion for the appointment of these five Senators to the Joint Committee shall be moved at the appropriate time this afternoon. Thereafter, a Message regarding the appointment of the Senators to the Joint Committee shall be transmitted to the National Assembly in accordance with rule 9(2) of the Houses of Parliament (Joint Sittings) Rules which appear as the Fourth Schedule to the Senate Standing Orders.

Thank you.

What is it, Sen. (Dr.) Zani?

Sen. (Dr.) Zani: Mr. Speaker, Sir, I start by commending you. If you allow me, may I make a few comments on the ruling that you have made. Article 115(1)(b) is very clear and explicit. It starts by saying that the Bill will be referred to Parliament. The interpretation of Parliament now has become very clear. Parliament refers to both the National Assembly and the Senate. That is very clear within our specific circles.

Also, in Article 4, Parliament, after considering the President’s reservations, will have both the Houses vote. It gives a very high threshold of two-thirds which is very clear. Therefore, the fact that the National Assembly can even think about surpassing the Senate is very bad. First, it will set precedence, because this is the first Presidential Memorandum that we are receiving. Therefore, it is important that the procedure is followed clearly and to the letter.

Secondly, you also indicated that this is outlined in their Standing Orders. Standing Order No.155 of the National Assembly indicates exactly what the procedure

was. That is the same Standing Order that we have as Standing Order No.158 of the Senate. At this particular point, we might not tell whether the two Houses will agree in terms of the Presidential Memorandum and whether there will be an agreement or not, but there is a possibility that there will be an agreement. This is a fairly straightforward and useful process for both Houses.

First of all, the contemplation of disagreement is just by the way. There is contemplation that there might be an agreement and a position that can be moved strongly and effectively. Therefore, I commend you and especially for us we must show that we are the “Upper House.” We are the ones who will follow the procedures and do things as they should be done and within the timelines because the Presidential Memorandum is coming after the passage deadline for that particular Bill. So, we are already late.

We can, within that lateness, still follow the important procedures that we have set. This is important because this is a House of records, debate and procedure. This is one time that the Senate must stand to ensure that we deal with the Presidential Memorandum as per the way it has been specified within the Constitution and the Standing Orders of the National Assembly and the Senate.

The Speaker (Hon. Ethuro): Next order.

STATEMENTS

GENETICALLY MODIFIED ORGANISMS (GMO) TECHNOLOGY IN THE COUNTRY

Sen. Ndiema: Mr. Speaker, Sir, I rise to issue a Statement in regard to the request by Sen. Kisasa on Genetically Modified Organisms (GMOs). Ensuring food security is one of the core mandates of the Ministry of Agriculture, Livestock and Fisheries. Kenya faces challenges of food insecurity and malnutrition, climate change, pests, diseases as well as degraded soils, which raise concerns on the ability of the farmers and the country to ensure that there is food security for all. The solution to some of these challenges in the agricultural sector lies with biotechnology.

Kenya is a signatory to the Cartagena Protocol on Biosafety, of United Nations Convention on Biological Diversity; having signed the Protocol in the 2000 and ratified it in 2003. The Government of Kenya subsequently approved the National Biotechnology Policy in 2006. The Policy provides for a responsible use of biotechnology in addressing some of the challenges in agriculture.

Kenya has banned the importation of genetically modified products since 2012 due to lack of sufficient information regarding the public health impact of genetically modified foods. A task force domiciled in the Ministry of Health was established by the Kenya Government to review and evaluate scientific information on the safety of genetically modified food on human health and advise on the future GMO related trade

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measures. The Kenyan Government is now awaiting the result of the deliberations of the task force before determining the question of the ban.

With regard to the first question seeking an explanation on the Kenya Government's position on the use of GMOs for food production, I wish to respond as follows:-

The Government of Kenya approved the National Biotechnology Policy in 2006 and enacted a Biosafety Act in 2009.

An hon. Senator: He is reading the Statement.

Sen. Ndiema: Mr. Speaker, Sir, I am trying to reduce it because it is too long.

The national framework oversees GMO activities in our country; this chronology of events in policy making shows that as a country, Kenya is prepared to promote the production, commercialization and use of genetically modified food and products. The Government has also published four regulations that cover all areas of GMOs, including research, production, import, export, trans-boundary, using industries, food and feed.

The development agenda for Kenya is anchored on Vision 2030 which is the development blue print for the country which aims to create a globally competitive and prosperous country with high quality of life by 2030. In the medium term plan, one of the priority programmes of the Kenya Government is delivery of genetically modified crop varieties for commercial production by Kenyan farmers by 2017. The objective of this project is to facilitate the commercialization of genetically modified crop varieties as products of modern biotechnology.

The above actions by the Government demonstrate openness and willingness to embrace modern technologies that will supplement existing agricultural methods in food production, but in a responsible and well regulated manner. This includes the use of GMOs. In this respect, the Government is cognizant of the need to continuously review and strengthen mitigation measures, put in place and build sufficient capacity to handle GMOs.

With regard to the second question to state whether Water Efficient Maize for Africa (WEMA) is a genetically modified crop and if so, what is the Government's position on its production; the answer is as follows:

WEMA is a public-private partnership consortium to develop and deploy royalty free African crop tolerant and insect pest protected white maize varieties for farmers. The African Agricultural Technology Foundation (AATF) based in Nairobi, Kenya is leading the partnership.

The WEMA is a research project being implemented in five countries, including Kenya, Uganda, Tanzania, Mozambique and South Africa, as a response to addressing challenges arising from the climate change by developing and promoting maize varieties that are drought tolerant and insect resistant. WEMA partners are involved in research and production.

The Speaker (Hon. Ethuro): Vice Chair, I am working on the assumption that the Member already has a copy.

Sen. Ndiema: Yes, Mr. Speaker, Sir, the Member already has a copy.

The Speaker (Hon. Ethuro): Then, just conclude.

Sen. Ndiema: Mr. Speaker, Sir, so far, the varieties of WEMA maize, which have already been released to the farmers, are purely conventional hybrids and are not genetically modified. However, research on the GMO maize that is drought tolerant and insect resistant is going on in the Kenya Agricultural and Livestock Research Organization (KALRO) confined field trials in Kiboko Centre. Seeds of this technology have not been approved or availed in the market. Once research on their efficacy and safety is fully assessed, the consortium will make an application to the National Bio-Safety Authority for consideration.

Regarding Question 3 on the steps that the Government is taking to ensure that food security in the country is enhanced considering the harsh climatic conditions that Kenya is facing, I would like to say that Bio-Technology is one of the tools that can be used to address food security. However, as earlier mentioned, research is still going on to ensure safety. In the meantime, the Government is taking several steps to enhance food security. Which are as follows:-

- (1) Provision of subsidized fertilizer;
- (2) Procurement of strategic food reserve;
- (3) Availability of credit through Agricultural Finance Corporation (AFC) to farmers; and,
- (4) Promotion of mechanization which a budget has been provided for this year.

Mr. Speaker, Sir, in summary, that is all I have to say.

Sen. Kisasa: Mr. Speaker, Sir, I would like to thank the Chairman for the comprehensive Report.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, later, I will be seeking further clarification after Sen. Khaniri.

The Speaker (Hon. Ethuro): Sen. (Prof.) Lonyangapuo, if the author of the Statement is very satisfied, who are you not to be.

(Laughter)

We will proceed with the Statement by Sen. Khaniri.

Proceed, Sen. Khaniri.

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Sen. (Dr.) Machage, I hope you do not want to contribute on the first Statement, it is over.

Sen. (Dr.) Machage: Mr. Speaker, Sir, with your indulgence, that was a very important Statement on food security in this country. It was read in bits here and there. Would I be in order to ask that, one, you allow that Statement to be distributed to us. Two, defer the conclusion of the same, so that we interrogate it adequately. It is a very important Statement!

The Speaker (Hon. Ethuro): Hon. Senators, I will grant the first request. Let the Statement be distributed to all Senators. I will disallow the second request. Look at it and interrogate it in the Committee. If you are not satisfied, I am sure that you have sufficient

intelligence and experience to re-arrange the question in a different manner and bring it as a different Statement.

CONSTRUCTION OF PETROL STATION ON RIPARIAN
LAND IN NYAMIRA COUNTY

Sen. Khaniri: Mr. Speaker, Sir, I rise to respond to a Statement sought by Sen. Okon'go of Nyamira County. He wanted my Committee to explain the following:-

(1) Whether the National Environmental Management Authority (NEMA) carried an impact assessment on the construction of a petrol station at Konate Junction.

(2) Why the project was carried out in a riparian area.

(3) Explain the measures that the Government has put into place to reclaim the riparian area and protect the environment.

Mr. Speaker, Sir, I wish to inform this House that currently, there are legion of court matters touching on the Konate Petrol Station in Nyamira County. This is as indicated in the following proceedings:-

(1) The Kisii High Court case Miscellaneous, 17, 2015

(2) The Kisii High Court Case 155, 2015

(3) The Nairobi Environmental and Land Case 351,2015 and;

(4) Nyamira Cr. 474, 2015

Mr. Speaker, Sir, as we are all aware, the principle of *sub judice* does not allow for comments and deliberation on matters before the court, as stipulated in our own Standing Order No.92. However, I hope it suffices to state the following:-

(1) NEMA is opposed to the development of the petrol station and has moved to court to have it demolished;

(2) NEMA has arrested and arraigned in Nyamira Court the owners of the subject petrol station;

(3) NEMA has partnered with the Nyamira County Government in the matters that are before the court of law, and;

(4) NEMA has received comments from Sen. Okong'o and it is using them as an exhibit in court for purposes of producing his views.

Mr. Speaker, Sir, the Cabinet Secretary of the Ministry of Environment, Water and Natural Resources has committed to provide to the House a full report on the matter upon the finalization of the cases related to the petrol station in question, which as I stated earlier, are currently pending in the various courts.

Sen. Okong'o: Mr. Speaker, Sir, I take this opportunity to thank the Chair for the well informed positions. I agree with the sentiments there in.

The Speaker (Hon. Ethuro): You seem to be doing very well today. Let us keep it up.

Sen. Kagwe: Mr. Speaker, Sir, allow me to acknowledge that there was a report that stands the test of today. I want the Chairman to take note of a very small fact; that the misuse of riparian land across the county is huge. There is theft of riparian lands by land grabbers across the county. There seems to be some confusion regarding who this land

belongs to. Is it the Ministry of Lands, Housing and Urban Development, the Ministry of Environment, Water and Natural Resources?

For instance, as you enter Nyeri Town, on the left, there is a huge area that is supposed to be riparian land, but apparently has been grabbed by individuals for their use. It is marshy land and it cannot be used for building. It is not just in Nyeri Town, it is across the country. Riparian land is no longer respected.

The Speaker (Hon. Ethuro): Conclude, Sen. Kagwe.

Sen. Kagwe: Mr. Speaker, Sir, I know I am misusing the opportunity---

The Speaker (Hon. Ethuro): Order, Senator! You are convicted on your own admission. So, I will not allow you to continue.

Please, proceed, Sen. Khaniri.

Sen. Khaniri: Mr. Speaker, Sir, there was no question to answer. I think that he wanted me as the Chairman and the Committee to take note of the importance of riparian land. I guarantee him that we will do that and should he come across any case where individual companies or anybody is grabbing these kinds of land or doing unnecessary developments there, then he can bring it to our attention and we will take the necessary action as I did in the case of Nyamira County.

The Speaker (Hon. Ethuro): Is there a response on Statement No. (a) on the Order Paper?

What is it, Sen. Murungi?

CRITERIA USED BY THE SRC IN CLUSTERING DAILY
SUBSISTENCE ALLOWANCES FOR CIVIL SERVANTS

Sen. Murungi: Thank you, Mr. Speaker, Sir. I just need your guidance regarding the Statement that I requested, listed on the Order Paper as “(b)”. I have been waiting for a response to this Statement for the last three weeks. However, I cannot keep waiting any longer.

The Speaker (Hon. Ethuro): Order, Sen. Murungi! Are you referring to Statement “(b)”?

Sen. Murungi: Yes, Mr. Speaker, Sir. It is a request for a Statement from the Chairperson of the Standing Committee on Finance, Commerce and Budget on the review of rates for allowances in the Public Service by the Salaries and Remuneration Commission.”

The Speaker (Hon. Ethuro): My apologies. That should be “(c)”.

If you noted, we had started with (a) and (b) had been covered. So, yours would have been covered next if you had been patient. However, now that your patience came before the real patience, where is the Chairperson of the Committee on Finance, Commerce and Budget, the Vice- Chairperson or any Member? The Committee now has two Statements to issue on the Order Paper.

Sen. Kagwe: Thank you, Mr. Speaker, Sir. As a Member of the Committee, I was also waiting for my Statement from the same Chairman. However, as I speak, he is held

up in a meeting. Hopefully, we can get him to issue these Statements tomorrow or the next day.

The Speaker (Hon. Ethuro): The Statements will be listed in tomorrow's Order Paper. Let us proceed to Statement "(d)".

Please proceed, Sen. Halima.

GOVERNMENT POLICY ON TERMS OF
ENGAGEMENT FOR PART-TIME LECTURERS

Sen. Mohamud: Thank you, Mr. Speaker, Sir. We are yet to receive the Statement from the relevant Ministry, but I under take to report progress on Thursday, this week.

The Speaker (Hon. Ethuro): Thursday will be fine. Let us proceed to Statement "(e)".

Where is the Chairperson of the Committee on Agriculture?

Hon. Senators: Sen. Murungi.

The Speaker (Hon. Ethuro): What is it, Sen. Ndiema?

CONSTRUCTION OF GATITU-NYAYO TEA FACTORY
IN KIRINYAGA EAST SUB-COUNTY

Sen. Ndiema: Thank you, Mr. Speaker, Sir. I believe that you are asking about the question on Gatitu Nyayo Tea Factory. If that is the case, I seek indulgence because the Statement is not ready. I ask that I be given until Tuesday, next week.

The Speaker (Hon. Ethuro): Order, Senator! First, I do not believe that it is the same question because it is as per the Order Paper. Secondly, I was expecting the Chairperson, who is present, to undertake his task. He cannot decide to donate to you, particularly when he had already stood to inquire about his own Statement "(b)", which should be "(c)".

Please, proceed, Sen. Murungi.

Sen. Murungi: Thank you, Mr. Speaker, Sir. In the Committee on Agriculture, Livestock and Fisheries, we have devolved functions. In our devolved functions, it is the Vice Chairman who deals with the Statements which come before this House. So, we hope that you will assist us to implement that arrangement.

The Speaker (Hon. Ethuro): You need to bring the same to the attention of the Speaker. That is the only way that I can assist you. I know that you trust I can read your mind, but not on this one.

Let us proceed to Statement "(f)". Where is the Chairperson of the Committee on Land and natural Resources, the Vice Chairperson or any member of that Committee?

Please, proceed, Sen. Obure.

CONTINUED DESTRUCTION OF MAU FOREST

Sen. Obure: Thank you, Mr. Speaker, Sir. This matter has been discussed fully in the Committee on Land and Natural Resources of which I am a Member. The response is ready, but as you can see, the person who sought the response is Sen. Khaniri, who is also the Vice Chairperson of that Committee. Therefore, he cannot answer his own question. In the circumstances, the Chairperson has requested that I seek your indulgence because he wants to answer this question himself, taking into consideration its significance and the interest that it is likely to generate around the country. He has, therefore, requested that the question be answered on Tuesday, next week.

The Speaker (Hon. Ethuro): Hon. Senators, I have always said that for efficiency of our business, there is no harm in approaching the Chair and making me know without subjecting us to a process of whether the neighbour and the one who sought the question is the Vice Chairperson of the Committee.

When will the Chairperson be available?

Sen. Obure: The Chairperson will be available on Tuesday, next week.

The Speaker (Hon. Ethuro): So ordered.

Please, proceed, Sen. Murungi.

Sen. Murungi: Thank you, Mr. Speaker, Sir. Mine is on Statement “(b)” on the Order Paper. We were informed that the Chairman of the Committee on Finance, Commerce and Budget is not present and it was suggested that the Statement be issued tomorrow. So, I will wait for tomorrow.

The Speaker (Hon. Ethuro): Sen. Murungi, I had said as much. That “(a)” and “(b)” which should be “(c)” as you can see that “(b)” is repeated, should be responded to tomorrow.

The Speaker (Hon. Ethuro): Order, Members! Let us now turn to the Supplementary Order Paper. I hope every Member has a copy. Let us move on to Order No.8; Notices of Motion.

NOTICES OF MOTIONS

APPOINTMENT OF SENATORS TO THE JOINT COMMITTEE
TO CONSIDER THE PRESIDENTIAL MEMORANDUM ON THE
PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL
(NATIONAL ASSEMBLY BILL NO. 40 OF 2014)

Sen. Keter: Thank you, Mr. Speaker, Sir, I beg to give Notice of the following Motion:-

THAT, whereas the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014) was passed by the Senate on 20th May, 2015 and by the National Assembly on 26th May, 2015, and;

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WHEREAS, the Public Procurement and Asset Disposal Bill (National Assembly Bill no 40 of 2014) was presented to His Excellency the President for assent in accordance with the provisions of the Constitution on 27th May 2015, and;

WHEREAS, His Excellency the President declined to assent to the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014) and sent a memorandum to Parliament on 10th June 2015;

NOW, therefore, pursuant to Article 115 of the Constitution and Standing Order Nos.158, 216 and the Fourth Schedule of the Senate Standing Orders, the Senate resolves to appoint the following Senators to the Joint Committee to consider the memorandum of His Excellency the President on the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014):

- (1) Sen. Billow Kerrow
- (2) Sen. Beatrice Elachi
- (3) Sen. Mutahi Kagwe
- (4) Sen. (Prof.) Anyang' -Nyong'o
- (5) Sen. (Dr.) Agnes Zani

APPROVAL OF SENATORS AS MEMBERS OF THE SELECT
COMMITTEE ON LEGAL AND CONSTITUTIONAL REVIEW

Sen. Keter: Thank you, Mr. Speaker, Sir. I wish to also give notice of the following Motion:-

THAT, pursuant to Article 124(1) of the Constitution, the Standing Orders of the Senate and the resolution of the Senate during the special sitting of the Senate held on Monday 15th June, 2015, the Senate approves the following Senators as Members of the Select Committee on Legal and Constitutional Review:-

- (1) Sen. Kipchumba Murkomen
- (2) Sen. Kiraitu Murungi
- (3) Sen. Naisula Lesuuda
- (4) Sen. (Eng.) Muriuki Karue
- (5) Sen. Billow Kerrow
- (6) Sen. James Orengo
- (7) Sen. (Dr.) Boni Khalwale
- (8) Sen. Mutula Kilonzo Jnr.
- (9) Sen. Halima Abdille

MOTIONS

APPOINTMENT OF SENATORS TO THE JOINT COMMITTEE
TO CONSIDER THE PRESIDENTIAL MEMORANDUM ON THE
PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL
(NATIONAL ASSEMBLY BILL NO. 40 OF 2014)

Sen. Keter: Thank you, Mr. Speaker, Sir. I beg to move the following Motion:-

THAT, WHEREAS the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014) was passed by the Senate on 20th May 2015 and by the National Assembly on 26th May, 2015, and;

WHEREAS, the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014) was presented to His Excellency the President for assent in accordance with the provisions of the Constitution on 27th May 2015, and;

WHEREAS, His Excellency the President declined to assent to the Public Procurement and Asset Disposal Bill (National Assembly Bill No.40 of 2014) and sent a memorandum to Parliament on 10th June 2015;

NOW, therefore, pursuant to Article 115 of the Constitution and Standing Order Nos.158, 216 and the Fourth Schedule of the Senate Standing Orders, the Senate resolves to appoint the following Senators to the Joint Committee to consider the memorandum of his Excellency the President on the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014).

- (1) Sen. Billow Kerrow
- (2) Sen. Beatrice Elachi
- (3) Sen. Mutahi Kagwe
- (4) Sen. (Prof.) Anyang'-Nyong'o
- (5) Sen. (Dr.) Agnes Zani

Mr. Speaker, Sir, this is a straightforward Motion, basing on your ruling this afternoon. This is a Bill that we had already enacted on 20th May, 2015 and it went through a mediation committee which both Houses agreed on. It then went to the President for assent and he has returned a Memorandum to be looked at by Parliament. It is very important to note that it did not specify that it is the National Assembly. Parliament means the National Assembly and the Senate. Therefore, the proposal by the President should come through both Houses so that we agree on the way forward and pass it over to the President again.

Since it is a straightforward Motion, I want it to be very clear that we, the Senate, need to follow the rule of law. That is why we thank you for giving us the direction very well.

(Applause)

The Constitution is very clear and we should not let this one go. It should go down in history that the Senate of the Republic of Kenya followed the rule of law

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because this Bill went through the National Assembly and the Senate, we made amendments, went through the Mediation Committee and, finally, it was resolved.

Mr. Speaker, Sir, the formation of the Joint Committee is in line with the Constitution and our Standing Orders that each House nominates five Members to sit in that Joint Committee. Finally, the resolution from the Committee will come to both Houses for onward transmission to His Excellency. Therefore, for the National Assembly to have looked at that Memorandum, excluding the Senate, to me, this should not be left at that. We have been making noise that some Bills are not being forwarded to the Senate. We, as the Senate, need to stand firm on this and I urge Members to ---

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. Did you hear Sen. Keter say that this House has been making noise? Do we really make noise in this House? Is he in order?

The Speaker (Hon. Ethuro): What did you say, Sen Keter?

Sen. Keter: Thank you, Mr. Speaker, Sir. I thought Sen. (Dr.) Machage was not listening. I withdraw my statement that “the Senate has been making noise” and substitute it with ---

The Speaker (Hon. Ethuro): What Sen. (Dr.) Machage heard is not what I heard. Sen. (Dr.) Machage heard you say that “this Senate has been making noise”, but that is not what you said. You said that “we have been making noise”. I thought he was going to challenge you on the “we”.

Sen. Keter: Mr. Speaker, Sir, of which he did not. The House does not make noise. Let me substitute it with “we have been raising issues” as the Senate. That rests my case.

The Speaker (Hon. Ethuro): Nonetheless, Sen. Keter, Sen. (Dr.) Machage is still perfectly in order. As long as the use of the word “we” refers to Members in this House, there is no Member of this House that is capable of making noise.

Sen. Keter: Mr. Speaker, Sir, noted.

With those few remarks, I wish to welcome Sen. (Dr.) Zani to second this Motion. I beg to Move.

Sen. (Dr.) Zani: Thank you, Mr. Speaker, Sir. I rise to support this Motion. The sequence was very clear; the dates on the respective dates of the Senate passing the Bills on 20th May, 2015 and for the National Assembly---

Sen. Khaniri: On a point of order, Mr. Speaker, Sir. This Motion is seeking to appoint certain Members of this House to a committee and I see Sen. (Dr.) Zani’s name is one of those names that the Motion is seeking to approve. I am seeking your guidance on this particular issue; is it in order for her, being an interested party, to second the Motion? Would it not have been neater and nicer for somebody else to second the Motion other than a Member who is being proposed to be on the committee?

The Speaker (Hon. Ethuro): Sen. Khaniri, you are perfectly in order to raise that particular point of order. I also do not see any reason on the face of it why a Member proposed on the Committee should not second, move the Motion or even contribute to the Motion. Are you saying that because you have been proposed, you cannot even

contribute to the Motion? Everybody serves in a committee who is already a Member of the House. So, I think it is perfectly in order.

Sen. Keter: On a point of order, Mr. Speaker, Sir. I am standing to agree with your ruling. I proposed Sen (Dr.) Zani because we both sit in the Rules and Business Committee (RBC). We deliberated on this issue this afternoon and so it was not intentional; it is because we sit in the RBC.

Sen. (Dr.) Zani: Mr. Speaker, Sir, thank you for allowing me to contribute to this Motion. I am contributing as an ordinary Member interested in this whole issue because I think it is a critical issue.

I was saying that the sequence is very clear for both the Houses. Both Houses were able to pass the Bill on the respective dates. The Senate on passed on 20th May, 2015 while the National Assembly did so on 26th May, 2015.

Sen. Kagwe: On a point of order, Mr. Speaker, Sir. I want to seek your guidance again on the same matter because my good friend Sen. (Dr.) Zani had actually spoken on this matter and this is the second time she is doing it. Could you make a clarification for my benefit?

The Speaker (Hon. Ethuro): Sen. Kagwe, you are connecting unrelated processes.

Proceed, Sen. (Dr.) Zani!

Sen. (Dr.) Zani: Thank you, Mr. Speaker, Sir. At that time, I was not contributing to a Motion that I am now seconding as Sen. Kagwe alleges.

Mr. Speaker, Sir, the dates are there; the Senate passed the Bill on 20th May, 2015 and the National Assembly passed it on 26th May, 2015. Of course, we are discussing the Public Procurement and Asset Disposal Bill. The President was to assent to the Bill on 27th May, 2015. This did not happen. What the President did instead was to send a Memorandum to Parliament. The key word here is “Parliament”. When we listen to various people speaking they confuse that term. This has happened many times and even at an event you stressed that Kenyans have to realize that when we talk about Parliament we are talking about the National Assembly and the Senate.

I think that confusion should be eradicated so that it is very clear that when we refer to Parliament, we are referring to the National Assembly and the Senate. In the first place, the process included both the National Assembly and Senate, it is only fair that the process is concluded by both Houses. The issues that have been raised by the President in the Memorandum need to be articulated and processed by both Houses.

Mr. Speaker, Sir, the proposal for the joint-committee has already been made in the respective Standing Orders; Standing Order No.155 of the National Assembly and Standing Order No.153 of the Senate. The process is very clear. What we expected in terms of the trajectory that should have happened is that this joint committee should have already been formed.

The Senate should have given the names of five Members and the National Assembly should have also given their set of five Members so that we have a committee of ten Members. These ten Members would then make an agreement on the way forward so that they now present the Bill in a form that is acceptable or respond to the

Memorandum in a form that is respectable and acceptable to both the Houses. This did not happen.

I want to commend the Speaker of the Senate and the Senate as a whole because we have decided that procedures are very key. We are then moving on to ensure that these procedures are put in place by taking the important step of selecting the five Members who I think are all up to the task. I hope that these five Members will look at the Memorandum together with the Members from the National Assembly. We should not anticipate that there will be disagreement. Indeed, there might be a disagreement, but it is only fair that since the process included both the Houses, then it should also, in conclusion, include both of them.

Mr. Speaker, Sir, apart from that point, it is also important as the Mover said, that the Senate should stamp its authority and its place within Parliament. If a provision and procedure has been set out, the message from the Senate is that it is important to follow this procedure.

We should ensure that all procedures are followed. We should follow the rules to the letter as stipulated in the Constitution and in the Standing Orders. I do not think we have gone beyond our mandate. I think we are on the right track and wish to congratulate you for your ruling and for the formation of this Committee. I am looking forward to this Committee working and delivering their recommendations with regard to the Memorandum from the President.

I beg to second.

Sen. Orengo: Thank you, Mr. Speaker, Sir, for giving me this opportunity to support this Motion. If you look at Article 131 of the Constitution, the President is supposed to safeguard, protect and defend the Constitution. Therefore, when a matter like this reaches the President, it is not just a question of looking at the Bill and the content of the Bill, there is also the question of the President ensuring that the Bill was enacted in accordance with the Constitution. There is a whole chapter or part of the Constitution dealing on how Bills that come to Parliament should be enacted.

Mr. Speaker, Sir, when you look at Article 115, the choice of the words there is very deliberate. The President is never required to refer a Bill back to the National Assembly or the Senate. The referral of a Bill by the President is to Parliament. It is obvious, from the provisions of the Constitution, that it may have to do with many other issues. The President being a guarantor and a defender of the Constitution should not only look at the content, but also the process.

Mr. Speaker, Sir, this Motion, therefore, makes a lot of sense. In fact, it is rational that a Bill which is a product of mediation between the National Assembly and the Senate, in consideration of the referral by the President, there should be a mediation process again so that we do not replicate or compound a process which had to done through mediation.

Mr. President, Mr. Speaker, Sir--- I was just about to promote you. Sorry for the slip of the tongue. Maybe, it may come to happen one day.

An hon. Senator: He is the President of the Senate.

Sen. Orengo: Yes, I agree with you that he is the President of the Senate.

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Mr. Speaker, Sir, sometimes politics require good manners. In many situations, people lack good manners. In an issue like this one, there should be no controversy at all. I am saying this because of the manner in which this Bill was enacted and forwarded to the President. I support this on the basis that we require the same process. It is rational and logical that the matter be considered by a joint committee of both Houses instead of the Bill going to the National Assembly separately and distinctly before coming to the Senate for consideration without the input of Members of a committee of both Houses.

Mr. Speaker, Sir, I hope that what you and the RBC have done is to make it clear and to set precedence about the referrals. In fact, the procedures were quite different in the old Constitution. The President could veto any Bill and refer it back to Parliament. At that time, we had a unicameral Parliament. Now that we have a bicameral system, Article 115 of the Constitution lays down very clear procedures which are replicated in the Standing Orders. The Standing Orders make a lot of sense. The committee is constituted by relevant people who dealt with this matter earlier. They will not have to rediscover the wheel because they know the issues involved.

Mr. Speaker, Sir, with those remarks, I beg to support. I hope that the National Assembly will not see it any differently; that two committees should consider the matter at the same time.

Thank you, Mr. Speaker, Sir.

Sen. Kagwe: Mr. Speaker, Sir, from the outset, I would like to join my colleagues in congratulating you for bringing this matter to the House in the manner which you did.

Mr. Speaker, Sir, it is important for us to send a very clear message to the National Assembly. No House can speak on behalf of another. This is one situation where we have two brothers; the Senate being a brother to the National Assembly. It is one of the situations contrary to the biblical saying where, “you cannot be your brother’s keeper.” This is because it is not possible for us to tell what Members of the National Assembly think about. Likewise, it is not possible for Members of the National Assembly to tell what the Senate is thinking about.

Mr. Speaker, Sir, I also want to point out that the matter in question is related to procurement, notwithstanding the fact that I have not seen the memorandum from the President. Nonetheless, procurement issues today in the devolved system of government are crucial as far as counties are concerned. Indeed, the bigger considerations in this Bill are, probably, issues to do with disposal and procurement within counties as we know.

Mr. Speaker, Sir, I hope and pray that the National Assembly will not start a tirade of the fact that the Senate disagrees with it. The Senate is simply agreeing with the law. It is important to make the distinction. You can disagree, but what we are doing is basically following the law. Since this is the first issue that we are dealing with, it is also important for us to send the message to the two Speakers. That is you, the Speaker of the Senate and hon. Justin Muturi, the Speaker of the National Assembly.

Mr. Speaker, Sir, it is important for consultations to be done at a higher and better level than we have witnessed. This is because had there been the kind of consultations that we believe should be there, this matter would not have been at the point that you explained.

Mr. Speaker, Sir, respect is crucial. Hon. Sen. Orengo spoke about manners. Over and above manners is the question of respect. If one has respect, it might follow that they have some manners.

Therefore, Mr. Speaker, Sir, we support the Motion. I accept to be one of those proposed. I will act to the best of my ability to ensure that the Motion is successful.

Thank you, Mr. Speaker, Sir.

Sen. Khaniri: Mr. Speaker, Sir, I rise to support the Motion as moved by the Deputy Senate Majority Leader.

Mr. Speaker, Sir, as I support the Motion, allow me to thank you for the elaborate communication that you made to the House this afternoon. You gave the House the proper procedure as laid down in the laws on how to handle a memorandum from the President.

Mr. Speaker, Sir, time and again, we, under your leadership, have demonstrated that the Senate is a House that follows the laid down laws, respects that Constitution and our own Standing Orders that guide debate in this House. I request you not to tire. In the past, I know you have followed the law and the correct procedures, but in the end, the Senate ends up losing. That should not discourage you because truth will set us free. We encourage you to continue guiding the House the way you have done ever since the House was inaugurated. At the end of the day, we will have the last laugh.

Mr. Speaker, Sir, I support Members who have been selected to form the committee. It is a good gender mix. They are people with a lot of experience and I have a lot of confidence in them. I believe that my teacher, Sen. (Prof.) Anyang'-Nyong'o, Sen. Billow and the rest will represent us well in the joint committee. Let them know very well that they have our full backing. We, as a House, will back up whatever decisions they make. We wish them well.

Mr. Speaker, Sir, we support this procedural Motion.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I also rise to support this Motion. As stipulated in Article 115 of the Constitution, every step is indicated to show how a Bill that has been referred should be handled.

As Sen. Orengo said, in this Article there is nowhere written “National Assembly or Senate.” It is indicated “Parliament.” For that reason, even a layman would know that since these two Houses exist, the two Speakers should have been summoned and told that this Bill has been referred. If for any good reason the Speaker of the Senate were absent, the Speaker of the other House would have noted and known that this is a shared responsibility that needs to be addressed. From the detailed Communication that you gave, it looks like the National Assembly went ahead and dispatched this business, as if it was any other Bill that originates from that House. It never bothered that we exist.

Mr. Speaker, Sir, it is paramount that we follow the law and stand by it. In this case, as proposed by the Senate Majority Leader, the list has five Members. This Public Procurement and Asset Disposal Bill is very critical. In the morning, issues to do with procurement were being debated on television. A number of experts had a discussion on what is happening with regard to corruption which is related to procurement.

Therefore, with the forwarding of the five names, as indicated here, it is a message that although they have their part we must follow the law, irrespective of what the other House has done. Probably, whatever has been put here, noting that it is not a document that is used; dedicated by the National Assembly--- It is a Bill that is supposed to be utilized for the whole country, including the counties. Remember that we represent counties in this House, therefore, every Bill must be followed as indicated.

Mr. Speaker, Sir, lastly, as you mentioned in your Communication, Standing Order 158 deals with referral of Bills by the President. I am also told that Standing Order 156 of the National Assembly Standing Orders is a replica of the same. This means that unless they have forgotten to read these laws; the Standing Orders and the Constitution, then we fail to understand the leadership of the other House. When we raise it here, they say that the Senate is fighting them. We are not fighting them, but actually pointing at the failings that they are practising and it needs to be corrected.

Mr. Speaker, Sir, I support this Motion.

Sen. (Dr.) Machage: Thank you, Mr. Speaker, Sir. Indeed, it would have been very appropriate if your Communication to this House would have copied also to the “Lower House,” for them to understand and appreciate how our own Speaker in this House understands law and procedure.

There are lots of legislations that have gone through the “Lower House” that have actually found themselves on the desk of the President. Some have been assented into “law.” I believe that this House should not just ignore. We should address each of those “illegal” laws that have been created as a result of selective amnesia with regard to the Constitution. The five Members that have been selected by this House are quite appropriate. They are well knowledgeable Members who are respected by this House. They will carry out this exercise well.

Mr. Speaker, Sir, I would like to draw your attention also to Standing Order 216 which says:-

“A Senator appointed to serve on a Joint Committee at the commencement of a Parliament or at any other time during the term of a Parliament shall, unless the Senate otherwise resolves, serve for the term of that Parliament.”

It means that these five Senators, as per this Standing Order, unless we otherwise decide later, will remain for the rest of this term to serve for this purpose whenever need arises.

Mr. Speaker, Sir, I beg to support.

Sen. Murungi: Mr. Speaker, Sir, I also rise to support this Motion. In so doing, I would like to refer the House to Article 93 of the Constitution which reads:-

“(1) There is established a Parliament of Kenya, which shall consist of the National Assembly and the Senate.

(2) The National Assembly and the Senate shall perform their respective functions in accordance with this Constitution.”

There is a consistent pattern where the National Assembly seems to be pretending that it is Parliament. It is because of that pretence that you see behaviour like what we are dealing with now.

The Bill which has been referred back to Parliament has been referred back to both the National Assembly and the Senate, more so, because that Bill itself was a product of a Mediation Committee made up of Members of the Senate and Members of the National Assembly. So, I do not see by any stretch of the imagination how the Speaker of the National Assembly could say that this is a matter for the National Assembly and they are going to deal with it without forming a Joint Committee, as required by their own Standing Orders and our own Standing Orders.

Mr. Speaker, Sir, it is said: “When others lose their heads, keep yours.” I think that is what we are doing. Let us not fall into the trap of committing illegalities because your brother in the “Lower House” has committed illegalities. As the “Upper House”, it is our duty to stick to the Constitution and the law. This Motion is, indeed, in accordance with our own Standing Order 158, which specifically deals with referral of Bills by the President. Standing Order 158 (1) states:-

“Whenever the Senate receives the President’s reservation on a Bill pursuant to Article 115 of the Constitution, the Senate shall, within seven days of the receipt refer the President’s reservations to a Joint Committee appointed for that purpose and Standing Order 216 (Appointment of Joint Committees) shall, with necessary modifications, apply.”

So, we are following the Constitution and our Standing Orders and should not be distracted from this path by the illegalities which have been committed by the “Lower House.”

Mr. Speaker, Sir, before I sit down, we are told of a prayer which is always said by the moon. The prayer is that as the night comes and the sun is setting, the moon always prays that the sun never rises again, so that it can continue giving moonlight to the world. There could be such prayers from the other House, that this House never rises again, so that it can continue giving moonlight to the world and deprive it of sunlight. May God bless them.

Mr. Speaker, Sir, I beg to support.

Sen. Sijeny: Mr. Speaker, Sir, thank you for giving me the chance to contribute to this Motion. Kenyans passed the Constitution knowingly and intentionally. This Constitution must be implemented to the letter. In the Constitution, Parliament means the Senate and the National Assembly. These particular provisions of the Constitution must be adhered to. Therefore, it is very important. I support the fact that the Presidential Memorandum has been brought to the Senate.

The Public Procurement and Asset Disposal Bill is very important to Kenyans, especially the counties. The Senate being the institution with the oversight role must know everything that is happening and be seized of all the laws and the matter.

Having said that, I wish to applaud the people who constituted this Committee; it is gender sensitive and has adhered to the affirmative action. This is what the women of Kenya have been asking for. However, I would urge that in future, other Senators also be given a chance to sit and perform in these Committees.

I beg to support.

Sen. Lesuuda: Mr. Speaker, Sir, thank you for giving me this opportunity to add my voice to the Motion before us. A lot has been said and, therefore, I will be brief. It is important for us to follow the law. Many of my colleagues who are lawyers have stated what the Constitution says. Also the Standing Orders of both Houses state what happens in such a situation. If you read the Motion, it is clear that the Memorandum was sent to Parliament. We cannot be using the word “Parliament” to suit different Houses at different times. If it is Parliament to mean both Houses, then it is so.

I like what Sen. Orengo said, that sometimes it is just about courtesy and good manners in everything that we do, not just for us parliamentarians, but for everybody else. Therefore, the whole issue of accepting constitutionalism as a country and following it to the letter is something that we all need to do.

I have confidence in the Senators who have been nominated to sit in this Committee to review why this Bill was not signed into law, what amendments are to be made and why it was brought back to both Houses. I hope that when it finally happens, we will not see what we have seen severally where once we discuss, debate and pass things which are from a mediated point, then the views of one House are disregarded. We hope that will not happen. I believe that those who will sit in this Committee will add value. I am sure that this House will also add value once it comes back to the Senate and the National Assembly.

I beg to support.

The Speaker (Hon. Ethuro): Hon. Senators, it is fairly straightforward. I have one more name. So, we will conclude with Sen. Elachi after Sen. Muthama.

Sen. Muthama: Mheshimiwa Spika, ninashukuru kwa nafasi hii. Ninasimama kuyaunga mkono majina haya ili yaweze kupitishwa mara moja na kufanya kazi inayohitajika. Ninaungana na wenzangu nikisema kwamba ni aibu kubwa sana kuona kwamba sisi Maseneta tuliochaguliwa na kura nyingi kuliko wao ukizingatia kura ambayo kila Seneta alipata, kuona kwamba jambo lolote likipitishwa hapa, likifika kwao wanalifanyia mzaha.

Bw. Spika, ninakushukuru sana kwa taarifa uliyotoa hapa leo na kwa msimamo wako ambao umesimama nao kutoka mwanzo kuhusiana na Bunge la Seneti na Bunge la Kitaifa. Sisi tumechaguliwa kuulinda Katiba. Rais pia yuko pale kuulinda Katiba. Lazima tuongozwe na Katiba na sheria tunazopitisha hapa. Kama kila mtu atakuwa anafanya anayoyafikiria bila kuzingatia Katiba, taifa hili litaelekea katika njia panda na mwisho litapotea. Hakutakuwa na mtu hata mmoja anayestahili kutii sheria.

Jambo lililofanywa na Wabunge wa Bunge la Taifa ni jambo la aibu sana. Mheshimiwa Spika, nakuhimiza usimame na msimamo huo, usitingizwe na mtu na usishtuliwe na jambo lolote kwa sababu unasimama kulingana na Katiba. Utadhulumiwa na kuitwa majina. Seneti itadunishwa na kuitwa “Nyumba ya wazee” waliostaafu. Wewe ni mmoja wao, lakini usitingizike. Simama imara ili tuweze kuliongoza taifa hili kwa sheria taratibu na vile mambo yamepangwa.

Kwa hayo machache, Bw. Spika, ninaunga mkono.

Sen. Elachi: Mr. Speaker, Sir, I also rise to support this Motion. It is time Members of the National Assembly started reading the Constitution. They need to count

how many times the word “National Assembly” and “Parliament” appear in the Constitution.

I am sorry to put it within this context, we took a Bill concerning potatoes to the National Assembly to look at it. I remember the Majority Leader and the Speaker of the National Assembly did not realise that potatoes are grown in 34 counties. It is a staple food for many Kenyans. Its cultivation is guided by a Sessional Paper. That is why today, chips are cut in finger-like shapes. I could not even believe that when they looked at that Bill they could not remember the 9 counties that rely on potatoes for economic empowerment.

This is the same thing. They have looked at the Procurement Disposal Act and they do not imagine that it is the same Act that will work in the counties. Here they are; after finishing with it, they wanted the days to lapse so that they can say “after all the Constitution says that when the days lapse, the Bill goes through.” It is time the National Assembly and the Senate worked together for the benefit of our people. We need to be serious.

I plead with the Senators that since the National Assembly has time to embrace a lot of verbal violence that we cannot understand, it is time we employed a different strategy and embrace the Senate as an “Upper House.” When we deal with issues concerning the country, let us manage them in a manner that when the society looks at us when we are debating, they will always separate us from the National Assembly and we shall remain relevant as an “Upper House.” That is how we will deal with this. We will look at what the President has said, advise accordingly as a Senate. If we feel this is not right, we will do it the same way we have always done. We will pass it and make sure that it goes back to the President for assent.

We will continue telling the National Assembly to kindly stop making Parliament look as if we are people who did not go to school. Many of us have degrees. We talk about them in this country.

(Question put and agreed to)

APPROVAL OF MEMBERS TO THE SELECT COMMITTEE
ON LEGAL AND CONSTITUTIONAL REVIEW

Sen. Elachi: Mr. Speaker, Sir, I beg to move:-

THAT, pursuant to Article 124(1) of the Constitution, the Standing Orders of the Senate and the resolution of the Senate during the Special Sitting of the Senate held on Monday 15th June, 2015, I beg to move that the Senate approves the following Senators as Members of the Select Committee on Legal and Constitutional Review:-

- (1) Sen. Murkomen
- (2) Sen. Murungi
- (3) Sen. Lesuuda
- (4) Sen.(Eng.)Muriuki
- (5) Sen. Billow
- (6) Sen. Orengo

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- (7) Sen. (Dr.) Khalwale
- (8) Sen. Mutula Kilonzo Jnr.
- (9) Sen. Halima

Mr. Speaker, Sir, today, we want to set the record straight that the institution of the Senate will have to do a constitutional review through the Select Committee to look at all the issues that are affecting the work of the Senate and to ensure that we come up with a clear road map. As we leave this Senate, the next Senate shall never find itself with the challenges that we have been facing. Senators need to embrace themselves because we are not turning back. In Mombasa, the Senate Majority Leader said that anyone who turns back will turn into salt just like the wife of Lot.

Therefore, we are hoping that we will stand firm. This is just the beginning. We have a right to prepare everything that we need. We are not saying that we have joined the *Pesa Mashinani* Movement; we are saying that the Senate wants to use a deliberate road map to ensure that we look at the articles and the issues that affect the Senate. After that, we will face the nation and say that if we join hands together we will have a better Senate.

Mr. Speaker, Sir, we also need to understand that it is a political process. Therefore, we will have many who will come in, many who will slaughter the agenda and those who will support it. The most important thing is that we must look at the issues without being emotional. We shall be tolerant because in a political process, as much as we want everything, it is a consensus process. We have to meet political leaders and ensure that the issues of women are captured within the same process, so that we carry the country together and ensure that in the end, we decide on the right time for the referendum.

As I finalize, and call upon Sen. Orengo to second, I hope this time the Senate is going to stand firm and give a justification why we need the Senate to move on.

Mr. Speaker, Sir, I beg to move and call upon Sen. Orengo to second.

Sen. Orengo: Mr. Speaker, Sir, I begin by commending Sen. Elachi for moving this important Motion and setting out the tone as to why we need this Committee. The first point to emphasize, even by looking at the constitution of this Committee, is that it is bereft of politics. This is a bi-partisan process which needs to look at the Constitution, particularly with regards to the authority, power and functions of the Senate. This is being done in good faith to ensure that the institutions, the makers of our Constitution and the founders of this nation will be at peace, so that as we speak on behalf of the people, there is no doubt that the constitutional authority is designed to make the Kenyan Parliament and the institution of the Senate be an effective organ for purposes of law-making and other functions which are set out in the Constitution.

Mr. Speaker, Sir, first, the design of the Constitution that we proclaimed in 2010 was not to create sinecures; any institution, body or organ which is there for window-dressing. In the United Kingdom (UK), we have a constitutional monarchy which has some functions despite the fact that it is assumed that the King or Queen of England does not have any real power or constitutional functions. Nevertheless, even if it is a constitutional monarchy, it is well regarded and respected. Whenever a new Prime

Minister is elected in the UK, the handover of power or the ceremony which surrounds the appointment of the Prime Minister realizes the importance of the monarchy in England, although it is a constitutional monarchy.

Therefore, if you examine this Constitution, our Senate was not created in the image of the House of Lords in England, as a House of chiefs, Elders or as House of retirees. First and foremost, it was supposed to represent and exercise the authority and sovereignty of the people of Kenya through the legislative process. Beginning from that premise, the legislative authority and the sovereignty of the people of Kenya is not found in the National Assembly or the Senate. It is founded in Parliament as an institution. Therefore, it is very disturbing, that over the two or more years we have been here, in the eyes of some people, the Senate continues to be a House that is called upon to take steps of such a nature that are not really functional in terms of the legislative authority of the Republic of Kenya.

Mr. Speaker, Sir, the Constitution is very clear. When you look at all the articles dealing with the Legislature, it requires the Senate to be at the centre of the legislative process and governance. I plead that we leave politics aside. I would like this Committee to sit down together because I think that this country is getting into a situation where the nation does not have an organ or an avenue for us to sit together and seriously consider the issues that beset the nation.

This Motion in itself, leave alone the work it is going to do, if you look at it, the Constitution and the Committee – although I am a Member there--- it is sending out a very loud message, that all these people can sit together and reconsider whether this Senate and the architecture of the Constitution is what it should be.

Mr. Speaker, Sir, I know that over history, if you sit and wait that everybody will respect your powers, functions or authority, that will always be the case. However, in the nature of things, even in nature, friction plays a very important role in the struggle between elements. If there is a universal struggle in the universe at the moment, which the scientists in this House would confirm; we are engaged in a constant struggle between man and man and between man and nature. Out of that friction, some positive developments arise.

The Constitution, through this process of checks and balances and separation of powers as designed was not just the three arms of Government. Even within the Legislature, there is a system of checks and balances. I think that is why the Senate is important, so that in our law making process, we can audit each other as two equal Chambers or with one being the senior Chamber.

The Bible, as we read it, was not a perfect document, although it contains the word of God. However, over the years, we have had divine interventions of all sorts to create a more perfect message and gospel. In similar terms, even a Constitution is never perfect. The Constitution of the United States of America (USA) was never perfect. Majority of the most important features of the USA's constitution came in the last 100 years after it was enacted.

Therefore, this review is not to upset the constitutional order. It is to make it perfect. The time is now because if we wait, then those that come after us will always

assume that this was the nature and order of things. If the Senate was indeed the junior House of the Legislature, it will not require that, for example, my friend Sen. Billow, to get every vote in every ward and constituency, everywhere and every place in Mandera County.

I was in Mandera about three or four months ago and seeing what the Senator had to undergo to get elected, it was not a walk in the park, yet, there are some people who believe that going through an entire county in order to get elected is easy. In West Pokot County and Samburu County, one sometimes looks for votes in times of internal conflict and you to get those votes one by one, then somebody tells you that when you come here, your function is just to participate in the law making and not to enact laws.

We also have a very important category of Kenyans who are disenfranchised through history and exclusion; the women in the Senate. I believe that we should never think of them as lesser than the elected Members of the Senate. In fact, we should look at the question of votes by delegation. Although Sen. Khaniri disagrees, I invite him to have a little debate with his better half this evening and come better informed.

We can have difference of opinion, but these are things that we can look at through the process of review to ensure that the Constitution is a better document than it ever was. If you go to Sen. Njoroge's office, you find that people come to see him from Busia and all over the country, because they know that he has got a national constituency. I think that is an important thing that we need to review and look at. However, what I know is that, going by the experiences of the First Parliament; either in terms of the Senate or the National Assembly, if we do not act now, then we are forever gone.

Mr. Speaker, Sir, sometimes when I look at the cocktail of laws which were made in the First Parliament, there was general assumption that all men are good and they mean well for each one of us. However, there was an Englishman who said that power corrupts and absolute power corrupts absolutely. There is an animal called the Budget and Appropriations Committee in the National Assembly which has become rogue and translated itself to be part of the Treasury, instead of being a medium for budget making of Parliament, rather than becoming a functional organ of the Treasury.

As I say this, I am impressed by the view that I read from the meeting that took place in Mombasa over the weekend under the leadership of no other person but our Speaker. Those views have contributed towards giving the Senate a better rapport with the people as a whole. However, I think that the more we go into this controversy, the Senate is coming out as a more responsible and trusted organ, not just like a Legislature, but as an organ of Government. I know that in this process which I am very enthusiastic in participating, we will come up with a constitutional review touching on important questions that relate to law making.

Mr. Speaker, Sir, sometimes when I hear some people speak about the Senate, I want to cry. This is because the best people in this country who wanted to be legislators ended up in this House. The way they talk off-guardedly and depict the Senate, as some little place where nothing goes on, I cry for this nation and begin to understand why the First Senate was abolished in very questionable circumstances.

My colleagues, particularly the first five in this Committee, Sen. Murkomen, Sen. Murungi, Sen. Lesuuda, Sen. (Eng.) Karue, whom I know can stand the test when it requires and Sen. Billow- for you to even allow your names to be in this Committee, you are going to be faced with many challenges more than any one of us. So, I appeal to you that we are on the right course, so long as we do not look back. Sen. Murkomen, if you look back on this, I know that we are never going to have a better country.

We can quarrel about power, who occupies State House and who the Senator for Elgeyo-Marakwet County is. However, on how this country is governed, I think that we should have a bipartisan approach and agree that when it calls on the Senate to speak in one voice as I have seen many times, that we will do so.

Hopefully, this process will not be seen as the other processes which may attract political attention but as a process where even Members of the Executive would be comfortable to also give their views and they are justified. Then, they can be taken into consideration. I hope that when we go to the people and get their votes, the Senate will finally be a House of honour and authority.

Mr. Speaker, Sir, when we look at the way things happen, for example, if I ever wanted a public office where I am to be interviewed before a committee of 30 to 40 people in the National Assembly – some of whom do not know anything about what is being discussed – I think time is coming when approval of committees and appointment of people ---

I support.

(Question proposed)

Sen. (Dr.) Machage: Bw. Spika, siku ya leo itaangazwa katika historia ya Kenya kama siku nzuri; siku ambayo wateule waliteuliwa kuangaza mawazo yao kwa sheria za nchi, hii ambazo huenda awali hazikuzingatiwa kwa hekima iliyostahili. Wakati wa kupata Katiba mpya kulikuwa na mawazo mengi. Kundi moja lilisema kwamba Katiba haifai; irekebishwe kabla kupitishwa. Kundi lingine likasema Katiba ipitishwe ndipo irekebishwe. Wale wa upili wakashinda uchaguzi.

Bw. Naibu Spika, wakati umefika ambapo Katiba hii ambayo makundi haya mawili yaliona na kukubaliana kwamba kuna vipengele ambavyo havikufaa na vinahitaji kurekebishwa, basi irekebishwe. Kati ya vipengele ambavyo havikufaa kabisa ni nguvu za Seneti. Ulimwengu mzima, Bunge la Seneti limekuwa la heshima na nguvu kiwango fulani ambazo zinatumika hasa kuleta na kuieweka nchi kuwa na amani, ushirikiano na uwiano.

Kwa sababu ya siasa za wengine, nguvu hizii ziliondolewa kabisa kwa Seneti hii. Katika kikao cha Bomas cha kwanza na cha pili, nguvu za Seneti zilizingatiwa na zilikuwa nzuri. Kikao cha Kilifi kikaja na kikao ambacho kiliharibu hasa ni kile cha Naivasha. Kwa sababu ambazo hazijaeleweka hadi wakati huu, nguvu za Seneti zilipunguzwa kabisa hadi kiwango cha Seneti tuliyonayo wakati huu, wakati mwingine hata “Bunge la taifa” husahau na kupuuza kabisa kuwepo kwa Seneti katika umoja wa Bunge la Taifa.

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

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

Leo kabla Hoja hii, tumeona makosa kama hayo. Wakati mwingine ninafikiri hata Rais wa nchi husahau kwamba kuna Seneti au hupotoshwa mawazo ili asiangaze mawazo yake na hekima atafute mawazo ya Seneti kwa mambo mengine ambayo ni muhimu kwa nchi hii.

Kundi hili la watu tisa limeteuliwa litembee, likae na lifanye chochote kinachowezezana kukusanya maoni ya wanasiasa, wananchi, Wabunge na hali kadhalika. Linapaswa kuangalia ni vipengele gani vya Katiba ambavyo vinahitaji kurekebisha ili Seneti iwe Bunge la heshima na linalostahili sifa zake. Watu hawa wamechaguliwa kutoka kwa milengo yote miwili ya siasa katika Bunge hili kwa uangalifu na uadilifu.

Bw. Naibu Spika, wanawake kwa wanaume waliochaguliwa wamepewa jukumu kubwa. Ningetaka kwamba mawazo yao yasije yakafungwa na siasa za kufikiria kwamba sasa ni siasa za “Okoa Kenya”, “Pesa Mashinani” au hili na lile. Hawa wote labda wana mawazo mazuri ya kukusanya kutoka kwao. “Okoa Kenya” na “Pesa Mashinani” wasikizwe. Sijui sisi tutajiita nini lakini kama itabidi tuunganishe haya majina na tutele jina lingine la tatu, ni sawa. Jina halijalishi kabisa. Hekima ndio muhimu. Mambo ambayo wataibuka nayo kwa minajili ya kurekebisha vipengele vya sheria vinavyohusu Bunge hili yafanywe kwa uangalifu na kwa undani, wachimbe na kuchimbua yale yote ambayo tumesema tangu mwanzo wa Bunge hili hadi sasa.

Tulianza vizuri. Nakumbuka katika miezi sita ya kwanza kulikuwa na fikira za kuwa na kikundi kama hiki cha kurekebisha sheria zilizopo ili mradi kuwe na Serikali nzuri hasa kipengele cha Bunge la Seneti. Haya mawazo yalipotoshwa kwa sababu ya siasa duni. Wenzetu ambao walipotosha mawazo ya kwanza bado wapo na bado watajitokeza. Kutakuwa na wimbi la kupotosha mawazo ya kamati hii ambayo tumeteuwa leo ili wasahau lengo la jukumu lao.

Bw. Naibu Spika, ombi langu ni kwamba ninyi muwe wacheshi na wenye fikira za hekima na msipotoshwe kamwe na mawazo ya wale wasiolenga wema kwa Bunge hili. Tunataka Kamati hii iangaze mawazo yake kwa sheria na shida zote tulizopitia na kustahimili katika Bunge hili. Pia, tunataka waanze mawazo yao kwa ujenzi wa Taifa la Kenya ili liwe la heri na kuangaza mawazo yao kwa utukufu wa Bunge hili katika siku za usoni. Tunataka mawazo yao yawe ya ujenzi wa taifa la Kenya na utu uzima. Hilo ndilo ombi langu kwa kundi hili la wateule ambao leo twapitisha katika Bunge hili hivi leo.

Hili si jukumu ndogo; jukumu lao ni kubwa. Huenda hata wasipate nafasi ya kukaa kwenye vikao vingi vya Seneti, lakini itabidi wastahimili yote watakayoyapitia ilimradi waje na stakabadhi za sheria ambazo wao watakuwa wameangazia ili nasi tuyafikirie. Kundi hili la Maseneta lina wanasheria karibu watatu hivi. Wengine wana masomo tofauti; kuna wanahesabu, waalimu na kadhalika. Kwa hivyo, hili ni kundi

ambalo limeteuliwa kwa kuangalifu. Ni kundi ambalo litakuwa na fikra ambazo zimejaa kwa kuangaza mawazo yao kwa sheria ambazo zinastihili kurekebishwa.

Bw. Naibu Spika, tunajua kwamba Bunge la Kitaifa linangoja kwamba baada ya kupitisha ama kuangaza mawazo yetu kwa sheria fulani, wao wazivunje na kuziangusha. Lakini ningependa kuwaambia kwamba nguvu zetu ni nguvu za wananchi mashinani na sheria ambazo zitapitishwa au ambazo zitaangaziwa mawazo yetu, zitapelekwa mashinani kwa wananchi wenyewe kuamua kama zinatoshia ama hazitoshi. Tunataka waelewe kwamba sheria hizo zitapitishwa na wananchi na watabaki wakisaga meno kwa sababu wananchi pia wanaona yale yanayotendeka na wamesoma. Wananchi wanajua ni Bunge gani linafaa kupewa nguvu za kutosha kwa uongozi wa Taifa la Kenya.

Ombi langu kwa wananchi ni kwamba waoembe kamati hii dua njema na iwapo watahitajika kuja kupendekeza mawazo yao, waje kwa dhati na hima ili wayaangaze mawazo hayo kwa vipengele ambavyo wanafikiria vinahitaji marekebisho.

Bw. Naibu Spika, naomba kuunga Hoja hii.

Sen. Khaniri: Thank you, Mr. Deputy Speaker, Sir, for the opportunity to contribute to this very straightforward Motion. The Constitution that we have in Kenya is relatively new and anything new always comes up with teething problems. I want to believe that what we are experiencing now with our Constitution of 2010 are the teething problems and it is incumbent upon us, the leadership, and the legislature to ensure that we resolve these teething problems.

Mr. Deputy Speaker, Sir, in 2010, Kenyans voted either for or against the new Constitution. Those of us who supported the Constitution agreed that it was a good document; that 80 per cent of it was fantastic and there was only 20 per cent or 15 per cent that we said we would rectify once the Constitution comes into operation. Those who supported the Constitution and those who opposed it all agreed. Those who opposed the enactment of the new Constitution said that we rectify the 20 or 15 per cent that is bad before we enact it while those who supported it said that we enact and then we rectify it.

Four- and-a-half years into the new dispensation, I think it is now clear to everyone where this shoe pinches and it is a high time that we now rectify the 20 per cent that we all agreed across the board that it was not good in the Constitution. This 20 per cent comprises of so many issues that we think must be rectified before we go far and I think that the time to make these amendments is now and not tomorrow. I want to differ with those who are opposed to the referendum saying that we tie up the referendum with the coming elections. My opinion is that if there is anything to be rectified with the Constitution, this is the time. There is no better time to do that than now.

Mr. Deputy Speaker, Sir, many people have issues with the Constitution. The governors have their issues with the Constitution which they think should be rectified, and I believe that is why they are coming up with their call for “*Pesa Mashinani*” and the referendum. The Senate has issues that we think should be rectified. The opposition CORD has its own issues and that is why they are calling for “*Okoa Kenya*”. *Mwananchi* has spoken that they have their issues with this Constitution and they want them rectified.

This presents us with a very good opportunity to look at all these issues that have been raised by the different stakeholders so that we can now come up with what we can

call a perfect document. Thus, I want to agree with those who have spoken earlier that it is now time we spoke with one voice. Let us consolidate the views of all these people because we want a process that is all inclusive. We must get the views of wananchi, “Okoa Kenya” initiative and the governors and come up with a document that is acceptable to all the stakeholders so that at the end of the day, we have a Constitution that we can all be proud of and subscribe to without many lamentations.

Devolution is the biggest gain that Kenyans got in the Constitution of 2010. The father and protector of devolution is this House, the Senate, and thus the need to ensure that the Senate is strengthened because, for those who drafted the Constitution and said that the Senate will be established to protect the interests of the counties and their governments did not do this in vain. They knew that there would be threats to devolution. It has become apparent that there are very serious threats to devolution which we all hold so dearly. Therefore, for devolution to be protected, the Senate should be given the proper teeth to protect devolution so that we can reap the fruits of devolving power and resources from the centre to the counties.

The work of the Committee that we are putting in place this afternoon is to come up with a road map to guide the Senate on how we are going to achieve what I have just stated. I am looking at the names of the Members proposed and I am confident that these Members are very well versed with issues of Constitution and law making. I have a lot of confidence in them and, therefore, stand to support this team of Senators that has been put together and assure them of my full support. I assure them that we, as a Senate, will abide by the resolutions and the decisions that they will take.

I support this Motion and want to encourage the team that is sitting on this Committee from the other side led by my good friend and age mate, Sen. Murkomen, that as Sen. Orenge said, there will be so many challenges ahead; you will be called names. There will be claims that you have joined “Okoa Kenya” initiative. You should ignore that because we know what we want to achieve. There is a problem in the Constitution and if we have to fix it, we have to fix it even if it means losing friends and seats. We must be ready to lose friends and seats as long as we give Kenyans a document that they will be happy with.

Thank you.

Sen. Bule: Mr. Deputy Speaker, Sir, first and foremost, I would like to thank the Mover of the Motion, Sen. Elachi, for giving us the opportunity to contribute to this important Motion.

Mr. Deputy Speaker, Sir, I am humbled and happy about what we have come up with. It is high time we stood firm not only to make a decision about our fate but also the fate of all Kenyans. Whoever is fighting the Senate is fighting devolution. He does not know that the Senate is the custodian of devolution.

(Applause)

Mr. Deputy Speaker, Sir, I want to be on record by saying that we faced challenges here and there. For example, we have been threatened by our junior brothers

in the National Assembly which is the “Lower House.” They act like primary school pupils.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senator! You have to choose your language correctly. You are talking about your colleagues.

Sen. Bule: Yes, Mr. Deputy Speaker, Sir, I am talking about my colleagues. However, they behave like children in a primary school. They need to know that.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Bule! Maybe you could say that this is the “Upper or Senior House.” We must use a polite language.

Sen. Bule: I apologise for that, Mr. Deputy Speaker, Sir.

I wonder when the leadership of this country, which we voted for and have faith in it, will change the scenario. A mere Member in the National Assembly who was elected by at least 4,000 or 5,000 people is recognised while they do not respect a Senator who was elected by more than 200,000 or 400,000 people. This is the time to show the world and Kenyans that the Senate is there to protect the interests of counties. It is time that hon. Senators assured Kenyans that they have achieved what they voted for. Kenyans voted for the Constitution, their leadership and representatives in this Senate and the National Assembly.

Mr. Deputy Speaker, Sir, my worry is about how the leadership of this country handles issues. We have 47 counties each with different interests. This Senate is the custodian and protector of counties. Whoever fights with the people I represent; the people of Tana River County, will be fighting with me. I will have to stand firm on that.

Mr. Deputy Speaker, Sir, today is a historical day. Hon. Senators have to declare their stand. They should be ready for any fight. Despite the fact that we were denied facilitation, I request your office to allow us to go for recess and campaign for a referendum which should take place in three or four months to come. We have to save Kenyans.

Mr. Deputy Speaker, Sir, county assemblies are ready to work with us. Governors who had been compromised have also seen the light. They have noticed that the Senate is not their enemy and are ready to work with us.

My dear brothers and sisters in the Senate, we must force this issue and stand firm on it. Let us not be compromised by other people. My brothers in the Jubilee Government should know that I am here as a third force. I am neither supporting the Jubilee nor the CORD side. I will support, where necessary, whoever will lead Kenyans to the right path.

Mr. Deputy Speaker, Sir, I beg to support.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you very much, Senator.

Sen. (Dr.) Zani: Asante sana, Bw. Naibu Spika kwa nafasi hii. Ni vyema kuangalia mambo yanayotuhusu kama Seneti na pia taifa. Taifa linafaa kuelewa kazi tunayoifanya. Sasa tuna nafasi ya kuona jinsi Katiba tuliyopitisha inavyofanya kazi.

Bw. Naibu Spika, watu wengi waliisoma Katiba hii lakini hawakuielewa. Ni zaidi ya miaka miwili tangu tulipoanza kutekeleza Katiba hii, tumeiangalia na kuona pengo hapa na pale jinsi Bunge la Taifa na Seneti yanavyofanya kazi yake. Kwa upande wa sheria, tumeona jinsi mambo yanafaa kufanywa. Miswada kadha wa kadha imepitishwa na Bunge hizi mbili. Katika nchi ambazo zina bunge mbili kama sisi, kila bunge lina

jukumu lake. Lakini lazima bunge hizi ziungane mikono katika kazi zao. Tukiangalia Bunge la Taifa na Seneti, kumekuwa na mgongano kila mara. Kwa mfano, kuna Mswada ambayo ililetwa kutoka Bunge la Taifa lakini ikija hapa, pengine Seneti inakataa kuipitisha.

Bw. Naibu Spika, tumejaribu njia nyingi bila mafanikio. Tulipoanza, tulienda kortini kuuliza ufafanuzi wao vile tunavyotakikana kufanya na walifanya hivyo. Baadaye, tulikuwa na mkutano mkubwa ambao ulifanyika mwaka wa uliopita ambapo tulikuwa na wawakilishi tofauti tofauti kutoka korti mbalimbali. Tuliwauliza jinsi ya kuendeleza kazi ya Seneti na tukakubaliana juu ya mambo fulani. Hata hivyo, imekuwa kama kawaida kwamba wakati wowote jambo lolote likija hapa, hasa Mswada, tunagombana. Basi wakati ni huu. Kama wakati si sasa, basi ni sasa hivi kusimama kama Seneti. Maseneta wengine wamesema kwamba itabidi tusimame kwa umoja. Waliochaguliwa kuunda kamati ni Maseneta ambao wamepewa kazi ngumu. Kazi hiyo ni muhimu. Hii ni kwa sababu itabidi waangalie vipengele tofauti tofauti katika Katiba. Wanafaa kuangalia vile ambavyo vinaweza kubadilisha na kuzungumza na wananchi kwa sababu lazima kuwe na Bunge la kusema neno la mwisho.

Kwa mfano, tukiangalia nchi kama Rwanda, Uingereza au “Amerikana”, tunaona kwamba wameweza kuweka mikakati vile ambavyo sheria ambayo itatoka “Nyumba” moja hadi nyingine. Haswa katika sheria hizi kuna uwazi, kwamba kuna “Bunge la Taifa” na “Bunge la Seneti.” Mara nyingi kama kuna Mswada ambao umetokea, mwisho ile “Nyumba Kuu” ndio inatakikana ielekeze na iwe na uamuz wa mwisho kuhusu Mswada ule. Tunajua kwamba Katiba haisemi kuwa kuna “Nyumba Kuu” na “Nyumba ya Chini.” Kwa hivyo, tunafaa kuangalia sheria na Katiba na kuamua ni vipi ambavyo tutafanye kazi kwa pamoja. Tuangalie vipengele tofauti ambavyo vinahitaji kurekebishwa.

Bwana “Mzungumzishi”, tumefika mahali ambapo tunafikiria kwamba vipengele hivi visipoangaliwa na kurekebishwa, itakuwa vigumu sana kwa Seneti kufanya kazi yake. Juzi tuliwaona Sen. Mutula Kilonzo Jnr. na Sen. Murkomen wakihojiwa katika stesheni moja ya runinga nchini. Ile habari kutoka kwa wananchi ilikuwa inaonyesha mapendekezo yao kuhusu Seneti. Bila Seneti hakuna ugatuzi. Hilo ni jambo ambalo ni lazima tulielewe. Kama tunataka ugatuzi ni lazima tuwe na Seneti. Kama hatutakuwa na Seneti ambayo imepewa nguvu ambayo inahitaji ili itekeleze wajibu wake wa kutetea kaunti na serikali zao, itakuwa vigumu sana.

Ni vizuri kwamba Kamati hii imechaguliwa. Inafaa iangalie mambo yote ikiwemo historia ambayo tumekuwa nayo na pia sheria ambazo tumeweza kuzipendekeza. Iangalie hata yale mambo ambayo Seneti imependekeza. Kwa mfano, tulikuwa tumesema kwamba tutakuwa na vikao katika kaunti. Vikao hivi vitawaunganisha viongozi wote. Hata sasa nimezungumza na viongozi tofauti tofauti ambao wamesema kwamba sisi kama Seneti tulifanya jambo la maana na tunaweza kuwaweka pamoja viongozi wote ili wazungumzie mambo kadhaa. Hata hivyo, vikao katika kaunti havikufanyika na kwa sababu hiyo, watu wamedhoofika.

Pia, kuna sheria ambazo tumeweka lakini hatujaweza kuziendeleza mpaka ziwanufaishe haswa wale ambao wanangojea ugatuzi. Tuziangalie zimekwama wapi na

tujue jinsi ya kuzikwamua. Tukumbuke pia kwamba hili ni Bunge ambalo sasa lina “Nyumba” mbili. Tuangalie kwa nini Seneti ya kwanza haikuweza kuendelea na kazi yake. Tuangalie ikiwa nguvu za Seneti hiyo ndio chanzo chake kuvunjwa kwa haraka. Hatutaki Seneti ya pili ivunjwe kwa haraka vile.

Nina imani na nimewasikia wananchi wengi wakisema kwamba tunahitaji Seneti. Wakati ni huu. Ninawapongeza wanakamati ambao wameteuliwa kwa Kamati hii ya muda. Niwaombea wafanye kazi njema ambayo itaimarisha Seneti na miaka nyingi itakayokuja tutasema kwamba kweli Kamati ile ilifanya vyema.

Asante, Bwana “Mzungumzishi”.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Sen. Zani. Is that a new term or the actual term?

Sen. (Dr.) Zani: “Mzungumzishi” ni mtu ambaye anafanya wenzake wazungumze, na wewe ndiye unatupatia nafasi ya kuzungumza. Nikisema “Bw. Spika” hiyo ni lugha ya Kimombo. Kwa hivyo “mzungumzishi” ndio Kiswahili sanifu.

The Deputy Speaker (Sen. Kembi-Gitura): We are developing language, which is very good. Thank you very much, Sen. Zani.

Sen. Murkomen: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for me to say that, perhaps, Sen. Zani got that good Kiswahili from her distinguished parents, who have written so many books in Kiswahili, and this House, one day, must come and recognize them for the great job that they did in Kiswahili?

The Deputy Speaker (Sen. Kembi-Gitura): Amongst them which book?

Sen. Murkomen: “*Masomo ya Msingi*” by Z. Zani and Teresa Zani.

The Deputy Speaker (Sen. Kembi-Gitura): That is nice. I thought that he might have written “*Kufikirika*,” but I notice that, that is not the correct position.

What is your point of order, Sen. Sang?

Sen. Sang: On a point of order, Mr. Deputy Speaker, Sir. Having benefited from the deep understanding of Kiswahili by Sen. Zani, in her contribution, she made references to a country and gave it the name “*Amerikana*.” I was wondering whether that is really the proper Kiswahili word for “America,” because we always talk of “Marekani.” Can she confirm that, that is the new word to referring to America?

The Deputy Speaker (Sen. Kembi-Gitura): Maybe you have asked her what she meant and not presume what she meant.

Sen. Zani, do you feel inclined to deal with that situation? I know that it is all in the spirit of developing the language.

Sen. (Dr.) Zani: Mcheza vyema hatuzwi kwao. Hapa tunajaribu kuangalia njia sanifu ya kusema nchi tofauti bila kuiita “America” kwa kimombo. “Amerikana” ndio karibu zaidi na jina “America.” Rwanda haina shida kwa sababu ni matamshi ya Kibantu. Kwa hivyo, inaingiliana sawa kwa sawa. Katika upanuzi wa lugha ya Kiswahili kuna maneno ambayo ni ya Kizungu. Kwa mfano, tunaweza tafsiri “*Senate*” kama “Seneti.” Unaongezea kuweka mdundo unaohitajika, lakini bado unahakikisha kwamba umeisema kisanifu.

Asante.

(Laughter)

The Deputy Speaker (Sen. Kembi-Gitura): I am sure that Sen. Sang has learnt something new. That is all very good.

Thank you, Sen. Zani. You must also maybe find out what the true name for “Senate” is in Kiswahili, because most likely there is one; not “*Seneti*.”

Sen. Njoroge: Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity to also contribute to this Motion. My intention was to speak in Kiswahili, but I am afraid that I cannot compete with Sen. Zani. I have changed my mind and will use English, to avoid getting into any trouble.

Mr. Deputy Speaker, Sir, I want to say a few words as I support this Motion. I know that Kenyans have really been waiting for this time to come, since the promulgation of the Constitution. Kenyans were promised that whatever articles they felt were not okay, a time would come when they will be amended. The formation of this Committee by the Senate is the best thing that we have done to Kenyans. All the Senators who have been proposed to spearhead this process of constitutional review are qualified. As the Committee is waiting to start its work, I would also request it, first, to go to some articles which need to be amended.

(Loud consultations)

Mr. Deputy Speaker, Sir, there are loud consultations going on in the House. These are the Senators I want to pay attention because, for instance, Sen. Murkomen is in that Committee.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Murkomen. You have now moved from that side and the consultations are becoming very loud on this side. You have to decide which side you want to be.

(Laughter)

Sen. Njoroge: Mr. Deputy Speaker, Sir, I urge the Committee to relook into Articles 94, 95 and 96. These articles need to be relooked at. The Committee should also try and explore more on how this Constitution can tame the National Assembly which of late has undermined the role and mandate given to this Senate. Recently, they went further and blackmailed the President of the Republic of Kenya. I humbly request the President and his deputy to support this Senate in relooking into the constitutional review because of late, they have become victims of the National Assembly.

The National Assembly is trying to blackmail the three institutions; the Senate, the Presidency and the Judiciary which also recently had funds allocated to it, deducted. As we also look into ways of making this Senate more powerful, we need to extend our hand and see if we can tame the National Assembly which has become a notorious House and needs to be controlled by all means. We cannot be moving towards that direction.

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These are our colleagues; they have been treating us as if we are second degree, yet we were elected and established at the same time by Article 94 of the Constitution.

Therefore, as I support this Motion, I encourage the Committee which has been formed to do its work without fear. This Committee cannot be compromised by any one. Time has come when even the Executive needs this Constitution to be amended because we are living within a family in which we cannot trust some members, for instance, the National Assembly. I know that Kenyans have been eagerly waiting for this day to come.

I support the Motion.

Sen. Obure: Mr. Deputy Speaker, Sir, thank you for giving me the opportunity to support this Motion. This Motion is about peace, national cohesion and harmony among Kenyans in the future. It is also about what we need to do to truly actualize devolution and enhance the devolution agenda. During the last referendum on the Constitution, Kenyans chose this Constitution and devolution is, in fact, the centre piece of it. Devolution gives hope to our people everywhere in the country because it promises to bring equality among all the people of Kenya, improve service delivery and reduce marginalization which many Kenyans have complained about.

Devolution gives hope to the aspirations of our people everywhere. It gives them power to have a say in matters that affect them in their localities and, more importantly, it gives them resources to set priorities for themselves. However, we have noted that by being undermined, we may not achieve devolution in the manner and spirit in which it was intended. This Senate must, therefore, be given the power and authority to play its rightful role in the management of public affairs of this country so that it is ultimately given the opportunity to secure the gains of devolution because it is the future of this nation.

This Select Committee has been mandated to carry out a huge and important task; to look at the current Constitution and all the pieces of legislation currently existing, which may have a bearing on the work and the standing of this Senate. I am confident that this Committee will come up with proposals which will ultimately give this Senate its place and make this institution effective and relevant.

I have looked at the names of our colleagues in this Select Committee. They are respected individuals. They are people who have proven records and are serious legislators of this House. I am confident that they have the capacity to deliver on this mandate. I wish them well but I remind them that in performing this assignment, they should stand very firm. I know that there will be attempts to intimidate and put pressure on them but knowing them as I do, I am confident that they will deliver on this mandate because these are honest and principled individuals. I wish them well.

I beg to support.

Sen. Murkomen: Mr. Deputy Speaker, Sir, the day we prophesized last week has finally come. It is very important that this House is not a House of “*Kusema bila kutenda*” which means, to say without doing. It is a House which says and keeps its promise.

Last week when I had the privilege and honour of moving the Motion that was basically discussing the consistent attack on independent institutions and institutions of

accountability, I made it very clear that this time round, we will not act emotionally, provide sound bites or give hollow promises.

It is time that the Senate of the Republic of Kenya, going by its reputation as a sober House, a House of reason and a House that is composed of men and women who have served this country with distinction, to follow its promises with actions. Therefore, I thank the Senate Majority Whip, the Senate Minority and the Majority leadership for following through and nominating the Committee members.

Mr. Deputy Speaker, Sir, I am one of the persons nominated in that Committee. If this Motion is passed, I believe that we will not be having a selfish process. This is a process that is for the sake of the Senate. It is meant to benefit the people of Kenya and carry along whoever is willing to be carried along. We will also persuade others who have a contrary opinion to come to our side so that together we can form a formidable team. There are so many suggestions about other processes run by political parties and county governors but we are here as the elected representatives of the people.

Mr. Deputy Speaker, Sir, I am proud to see a process that is established and managed by elected representatives of the people. I have confidence that we will come up with robust proposals for legislative and constitutional amendments that are necessary for entrenching the institution of the Senate for the good of this nation. This House was not put in the Constitution to be just another institution. It was put here for a responsibility that is enormous, that is, to protect devolution and counties.

Last week when we were in Mombasa, we reminded ourselves that devolution is not about counties, but about how the national Government is applying the principles of devolution to deliver services to people. Therefore, the institution of the Senate cannot be confined to just looking at the counties alone yet this institution by structure is meant to focus on equity of the nation and how the nation will benefit on both national and county resources.

Mr. Deputy Speaker, Sir, this is a House of equity. That is why Kakamega County which has 12 constituencies has one representative, just like Lamu County which has two constituencies has one representative. There comes a time when Kenyans must sit together as brothers around one table called the Senate without focus on the argument of tyranny of numbers to divide the cake and ensure that, as Sen. Hassan says, the ones who are weak are given more so that they catch up with the ones who are strong. The ones who are strong should accept to take less because they appreciate the challenges of the brother who has always been marginalized for a long time. That is why the Senate is here. That is why we vote using county delegation because we do not want to disadvantage any county.

Mr. Deputy Speaker, Sir, as it is now in the Constitution, if you confine the role of the Senate to only focus on counties, you miss the bigger picture of asking the critical question of how national resources are being applied across counties for purposes of ensuring equity. That is why this House must re-look at the Constitution and re-strengthen the areas that are missing. We should ensure that we serve the nation with a better instrument that can divide the cake. At the same time, we should pursue a

mechanism for baking a bigger cake so that the division of the cake - the division of revenue - becomes an easy process.

Therefore, as a team, we will stand firm. We have not been established to undermine the National Assembly. It is not us versus the National Assembly, the Executive or the Judiciary; it is us versus the truth. This Committee is established to look for the truth and find mechanism of ensuring that the working relationship between this House, the Executive and the National Assembly is better. It is not for tomorrow, for the current regime or for the next ten years. It is for posterity because this House has a responsibility of doing what is right, so that those who will come after us, when they read the books of history, will be confident to say that there were men and women who sat in the first Senate of Kenya under the new Constitution and had a bigger and brighter picture.

They will know that we were looking at the big star that is shining like a diamond. This House must dream big and know how Kenya will be governed in the next 30 years and how we will utilize the best leaders in this country in future.

We have now created a structure in this nation under this Constitution where one can start leadership by being a Member of the County Assembly (MCA), graduate to be a Member of the National Assembly, to a Senator or Governor and finally to be the President. We do not want to say that we have a strong Member of a County Assembly and when the day comes for that person to graduate to be a Senator, he finds himself in an institution that is weaker than where they came from.

Mr. Deputy Speaker, Sir, we have 47 governors serving our country. They are wonderful men but some of them have misbehaved, but you cannot miss about 10, 20 or 30 who are good. Assuming that they get a second term and serve this country with distinction for ten years and they want to further their political career, will they be comfortable to come and serve at the Senate of Kenya? Will they find an institution that will make them progress their leadership and ideas that they collected from the grassroots when they were governors? Can they debate in the Senate or they will feel that this House is so small and weak and that they should run for the Presidency? What happens when this nation has 47 candidates from every tribe running for the Presidency?

Mr. Deputy Speaker, Sir, this House must be what it was intended to be, which is the second tier of leadership after the presidency, where men and women of wisdom can sit, generate ideas, inform the Executive and the county governments of the day and ensure that we have a strong system of governance that respects values and other institutions. We must also disabuse the nation of any notion that we are forming this Committee for the purpose of pursuing our own welfare. That is far from the truth. This House has never put its welfare in front of the welfare of the people of Kenya. In this House, even when people were clamouring for salaries and allowances, we kept mum, became reasonable and good negotiators.

Mr. Deputy Speaker, Sir, let it be known to the nation that the issue of the Kshs1 billion allocated for our oversight responsibility was not money for Senators to manage, it was meant to do the structure of the Parliamentary Service Commission (PSC). Its responsibility was to create entities and structures at the county

level where the Senator can serve the people. It is a contradiction of sorts to be told that at the grassroots, they do not see us, we are not represented, we do not sit with the voters or representatives that are perpetuating the ideas and the policies of the Senator. On the other hand, we are told that they will not facilitate us.

Mr. Deputy Speaker, Sir, it is important that the institution of the Senate, going forward, must be facilitated to serve the people because the contradiction is that there is an MCA who is being facilitated, lives within the county, has the opportunity to go to his ward and the resources to do oversight in his ward. The Members of the National Assembly are also allocated Constituencies Development Fund (CDF) money with patronage over all the committees formed in the county, has a car which is bought by the CDF kitty, has an opportunity to put together those resources and visit schools, hospitals and deliver resources.

The governor also has a village administrator, ward administrator, sub-county administrator, chief of staff, political advisor, economic advisor and all kinds of advisors. Then the President has chiefs, county and sub-county commissioners, Permanent Secretaries (PS) and Cabinet Secretary (CS) serving the nation. The only office that is not enabled to meet and listen to the people and bring the views of the people in the grassroots to the table is this office. When the Senate asked for facilitation of that office, what we were told is hypocrisy, contradiction and insulting.

Mr. Deputy Speaker, Sir, it is insulting to this institution to be told:

“We will not give you resources, but will ensure that you are disabled from doing your job because the rest of us have the resources.”

We have gone to meetings where people laugh at us and tell us that they do not see us. They ask where our committee or Constituencies Development Fund (CDF) is. We are not asking for the CDF. We are saying that the Office of the Senator all over the world, giving the example of a Senator in the United States of America (USA)--- A Senator in the USA earns \$174,000 but every year; he or she is allocated \$3 million to travel from Washington DC to go to his or her state, whether in Alaska or California; every time and as much as the people want him to go there and have caucuses, town hall meetings and consultations when they are doing Bills, to listen to their voters and then represent them in Washington DC.

Mr. Deputy Speaker, Sir, we have not asked for \$3 million because we are not the USA. We asked for mere peanuts of Kshs13 million for Elgeyo-Marakwet County for a whole year, which if you divide that amount, it is about Kshs1 million per month for me to go and have consultations with my people, then they say that they cannot enable this institution to work. That is not right.

The right thing is to be honest to this nation; that we want this House to be strong and not against the National Assembly or the Executive, but because we need a strong institution. I strongly believe that if you want your candle to be lit, you do not have to put off your neighbor's. It is possible for the candle of the National Assembly to be lit beside that of the Senate. It is possible for the Members of the National Assembly to shine as well as the Senators. We must get out of this mentality that says that: “This office should

diminish so that I can rise” We must all of us, as leaders, be willing to facilitate each other and the institutions of governance, so that this nation becomes great.

That belief makes me hopeful today that we are sitting here to pass a Committee that will finally come back with proposals that will ensure that county governments, the Senate and the institutions of accountability are strengthened and that devolution is working better for the Republic of Kenya. I promise my brothers and sisters in the other side that if this Motion is passed, I will serve with diligence, dedication and focus, without fear or favour and with desire that I swore I would protect and defend this Constitution.

The Constitution comes after God in our order of things. We acknowledge God, the sovereignty of the people of Kenya and the importance of the Constitution. All other allegiance will come thereafter. Therefore, I am here today to promise my colleagues that I am willing to walk the entire journey, from whatever sea we are going to cross. I will cross River Jordan with you and finally, we must deliver Canaan.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you Sen. Murkomen.

Please, proceed, Sen. Hassan.

Sen. Hassan: Thank you, Mr. Deputy Speaker, Sir, for this opportunity to speak to this important Motion. When a Motion on this issue was tabled in the Senate last week on Monday, unfortunately, I did not have an opportunity to be here, because I had travelled with some of my colleagues to Wajir County. We visited Wajir County which exhibited enormous developments based on the fact that devolution had arrived in that county. Kenyans are unequivocal, not in contradiction and are clear that the institution that is meant and charged with the responsibility of protecting devolution is the Senate.

Since this great idea needs a guardian angel, it is obvious that if you tasked me to guard the Central Bank of Kenya, you would not give me a simple *rungu*. You would probably facilitate me with a little more ammunition. Right now, we are trying to get to that point where we can guard devolution effectively.

Mr. Deputy Speaker, Sir, I think that there is unanimity that this Constitution was eroded because at that point when it was being negotiated, the National Assembly sat in court in a process where they were able to make a determination as to the kind of powers that were eventually passed to the Senate, to weaken the institution so much so that they can today step over some of the recommendations that are intended to safeguard devolution. Although in my assessment, this is the last opportunity that we have.

We have spoken about strengthening the Senate so many a times. We spoke this language in 2013, after the court proclaimed itself in terms of the advisory opinion and after Bills were passed by the National Assembly where we thought of setting up a Committee to look at the constitutionality of these Bills and seek annulment. We have spoken about these issues time and again when the National Assembly appears to have ignored the input of the Senate or not acted in the best interest of devolution.

In my assessment, this is the final opportunity that we have and that is why even as we debate this Motion, my faith is bruised but not lost. This is because I believe that we always have the issue of redemption. At least, if the Lord can forgive us, then who are

we as human beings not to give each other the benefit of doubt, time and again? However, I can tell you that if we move back on this Motion or amendments again, this country will be extremely unforgiving.

This is not to say that I know that some of us are running other processes and that is why I want to reassure this House that this process is independent from those other processes. We will pursue those other processes because we believe in them. For us, it not something that we woke up and realized that the Senate needed strengthening. We have been talking about the strengthening of the Senate since 2013. This is the time that we must complete this journey.

Mr. Deputy Speaker, Sir, when I sat in a talk show on Monday, a colleague from the National Assembly thought that we are scarred because we are not getting Kshs1 billion. I am totally distraught by this type of analogy; that we have issues because we are not getting Kshs1 billion. We have issues because recommendations of the Senate matter in this country and because we have argued systematically about these issues, and it is wrong for anybody to believe that the Senate has now created issues because of Kshs1 billion.

We have continued to agitate about the functional powers of the Senate. I think that there was erosion of those drafts as I heard one of the speakers say; that they were well captured in the Bomas Draft; that the Senate was not necessarily an “Upper House” but an equally fully functional legislative House. It was also captured in the same spirit in the Committee of Experts (CoE) Draft, but was eroded based on our own political machinations at some point. In fact, it is stated nowhere that the Senate is the “Upper House”. Whether upper or lower, what is important is to discharge our mandate. We have a unique mandate; a House of equity. We are not just a legislative House; we are a House of equity. Based on that fact, we have a distinct mandate from the National Assembly, which must be given functional capacity for us to undertake that mandate.

As I told my colleagues, they shall never be able to erode the recommendations of the Senate again with the kind of impunity that we have seen. The Senate must speak to every Bill from the National Assembly, much as in the same way they will also have an opportunity to speak to every Bill from the Senate. The Senate must be a fully functional legislative House. We must do away with the idea of citing a technicality in trying to torpedo every Bill that comes from the Senate.

Any Bill can originate from the Senate and that was the spirit in the Bomas and the CoE Draft. That must be the spirit that we must look at. The Senate developed the tendency of being the Upper House through traditions, which placed this House as the “Upper House”. I think that we have already cemented a tradition in this country, whether we like it or not. As a political fact and reality, the Senate is the “Upper House” and people treat us as such. Even when the National Assembly passes an order of precedence to just elevate themselves, it does not matter to the public because they know who is “upper”.

Mr. Deputy Speaker, Sir, it is only in this country where there is an “*Abunuasi*” analogy; that you can win an election in one out of eight to nine constituencies or for my case, in six constituencies, then with an “*Abunuasi*” theory, allege that you are of an

“Upper House” than the person who won votes of the electorate from over six constituencies. I think that this analogy is what I call weak and feeble wisdom. Therefore, the Senate by implication, political fact and tradition is the “Upper House”.

I have heard some Members of the National Assembly tell me that I am misplaced in the Senate. However, I think that this is where I was destined to be. If given an opportunity to run for election again, I will run for the Senate again. This is because if for nothing else, I have interacted with some of the greatest minds that this country has ever known and some of the greatest people that I read about in history and civic books. I have learnt from their experiences. If I was probably in the other House, I would have degenerated and been lumped in some kind of framework where my intellect and capacity would have been questioned. I have no issues being in this House. In fact, to repeat myself, even without these amendments, I would still be in this House because I think that our destiny is such that we must be the people who lay the foundation.

The Senate is simply looking for that space for devolution. Some of these names I have come across were people who I was reading and just marveling about. Today I have had the opportunity to interact with them. I had not read many of the names that are in our sister House. In fact, if I was in that House, I would probably have been one of the biggest names. Truth be told and it is for nothing else.

The Senate, even in its debates, is a House of knowledge. Do not think that sometimes I just sit here fidgeting with technology. Every time every speaker stands in this House, be it the youngest Senators to the oldest ones, there is wisdom that you get. I have heard experiences that people share when they were in the Cabinet. People will give you their experiences of the first regime; that is the first Independence Government, the second one of Moi and the third of Kibaki. This is a reservoir of knowledge.

The Senate, undeniably, put together is the biggest law firm in this country with some of the most expensive consultants in the field of law. In this Senate, there are some of the best doctors, professors of leading industries and people of human rights like myself, probably, one of the greater names in the human rights domain. There are people of all calibre. Every greatness is found in the Senate. Some of the women leaders who are here are the biggest names in the women movement.

(Applause)

If you want to acknowledge what is upper, that is tradition. Why would these great men and women seek to be in this House? It is because tradition has it and now the law must validate it. It must now be changed to constitutionally provide for a Senate that has a fully-fledged legislative capacity so that we can originate any Bill and address national matters that affect devolution. In every jurisdiction where there is a Senate, it has been spoken to in various assertive ways in every Bill that emanates from the other House which protects a different cadre of national interest.

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

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

Mr. Temporary Speaker, Sir, my only advice as we move forward in this campaign for change, is that let us not, in our public statements appear to exhibit arrogance or the kind of loose debate that has characterized the political debate in this country; at least on this matter. If you want to speak to the matter in your respective coalitions, speak to them. Derogate whoever you wish to but on this one, we must exercise decorum. This is the place where people will not only be voting or acknowledging whether we are the “Upper House”. We must demonstrate ourselves as capable of these responsibilities.

As I conclude, I have seen the names that have been proposed and I do not think I have any issues with any of them. Mine is only to ask them and I hope they will stand firm. I am sure they will be approached to undermine this process. That means even if you are approached from the opposition ranks, you must say, “No.” These names are some of the best litany of brains that we have within our respective coalitions and it is important that they put the best interests of the Senate at heart.

My leader, the Senate Minority Leader, Sen. Wetangula, has committed himself to ensure that he discharges every other interest of the Coalition to ensure that these amendments to the Constitution succeed. I hope that is commensurate leadership. The advantage that we have is that our leader in the House is also our leader out of the House. I think he is a big man, he makes decisions; he has the influence to impact in the CORD Coalition; in and outside the House. He has a rare advantage. He has committed that no interest of the Coalition will supersede this particular Senate initiative. You have even seen how I have moderated my speech and it is partly because of his counsel that we must moderate ourselves to ensure that we achieve the bigger goal.

I hope that we will all come as a unit and agitate for these amendments and as my dear clear colleague, Sen. Murkomen, said, it is not about spite for the National Assembly. The only people who exercise spite to the other House is the other House. For us, we are exercising the highest level of restraint and decorum. I overheard people in the media say that the Senate has now realised that it is not the “Upper House”. We are not in contestation in terms of the “Upper House” but in terms of devolution and doing the right thing for the people of Kenya.

If anybody thinks that that is our contestation, I can bet that you, go to any county or constituency, put a Senator and a Member of the National Assembly together and ask people who of the two is upper. It is a political fact that is known to people in their respective counties and constituencies. What has been proven in the domain of the people need no further justification. For us, it is to ensure that this House has a fully-fledged legislative capacity to do what is good and that is to defend devolution.

This Bill assists CORD, the Jubilee Coalition and everybody else because a strong Senate will ensure that devolution is grounded in a manner that meets the aspirations of

Kenyans. There is no doubt about one thing; we might agree with every pollster in the country that they are unanimous that devolution is the greatest idea that every Kenyan speaks of. If there is one thing that no pollster has contradicted – who is on the upper hand, first or second – then it is that devolution has the massive support of Kenyans.

For that reason, I join hands with my colleagues to support this Motion. I also express my full confidence in the membership that has been stated therein.

I support.

Sen. (Prof.) Lonyangapuo: Thank you, Mr. Temporary Speaker, Sir. I join my colleagues in supporting this Motion which was brought to this House by the Senate Majority Leader. On Monday, 15th June, 2015, the Senate unanimously agreed that it is now time that we assert our position as the House of reason and one that is supposed to guarantee and protect the Constitution, noting that our colleagues in the “Lower House” who refuse to be called by that name, have in one way or another since we began the year 2013, not been living with good intention in applying the Constitution.

If you can recall as Senators do, in 2010, there was intense debate and campaign by the pro-Constitution and those who advocated for the Constitution to be passed but do some corrections at a later stage. That group came to be called the “No” Team and the one that proposed passing it quickly was called the “Yes” Team. Some people were even branded names such as water melons.

I am neither “No” or “Yes”. Most of those terminologies came because of the desire to bring a document that was not going to harm Kenyans. It even forced the proponents of the “Yes” Team to plead with the “No” Team to pass the document the way it was and if there were issues which require to be amended, that could be done later. We are now at that stage where we find that we cannot move forward as a nation, with the aspirations that we used to have prior to 27th August, 2010 before the President lifted the new Constitution.

There was a lot of excitement that poverty would disappear on 27th August, 2010. There was even a promise from the partners of Kenya that if we passed it, all our problems would come to a standstill and that we would now swim and live in the land of Canaan that is full of milk and honey. There is no iota of honey and milk today. We are seeing a lot of competition that was not there before.

It is, indeed, time that we soberly sat down as Kenyans, led by this House. I know my colleagues on the other side have sat and in their desperation, they are also proposing an amendment which they are calling “*Okoa Kenya*”. Governors in their desperation on the ground are calling theirs “*Pesa Mashinani*”. They look at the amount of money going to the ground as opposed to a lot of it that remains at the national Government. Some examples are very vivid. Remember the Tana Delta Irrigation Project that was supposed to be done last year. The amount of money which was allocated to the project; Kshs13 billion, was quickly returned to the National Treasury.

How many problems would it have sorted out? It would have sorted out a lot of problems and that is why the governors have those kinds of examples to cite. The laptop project which earned the Jubilee Coalition points to the extent that the CORD Coalition was beaten hands down in the campaigns, because every child in Kenya was singing:

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“Laptop! Laptop! Laptop! Jubilee! Jubilee! Jubilee”! About Kshs17 billion was spent. I am told that two years down the line, challenges have been noted, but that promise must be fulfilled.

Mr. Temporary Speaker, Sir, we are not here to talk about the versions CORD and the governors are using. We are here as a House that must close the gap at a time when every evil force wants to intimidate and derail the aspirations and the plans the people of Kenya had when this Constitution was enacted. I want to thank all my colleagues in the Senate. You should remember that part of the intimidation we are facing from the “Lower House” is because they have refused to believe that at the grassroots, the Senate is the “Upper House” whether it is written or not.

In West Pokot, we have four constituencies and I garnered 86 per cent of the votes. The total sum of all the votes garnered by the Members of Parliament who won the elections in that county and are now sitting in the “Lower House” is a staggering 44 per cent. A lay man will tell you that 86 per cent is more than 44 per cent. If you do not want to believe me, we should go to Class One and start addition mathematics together, then you will know that 86 per cent is higher than 44 per cent. The Governor for West Pokot County garnered 55 per cent.

It means that the Senate was believed from history to be the Upper House. This is also written in the American Constitution. If you look at the House of Lords in England, it remains the Upper House. The world over, the Senate is the Upper House. Why is this Senate belittling itself just because we over-wrote our Constitution?

Mr. Temporary Speaker, Sir, Kenyans are very good at book work. When I became the Permanent Secretary in the Ministry of Industrialization I was surprised that in the library shelves of the Ministry, there exists a document which states that a fertilizer plant was built in 1983, sorted out and finished. The document is alive and kicking and brilliantly written. Sometimes I get surprised when people worry when they want to build new industries and yet we have all those drawings and the documentation ready. You only need to go and remove the dust from the document.

We even included in our Constitution the unimaginable. Some issues were put in very small print. For example, issues pertaining to the Senate were really limited. It is now time to amplify these little things that were written about the Senate. For example, Article 96 (3) reads:-

“The Senate determines allocation of national revenue among counties as provided in Article 217 and exercises oversight over national revenue allocated to the county government”.

What does exercising mean? People ceased to believe and know what that role is. That is why the Senate in their wisdom said that the Parliamentary Service Commission (PSC) which is supposed to be serving the welfare of Members of the National Assembly and the Senate should know that this provision exists. I must not be tortured to go and exercise oversight in my county over the money that has just been allocated to it, yet brilliantly and vigorously, the other money that has remained in the national Government is being fully taken care of.

The Auditor-General and the National Assembly are there to audit expenditure of funds by the national Government. We have trouble with the Senate where the PSC is headed by the Speaker of the National Assembly whose agenda is to behave like what is written in the book of John in the Bible, Chapter 10:10 that the enemy has come to steal, kill and destroy.

This seems to be the agenda of our brethren in the “Lower House”. They want to kill or destroy the Senate. By killing and destroying the Senate, they are actually saying that all the monies that always passes through our hands yearly to our counties--- We have ample evidence, to the extent that we know that malpractices are happening on the ground. It is not all of them but we know that some do.

Mr. Temporary Speaker, Sir, if you want to know that there is malpractice in West Pokot County, you should see how people’s body sizes have transformed; they are very huge. Some did not even have a bicycle, but they have refused to buy a motor bike or a *Probox* model car, but they are directly going to buy *Prados* and other heavy models. There is one who has a “permanent and pensionable helicopter” roaming around with him whenever he wants to go for breakfast, lunch and dinner. He even flies to the beach and comes back home.

For your information, they do not take breakfast in their counties. I know of some governors who have forgotten how their homes look like. They have migrated to other counties and only come back to their counties in the morning because of the loose money that is available. This is the money that the Senate is supposed to oversight.

It even pinches the Members of the National Assembly a lot because even them, they are living in a time of splendor which they fear the Senate will trespass and check some of the projects which they are duplicating on the ground and running to the Constituencies Development Fund (CDF) headquarters and presenting photographs of buildings purported to have been done using the same money and yet they have been done by the national Government or the county governments. Somebody somewhere is a thief and we are closing in on them.

Mr. Temporary Speaker, Sir, I would like to candidly tell the Senators whose names appear on this list that they are heading into tough times. They will be intimidated at dawn, at noon and in the evening, including in your own houses. This means that they should be patriotic and live up to the ideals of this Constitution which states that we have been given sovereignty of power.

We must exercise that with a lot of reasonable understanding that we are here to do this.

Therefore, Mr. Temporary Speaker, Sir, I support this Motion. For once, let us look at this. If they do not finish the process in three months, there is room as indicated in Article 200 of the Constitution – as you put – that the committee’s recommendations shall be tabled in the House for approval after it is done.

Mr. Temporary Speaker, Sir, I beg to support.

The Temporary Speaker (Sen. Murkomen): Hon. Senators, there are still about five requests but we need to finish on this Motion today. Therefore, with your permission, I will reduce your time so that everybody makes their contributions. I will give the Senate Minority Leader 10 minutes and three minutes each to the rest of you.

An hon. Senator: Please give allow us five minutes each.

The Temporary Speaker (Sen. Murkomen): We cannot manage five minutes each because we are only left with 25 minutes.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, I might even spend less time.

Mr. Temporary Speaker, Sir, the 15th of this month was a very important day. This House spoke in unison for devolution. Today, we come here in furtherance of resolutions of that day. The late Mwalimu Julius Nyerere once told his audience; “Do not wait for anybody to make you relevant. Fight for your space.”

Mr. Temporary Speaker, Sir, when the new Constitution was drafted, the first Bomas Draft had a very good chapter on Senate and devolution. The subsequent mutilations are now part of our history. Today, everybody in this country appreciates that devolution is changing and touching lives. However, devolution has also come with other trappings that need to be checked; the excesses and obscenities being exhibited by some of the governors. This House is the House world over that is “upper.” It is the House of revision, appellate to decisions of the “Lower House” and the House that checks and balances any excesses that may occur in the “Lower House.”

Mr. Temporary Speaker, Sir, this afternoon I had lunch with a distinguished High Commissioner of a country that has a bicameral system. When we discussed about the structure of the Senate, he was shocked. He said that that cannot be the case. He said that everywhere in the world, the Senate is the House of revision.

Mr. Temporary Speaker, Sir, the Senate cannot be a House that is trampled upon and treated with indignities by persons who do not even deserve to have any altercation with this House. The jurisdiction, mandate of a Senators and everything else about the Senate is very clear to the ordinary person. If you visit the ordinary *mwananchi* in your village in Tot, Pokot or Nakuru, you will see that they know that there is an MP and a Senator. It does not occur to them that a Senator is a Member of Parliament because they know that the Senator is a Member of the Senate and the Senate is not Parliament but the “Upper House.”

They send a very strong message in their simplicity. Every time you go to a public meeting, *wananchi* begin by acknowledging Members of County Assemblies (MCAs), the governor, MP and finally the Senator in that order. They know that. We come here as a House of equity to participate in---. In fact, we hold the trump card in the sharing of revenue among counties. It defeats logic, whichever way you look at it, to allocate counties Kshs283 billion but deny the Senate Kshs1 billion to oversight how the money is spent.

Mr. Temporary Speaker, Sir, last week but one, you may have seen a much publicised visit by myself to my county hospital. I found appalling neglect, disrepair, disuse and malaise. I summed it up that that was a sick health institution. I get messages from my own constituents telling me; “you went to Bungoma but you need to come and see the other one. Bungoma may be better off.”

Mr. Temporary Speaker, Sir, governors have perfected the art of public relations. Recently, my governor was rated number three by some group which I cannot remember.

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I ask myself, “If, despite what I saw in my county referral hospital, we were ranked number three, how does number 47 look like?” If we were number three, what would number 47 look like? We should look at other comparable jurisdictions. I have friends in Canada who are Senators including Madam Raynell Andreychuk who used to be the Canadian High Commissioner here. She is my good friend and we correspond quite a lot.

The Senator from the northern territories of the Hudson region has a helicopter available on request at any time for him to tour his counties and constituency. How do you expect the Senator for Turkana, Marsabit or Wajir to visit their counties? West Pokot County is small. The only issue is that it is in a difficult terrain but it is not as big. Other Senators who serve vast territories are Senators for Garissa, Tana River and Kitui counties. These are massive areas. That is why this is just the beginning.

I want to conclude by, first of all, endorsing the Committee that we have put in place. I hope that they will, when they first meet, elect a good chairperson who will send good signals that the Senate is not grand standing and not in a test of wills. The Senate is giving the spirit and letter of the Constitution meaning by doing what we are doing.

Secondly, Mr. Temporary Speaker, Sir, if the President and his deputy need some unsolicited advice from me, I will tell them that when they sit there as the head and deputy head of state and see that there is *Okoa Kenya*, governors and the Senate asking for the Constitution to be looked at, then there is a problem. There are many *wananchi* who call themselves “*Bunge la Mwananchi*” asking the same questions. Television and radio shows are also asking the same questions and that tickles your medulla oblongata to start wondering whether it is not time, in fact, to find a middle ground and have a bipartisan, less acrimonious and less noisy national coated approach to look at the Constitution because the Constitution is good.

However, conventional wisdom tells us that a good idea will always give way to a better idea; a better idea will give way to the best idea. We started with an idea that is good. We have tested, tried and now we recommend that there is a better idea on the horizon that can make things better.

Mr. Temporary Speaker, Sir, being a lawyer you know that law is not static. Law is by its very nature dynamic. That is why we can pass law and a court of law, properly thinking in the category of Lord Denning, Justice Madan or Lord Diplock would interpret that law and make it even better by setting a precedent that will improve the law that was passed by Parliament. So, the dynamism of life is that where you are today is not where you will be tomorrow and where you were yesterday. If we do not appreciate this, then we are headed in the wrong direction.

Mr. Temporary Speaker, Sir, I want to urge the Committee, in which you are a Member, to take up this. All these initiatives will eventually probably confluence to a national good. I want to urge that we find a middle ground of sobriety and make it possible for this country to be truly bicameral, devolved and for those who manage our devolved funds to be held accountable, by putting mechanisms in place where they are accountable to this House in real terms and this House is able to oversight and use what Safaricom calls “*mulika mwizi*” to those who are misusing public funds.

Mr. Temporary Speaker, Sir, I beg to support.

Sen. Omondi: Thank you, Mr. Temporary Speaker, Sir, for allowing me to add my voice on this Motion, which I support. I want to congratulate my fellow Senators who have been nominated to sit in this Committee and help us identify some gaps within the Constitution that need to be reviewed or dealt with.

Mr. Temporary Speaker, Sir, it is the high time that we, as the Senate, continued operating in an environment where cohesion is seen. I am saying this because most Kenyans think that the Senate behaves in a mature way. They are counting on us to end the wrangles that make us look like we cannot give hope to the people who elected us and are looking up to us to give solutions.

I am sure that this team of Senators is going to give us a way forward with regard to the way Kenyans want the Constitution to be implemented. Right now, Kenyans are confused and do not know which direction to go. This is because so many issues are coming up. There is undermining and lack of respect towards institutions that are supposed to run this country. This country cannot be managed by one institution. Each institution plays an important role and must be respected, supported and facilitated financially.

Take the Judiciary, for example. As the Senator who represents people with disabilities, I realized that they lack funds to make the institution accessible by people with disabilities. This is an institution that offers justice to Kenyans. Such an institution should not be frustrated simply because people have powers to deny or give funds when they feel like. The Constitution gives us the authority to share or deal with the budget but not frustrate institutions.

I support this Motion simply because I want devolution to grow. I want the Senate to remain the custodian of counties and it will only remain so if it plays the key role of ensuring that these institutions are protected and supported.

I beg to support.

Sen. Sijeny: Mr. Temporary Speaker, Sir, the people of Kenya spoke on 27th August, 2010. In the Preamble, the Constitution states: “We, the people of Kenya, acknowledging, honouring, proud, respectful, committed, recognizing, exercising, adopt, enact, God bless Kenya.” The people of Kenya spoke very loudly. We have seen the commitment and the way they believe in this Constitution.

As they passed it, they appreciated that there are three arms of Government; the Executive, the Legislature and the Judiciary. The Legislature comprises of the Senate and the National Assembly. The implementation has not been very smooth. As is expected, there have been hitches here and there. The Senate has acted, of course, with diplomacy and respect. It has followed all diplomatic ways to ensure that the Constitution is implemented and Wanjiku or Akinyi is given what she dearly wants.

Devolution is the key pillar and one of the most important aspects of this Constitution. For devolution to succeed, we must give clear-cut roles of the National Assembly and the Senate. We know what Article 96(2) states, but because we know the political exercise that this Constitution went through in Naivasha, there was some

dilution of powers or you are given both powers but the way forward is not stated clearly. That is why this is a very important Committee which will look at all those things.

Kenyans are confused and the media has not been of much help. Even the first conference that we had in Naivasha as a Senate, when we were still debating, trying to find our bearing, for example, where we were and what our relationship with the National Assembly was, the first newspaper headline was “Supremacy battles have started “ That has stuck, whereas, that was not the case.

This has to be dealt with because locally and internationally, Kenya is looking bad because of the little dialogue that we are having about one House being the upper and the other one the lower. We need clear-cut roles. That is the only way we will get it so that everybody’s hands are full with only what they need to be doing.

I beg to support.

Sen. Okong’o: Mr. Temporary Speaker, Sir, let me from the outset support this Motion. Some of us have been captured on the HANSARD talking about issues of the Senate. In the Biblical phrases, John the Baptist created a way for Christ. It is the same way the Constituencies Development Fund (CDF) created the way for devolution. Most Senators in this House have spoken eloquently that this is the right time to enforce and fight for the rightful place of this House, not for ourselves. As it is written in the book of Matthew: “Do unto others what you expect them to do unto you.” Tomorrow, we do not know who will be here. I have been on record saying that this House must be strengthened. So, 30 years to come when my son, Prince, will be here, he will be in a comfortable place to do what is right for this country.

Mr. Temporary Speaker, Sir, I support all the issues that the eminent Senators have spoken about. There is a lot of hopelessness and despondency in our counties but I know that we are on the right track.

We only attained our liberal democracy in 2002 when the Kibaki Regime came into power. Therefore, I am not going to belabour what has been said. The Senators who have spoken were chosen in this House to be in the Committee and fit the bill.

With those few remarks, I beg to support.

The Temporary Speaker (Sen. Murkomen): There being no other contributor, I call upon the Mover to reply.

Sen. Elachi: Mr. Temporary Speaker, Sir, I want to take this opportunity to thank Senators who have spoken. I believe this Committee will move to ensure that we flag out the issues affecting the Senate and also ensure that they stay steadfast as we have requested. This is a roadmap and guidance in flagging out the issues. Therefore, we do not want to hear the media saying that the Senate has now joined the referendum. We are doing this in a sober way. The Senate will be the spring board for everybody who would have wished to see a referendum in our country. We shall ensure that it does not divide us. It is a question that will be put during the time of elections. The next Senate will be proud to know that we have a foundation and devolution is going to work in this country.

Mr. Temporary Speaker, Sir, for the last two years, this institution has been sober but people have taken advantage of it. People do not understand why Senators decide to cool things down. It is because we respect our country. It is because if we become

combatant, we will hurt the country. Since we have been pushed and forced to stand, then we have to go ahead. The Senate has men and women who have worked for this country for not less than 20 years. Some of us have been in the civil society, others in the government and others in the field of research. There was a time I knew about all the 210 constituencies.

Therefore, I want to thank the Senators and I beg to move.

(Question put and agreed to)

ADJOURNMENT

The Temporary Speaker (Sen. Murkomen): Hon. Senators, there being no other business, the Senate stands adjourned until Wednesday 24th June, 2015 at 2.30 p.m.

The Senate rose at 6.30 p.m.