

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Monday, 15<sup>th</sup> June, 2015

### Special Sitting

*(Convened via Kenya Gazette Notice  
No. 4347 of 9<sup>th</sup> June, 2015)*

*The House met at the Senate Chamber,  
Parliament Buildings, at 10.00 a.m.*

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

### PRAYERS

### COMMUNICATION FROM THE CHAIR

#### CIRCUMSTANCES OCCASIONING THE SPECIAL SITTING OF THE SENATE ON MONDAY 15<sup>TH</sup> JUNE, 2015

**The Speaker** (Hon. Ethuro): Hon. Senators, I wish to welcome you to this Special Sitting of the Senate and to thank you for finding time from your busy recess schedules to attend the sitting. This Special Sitting of the Senate has been convened pursuant to Standing Order No.29 (1) of the Senate Standing Orders upon a request by the Senate Majority and Minority Leaders which was supported by 21 other Senators. The request was made to me vide letter reference No.SML/GEN.CORR/VOL.1(115) dated 5<sup>th</sup> June, 2015.

In the letter, the leaders requested the Speaker to appoint a day for a Special Sitting of the Senate to deliberate on the matter of reallocation by the National Assembly of various monies intended for key constitutional organs and institutions in the Budget Estimates for the Financial Year 2015/2016, at a sitting of the National Assembly held on Wednesday, 3<sup>rd</sup> June, 2015.

Hon. Senators, following consideration of the request by the two leaders, I was satisfied that it met the requirements of Standing Order No. 29(2). It is in this respect that I have convened this Special Sitting of the Senate by Gazette Notice 4347 of 9<sup>th</sup> June, 2015 which was carried in a Special Issue of the Kenya Gazette of 12<sup>th</sup> June, 2015.

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As required by Standing Order No.29(5), the notice specified that the business transacted at this Sitting would be the consideration of a Motion regarding the allocation by the National Assembly of various monies intended by key constitutional organs and institutions in the budget estimates for the Financial Year 2015/2016.

Hon. Senators, I have specified in the Gazette Notice that in accordance with Standing Order No.29(2), the business specified in the notice shall be the only business before the Senate during this Special Sitting following which the Senate will adjourn until tomorrow Tuesday, 16<sup>th</sup> June, 2015, at 2.30 p.m in accordance with the Senate Calendar.

Indeed, hon. Senators will observe that Order Nos.2 and 3 in the Order Paper pursuant to the provisions of the Standing Orders and as indicated in the Gazette Notice, the business to be transacted is the consideration of a Motion regarding the reallocation by the National Assembly of various monies intended for key constitutional organs and institutions in the Budget Estimates for the Financial Year 2015/2016.

I thank you.

### MESSAGE FROM THE NATIONAL ASSEMBLY

#### APPROVAL BY THE NATIONAL ASSEMBLY OF THE MEDIATED VERSION OF THE DIVISION OF REVENUE BILL, (NATIONAL ASSEMBLY BILL NO. 11 OF 2015)

**The Speaker** (Hon. Ethuro): Hon. Senators, I would like to report to the Senate that pursuant to Standing Order No.40(3) and (4), I have received the following message from the Speaker of the National Assembly regarding the approval of the mediated version by the National Assembly of the Division of Revenue Bill, 2015 (National Assembly Bill No.11 of 2015).

Pursuant to the provisions of Standing Order No.115 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly.

Whereas the Division of Revenue Bill, National Assembly Bill No.11 of 2015 was referred to a mediation committee in accordance with the provisions of Article 112(2b) of the Constitution, and; whereas the National Assembly on 3<sup>rd</sup> June, 2015 considered and approved the mediated version of the said Bill as required by Article 113(2) of the Constitution; now, therefore, in fulfillment of Standing Order No.150(4)(b) of the National Assembly Standing Orders, I hereby convey to the Senate the said decision of the National Assembly.

Hon. Senators, Article 112(1)(b) of the Constitution provides as follows:

“If one House passes an ordinary Bill concerning counties and the second House-  
(b) passes the Bill in an amended form, it shall be referred back to the originating House for reconsideration.”

Further, Article 112(2)(b) of the Constitution provides; if after the originating House has reconsidered a Bill referred back to it under clause (1)(b), that House –

(b) rejects the the Bill as amended, the Bill shall be referred to a mediation committee under Article 113.

For the benefit of Senators, Article 113 provides as follows;

(1) If a Bill is referred to a mediation committee under Article 112, the Speakers of both Houses shall appoint a mediation committee consisting of equal numbers from Members of each House to attempt to develop a version of the Bill that both Houses will pass.

(2) If the mediation committee agrees on a version of the Bill, each House shall vote to approve or reject the version of the Bill.

(3) If both Houses approve the version of the Bill proposed by the mediation committee, the Speaker of the National Assembly shall refer the Bill to the President within seven days for assent.

(4) If the mediation committee fails to agree on a version of the Bill within 30 days, or if a version proposed by the committee is rejected by either House, the Bill is defeated.

Hon. Senators, accordingly, the decision of the National Assembly to approve a version of the Bill developed by the mediation committee was taken on Wednesday 3<sup>rd</sup> June, 2015 pursuant to Article 113(2) of the Constitution. The approval of the Division of Revenue Bill, 2015 set the stage for the introduction and consideration of the county Allocation of Revenue Bill, 2015 by the Senate.

Hon. Senators, for your information, Article 218(1) of the Constitution states:

At least two months before the end of each financial year, there shall be introduced in Parliament, a County Allocation of Revenue Bill which shall divide among the counties the revenue allocated to the county level of Government on the basis determined in accordance with the resolution in force under Article 217.

I, therefore, urge the House to expeditiously dispense with the Bill.

Thank you.

## NOTICE OF MOTION

### CONSIDERATION OF BUDGET RE-ALLOCATIONS BY THE NATIONAL ASSEMBLY OF MONIES INTENDED FOR KEY CONSTITUTIONAL ORGANS AND INSTITUTIONS

**Sen. Murkomen:** Thank you, Mr. Speaker, Sir. I beg to give notice of the following Motion;

THAT:

WHEREAS on 27th May, 2015, the Mediation Committee on the Division of Revenue Bill, 2015, appointed by the Speakers of the Senate and the National Assembly by letters dated 28th April, 2015 and 27th April, 2015, respectively, concluded its Report on the Division of Revenue Bill, which was subsequently adopted by the Senate at a Sitting held on the same day, 27th May, 2015, and by the National Assembly at a Special Sitting of 3rd June, 2015;

AND WHEREAS the Mediation Committee in its Report proposed an increase in the allocation to the counties by a total of Kshs3.3025 billion, as follows-

- (a) Shareable Revenue – Kshs1.767 billion; and
- (b) Allocation for Level 5 Hospitals – Kshs1.536 billion;

AND FURTHER WHEREAS at its Sitting of 3rd June, 2015, the National Assembly considered the Report of the Budget and Appropriations Committee on the Estimates of Revenue and Expenditure for the Financial Year 2015/2016 and resolved to re-allocate various monies intended for key constitutional organs and institutions, including -

- (a) Capital Allocations for the Judiciary – a reduction of Kshs800 million;
- (b) Recurrent Allocations for the Salaries and Remuneration Commission – a reduction of Kshs200 million;
- (c) Allocations for the Integrated Financial Management System – a reduction of Kshs325 million; and
- (d) Monies intended for monitoring and evaluation of national revenue allocated to the County Governments – a reduction of Kshs1 billion;

NOTING that from their express pronouncements as broadcast on live national television and as appears in the Official Report (HANSARD) of the proceedings of the National Assembly of that day, Members of the National Assembly were clear that their decisions on the re-allocations were motivated by bad faith and by a desire for revenge or punishment of the affected constitutional organs and institutions for actions or decisions taken by those organs and institutions in accordance with the Constitution and the law;

AND NOTING in particular, that in the case of the Judiciary, and despite the existence of formal and established channels to challenge decisions of the courts, reference was made to the decision of the courts in the Constituencies Development Fund (CDF) matter as well as the Division of Revenue matter with aspersions being cast on the decisions delivered by the court in those matters and on the independence of the Judiciary in the preparation and delivery of its rulings and judgments generally;

AND FURTHER NOTING that some of the reductions, particularly those directed at the Integrated Financial Management System (IFMIS) and the Senate Oversight Kitty, targeted key oversight functions at both the national and county levels of Government;

AND NOTING that despite the express provisions of Article 218 of the Constitution and the Advisory Opinion of the Supreme Court in Supreme Court Reference No. 2 of 2013 on the processing of a Division of Revenue Bill, concern was raised by the National Assembly on the role of the Senate in the consideration and passage of a Division of Revenue Bill with erroneous arguments being made that the consideration of a Division of Revenue Bill is a function that resides solely with the National Assembly and that the Senate ought not to participate at all in the consideration and passage of such a Bill;

CONCERNED that the reductions as made are a threat to the independence and impartiality of the affected constitutional organs and institutions in the execution of their respective mandates;

FURTHER CONCERNED that going forward, as a result of these reductions and the basis on which they were made, constitutional organs and institutions may be compromised in their independence and impartiality in a bid to safeguard the allocation of monies made to them in subsequent financial years;

COGNIZANT that pursuant to Article 3 of the Constitution, every person has an obligation to respect, uphold and defend the Constitution;

FURTHER COGNIZANT that pursuant to Article 221 of the Constitution, the National Assembly has the mandate of considering and approving the estimates of revenue and expenditure of the national Government for each financial year, which mandate is to be executed in accordance with Article 10 of the Constitution which provides for national values and principles of governance which, amongst others, include “patriotism”, “the rule of law” and “good governance”;

OBSERVING FURTHER that the mandate of the National Assembly under Article 221 should be executed within the confines of Article 259(1) of the Constitution which requires that the Constitution be interpreted in a manner that “promotes its purposes”, “advances the rule of law”, “permits the development of the law” and “contributes to good governance”;

NOW THEREFORE, THE SENATE -

REITERATES AND RE-AFFIRMS the commitment of the Senate in terms of Article 3 of the Constitution, to respect, uphold and defend the Constitution;

FURTHER REITERATES AND RE-AFFIRMS the commitment of the Senate, despite the re-allocations effected and the adverse effects that the re-allocations are calculated to have on its operations, to zealously continue to discharge its mandate under Articles 94 and 96 of the Constitution and, in particular, to protect the interests of the counties and their governments and to exercise oversight over the national Government and the counties and their governments in the manner set out in the Constitution;

REITERATES AND RE-ASSURES the national Government and the counties and their governments that the Senate shall never waver in the discharge of its role under Article 96 of the Constitution and shall always, in good faith, steadfastly, diligently and robustly prosecute that role and in so doing shall resist any overt or covert measures or actions calculated to undermine, subvert or repudiate the Senate’s constitutional role and devolution as a whole;

CALLS UPON all constitutional organs and institutions adversely affected by the re-allocations to steadfastly continue to discharge their constitutional functions without fear or favour;

REITERATES AND AFFIRMS that in accordance with Article 160 of the Constitution, in the execution of its functions, the Judiciary is subject only to the Constitution and the law and shall not be subject to the control or direction of any person or authority, including the Legislature;

REITERATES the critical role of constitutional Commissions in our democracy and further reiterates that such Commissions are, in terms of Article 249 of the Constitution, independent and are not subject to the direction or control of any person or authority, including the Legislature;

CALLS UPON all constitutional organs and institutions to execute their respective constitutional mandates in utmost good faith and without vendetta, ill-will or bias and in accordance with the national values and principles set out in Article 10 of the Constitution, while observing Article 259(1) of the Constitution;

FURTHER CALLS UPON all organs and institutions, the National Assembly in the particular, and the people of Kenya at large, to abide by the Constitution and by its values and principles and to always respect, uphold and defend the Constitution.

AND RESOLVES to establish a Select Committee to inquire into these matters within three months and to recommend to the Senate such constitutional, legal or institutional changes that it may consider appropriate.

Mr. Speaker, Sir, I am aware that the hon. Senators may not have the amended version, particularly the last paragraph that I read. I just need to inform them that it was amended with your permission.

Thank you Mr. Speaker, Sir.

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

## MOTION

### CONSIDERATION OF BUDGET RE-ALLOCATIONS BY THE NATIONAL ASSEMBLY OF MONIES INTENDED FOR KEY CONSTITUTIONAL ORGANS AND INSTITUTIONS

**Sen. Murkomen:** Mr. Speaker, Sir, we must read the Motion as required by the law but considering how long it is--- In obeying the Standing Orders, I will read. Sen. Sijeny was not there when I was reading it so she can benefit now.

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

THAT:

WHEREAS on 27<sup>th</sup> May, 2015, the Mediation Committee on the Division of Revenue Bill, 2015, appointed by the Speakers of the Senate and the National Assembly by letters dated 28<sup>th</sup> April, 2015 and 27<sup>th</sup> April, 2015, respectively, concluded its Report on the Division of Revenue Bill, which was subsequently adopted by the Senate at a Sitting held on the same day, 27<sup>th</sup> May, 2015, and by the National Assembly at a Special Sitting of 3<sup>rd</sup> June, 2015;

AND WHEREAS the Mediation Committee in its Report proposed an increase in the allocation to the Counties by a total of Kshs3.3025 billion, as follows-

- (a) Shareable Revenue – Kshs1.767 billion; and,
- (b) Allocation for Level 5 Hospitals – Kshs1.536 billion;

AND FURTHER WHEREAS at its Sitting of 3<sup>rd</sup> June, 2015, the National Assembly considered the Report of the Budget and Appropriations Committee on the Estimates of Revenue and Expenditure for the Financial Year 2015/2016 and resolved to re-allocate various monies intended for key constitutional organs and institutions, including-

- (a) Capital Allocations for the Judiciary – a reduction of Kshs800 million;
- (b) Recurrent Allocations for the Salaries and Remuneration Commission – a reduction of Kshs200 million;
- (c) Allocations for the Integrated Financial Management System – a reduction of 325 million; and
- (d) Monies intended for monitoring and evaluation of national revenue allocated to the County Governments – a reduction of Kshs1 billion;

NOTING that from their express pronouncements as broadcast on live national television and as appears in the Official Report (HANSARD) of the proceedings of the National Assembly of that day, Members of the National Assembly were clear that their decisions on the re-allocations were motivated by bad faith and by a desire for revenge or punishment of the affected constitutional organs and institutions for actions or decisions taken by those organs and institutions in accordance with the Constitution and the law;

AND NOTING in particular, that in the case of the Judiciary, and despite the existence of formal and established channels to challenge decisions of the courts, reference was made to the decision of the courts in the Constituencies Development Fund matter as well as the Division of Revenue matter with aspersions being cast on the decisions delivered by the court in those matters and on the independence of the Judiciary in the preparation and delivery of its rulings and judgments generally;

AND FURTHER NOTING that some of the reductions, particularly those directed at the Integrated Financial Management System and the Senate Oversight Kitty, targeted key oversight functions at both the national and county levels of Government;

AND NOTING that despite the express provisions of Article 218 of the Constitution and the Advisory Opinion of the Supreme Court in Supreme Court Reference No. 2 of 2013 on the processing of a Division of Revenue Bill, concern was raised by the National Assembly on the role of the Senate in the consideration and passage of a Division of Revenue Bill with erroneous arguments being made that the consideration of a Division of Revenue Bill is a function that resides solely with the National Assembly and that the Senate ought not to participate at all in the consideration and passage of such a Bill;

CONCERNED that the reductions as made are a threat to the independence and impartiality of the affected constitutional organs and institutions in the execution of their respective mandates;

FURTHER CONCERNED that going forward, as a result of these reductions and the basis on which they were made, constitutional organs and institutions may be compromised in their independence and impartiality in a bid to safeguard the allocation of monies made to them in subsequent financial years;

COGNIZANT that pursuant to Article 3 of the Constitution, every person has an obligation to respect, uphold and defend the Constitution.

FURTHER COGNIZANT that pursuant to Article 221 of the Constitution, the National Assembly has the mandate of considering and approving the estimates of revenue and expenditure of the national Government for each financial year, which mandate is to be executed in accordance with Article 10 of the Constitution which provides for national values and principles of governance which, amongst others, include “patriotism”, “the rule of law” and “good governance”;

OBSERVING FURTHER that the mandate of the National Assembly under Article 221 should be executed within the confines of Article 259(1) of the Constitution which requires that the Constitution be interpreted in a manner that “promotes its purposes”, “advances the rule of law”, “permits the development of the law” and “contributes to good governance”;

NOW THEREFORE, THE SENATE-

REITERATES AND RE-AFFIRMS the commitment of the Senate in terms of Article 3 of the Constitution, to respect, uphold and defend the Constitution;

FURTHER REITERATES AND RE-AFFIRMS the commitment of the Senate, despite the re-allocations effected and the adverse effects that the re-allocations are calculated to have on its operations, to zealously continue to discharge its mandate under Articles 94 and 96 of the Constitution and, in particular, to protect the interests of the counties and their Governments and to exercise oversight over the national government and the counties and their governments in the manner set out in the Constitution;

REITERATES AND RE-ASSURES the national government and the counties and their governments that the Senate shall never waver in the discharge of its role under Article 96 of the Constitution and shall always, in good faith, steadfastly, diligently and robustly prosecute that role and in so doing shall resist any overt or covert measures or actions calculated to undermine, subvert or repudiate the Senate’s constitutional role and devolution as a whole;

CALLS UPON all constitutional organs and institutions adversely affected by the re-allocations to steadfastly continue to discharge their constitutional functions without fear or favour;

REITERATES AND AFFIRMS that in accordance with Article 160 of the Constitution, in the execution of its functions, the Judiciary is subject only to the



Constitution and the law and shall not be subject to the control or direction of any person or authority, including the Legislature;

REITERATES the critical role of constitutional Commissions in our democracy and further reiterates that such Commissions are, in terms of Article 249 of the Constitution, independent and are not subject to the direction or control of any person or authority, including the Legislature;

CALLS UPON all constitutional organs and institutions to execute their respective constitutional mandates in utmost good faith and without vendetta, ill-will or bias and in accordance with the national values and principles set out in Article 10 of the Constitution, while observing Article 259(1) of the Constitution;

FURTHER CALLS UPON all organs and institutions, the National Assembly in particular, and the people of Kenya at large, to abide by the Constitution and by its values and principles and to always respect, uphold and defend the Constitution;

AND resolves to establish a Select Committee to inquire into these matters within three months and to recommend to the Senate such constitutional, legal or institutional changes that it may consider appropriate.

Mr. Speaker, Sir, we passed our new Constitution in 2010 and the people of Kenya consciously agreed that the old order must give way to the new order. In that new order, we agreed that the old order that believed in absolute power and lorded power upon other citizens of this Republic and upon other institutions must give way to a new institutional order that requires servant leadership.

That requires that, as Chapter Six of the Constitution says, that we will not be lords over the people of Kenya and their institutions but be servants to them. When we did so, the people of Kenya also agreed that the governance of this nation shall not be done at the centre; that there shall be institutions of accountability in this country. We, therefore, agreed that we will have a devolved system of Government and it does not mean counties. It is larger than counties. Counties provide one of the avenues of ensuring that devolution occurs.

The principles of devolution under Article 10 of the Constitution permeate both levels of Government. The existing institutions that were there like the National Assembly, national Government and Ministries of the national Government were required to calibrate themselves and change to fit in the new order. For those of us who go to church, it would be like saying that all those institutions that existed before 2010 must be born again to enter into the new order that is the new constitutional order of this new Republic.

Mr. Speaker, Sir, when we formed these new institutions, a devolved system of Government was critical and many people may never understand why it is necessary to have the Senate. I would invite them to read a paper that I co-authored with a staff of the National Assembly about the role of the Senate and bicameralism. In my research at that time and in my further research, I established that there can be no counties without the Senate or Senate without counties. Any person who attacks the Senate attacks counties and the other way round. The Senate was created because of one important aspect; that

although in the National Assembly there is equal representation; constituencies were created almost like equal entities.

The Senate was created so that we can have equitable representation. That is why in the Senate, Lamu County has one vote just like Kakamega County which has 12 constituencies. It is understood that although Kakamega County in the National Assembly has an equal representation, it gets equitable representation here to ensure that at least Lamu County with the smaller representation in the National Assembly, will have a say and protection in the Senate.

The Senate is here as a very important organ. Let me say this for the benefit of the nation; it is only this House that has a super majority in making any decision that is affecting counties. Many Kenyans may never know that for every decision we make in this House, it has to get over 50 per cent support of the Senate. That is why many people wonder why we have to wait until we have the representation of 24 counties and above before we vote. This House respects the Constitution and is created as such to ensure that there would be no time that 10 Senators sitting here or a majority of the 10 would make a decision. Every decision that this House will make that affects counties will be done by the majority of the Senate and, therefore, despite the fact that the quorum of the House would have been 15, it is mandatory that this House will have 24 Senators and above for it to make a decision. Therefore, it is a principle that was carefully crafted and put there to protect the institutions of this country.

Mr. Speaker, Sir, many Kenyans have also asked me why the Senate requires a special sitting to make deliberations on matters that have occurred in the recent past that assaulted independent institutions. I told them that although we make pronouncements in churches, funerals and *barazas*, such pronouncements have no effect until this House pronounces itself in a formal sitting like this one.

We take seriously the requirements that this House has the responsibility of sitting down and defending the Constitution. It includes making pronouncements that are in support of that Constitution; pronouncements that will take effect can only be made inside this House and formally by a vote that will be taken by Senators later this afternoon.

We are here today, dully constituted at a very critical time of our nation, so that we can make pronouncements that are going to protect devolution as well as the place of the Senate and independent institutions.

Mr. Speaker, Sir, it is important to remind the nation that between 1963 and 1967, we had a working Senate. In my research, I found that the way the Senate was wound up just after independence was first started with pronouncements that initially looked good and in support of reduction of financial expenditure. There was even a time that Hon. Tom Mboya then, a man I dully respect, made pronouncements and said that a young country like Kenya required a strong president, sort of an African chief, so that we do not have these institutions that are scattered all over. I am seeing these arguments coming back. Some people say that we need only one institution that can give orders to the others because they do not want to live by the tenets of democracy. That is a misrepresentation of the old African governance system.

The truth is, if you go to the history of the people of Turkana, Kalenjin, Luo and Kikuyu, the old traditional system of democracy of African system had a proper way of debating and allowed everybody to speak. Decisions were made based on consensus, there was an appreciation of equity and everybody was given a chance. Those of us who have read Nelson Mandela's book, *The Long Walk to Freedom*, will find a proper description of what used to happen among the Xhosa people which also happened in many communities in this country. We must appreciate that now under this new order, we have a system that separates and distributes power and gives it as a responsibility to those who have been elected to carry them out.

What we saw is very saddening. The Senate and the national Government's IFMIS, the Salaries and Remuneration Commission and the Judiciary were created by the Constitution to serve the people of Kenya. They were given certain independence required by the law so that they could not be subject to any direction by this House, the National Assembly or the national Government. This is because Kenyans understood that if you give too much power to one institution, it can be easily abused.

Mr. Speaker, Sir, it is very sad that money that was allocated to this House for purposes of carrying out responsibilities of oversight under Article 96 could be slashed on account that this House fought for more resources to serve all Kenyans at the local level. It could have been an excuse if we allocated ourselves or an individual any money. However, we need to explain to the nation that as a result of that decision, Kshs1.536 billion went to 11 Level 5 Hospitals which are spread over the country in Kisumu, Nakuru, Mombasa, Nyeri, Nairobi, Kisii, Embu and Garissa.

When the Majority Leader of the National Assembly presides over a system or a leadership in the National Assembly, attacking and denying this House money for oversight yet the hospital next to his house in Garissa got an allocation of Kshs1.536 million, what exactly are we projecting to the nation? This House has been crucified as a result of trying to save lives at the local level and ensuring that mothers of this nation will give birth in properly equipped hospitals.

Mr. Speaker, Sir, it is important to make it clear that people who suffer from snake bites in Garissa have got an extra allocation of Kshs1.536 million so that they can get medicine in Garissa County. Therefore, the Chairperson of Finance, Planning and Trade Committee of the National Assembly should not have issues with this House. He should appreciate that his own constituency within Embu County has been allocated a share of Kshs1.536 billion so that those who voted for him into leadership position get money at a local level.

Mr. Speaker, Sir, Kshs1.767 billion was shared equitably, according to the formula, to go to the counties. That is why I have great joy. Like Apostle Paul, I can say here that I am glad in my suffering that if we lost the Kshs1 billion so that the people of Elgeyo-Marakwet get a particular share of the national revenue, then the suffering is not just for a loss but a suffering for the benefit of the people of Kenya. That message should get to our brothers and sisters. What was the Kshs1 billion supposed to do? Some people said that this House should have been denied the money. The Kshs1 billion was supposed to oversight almost Kshs300 billion going to the counties.

Mr. Speaker, Sir, last week on Wednesday, we were in Tana River with my Committee. We officially addressed the Tana River County Assembly. When we went for a *Kamukunji* with the Tana River County Assembly, the County Assembly said that it appreciates the Senate for the work it has done in ensuring that they build the capacity and complement county assemblies in matters of oversight. However, it requested us to find a way of ensuring that there are enough resources for their Senator, Sen. Bule, to play a role of bringing people together in the county so that they can collectively carry out oversight of their resources. They requested for complementary work of this House in Tana River so that about Kshs4 billion allocated to Tana River County can be properly used. I am not saying that they are misusing the money. However, there is need for all resources at the local level to be properly oversighted.

Mr. Speaker, Sir, I want to report here that there is good news in this country in certain county assemblies. In its budget, Tana River County Assembly has allocated Kshs7.5 million to the Office of the Senator so that it carries out oversight in the county. What a wonderful county assembly recognising the complementary responsibility of the Senate? Therefore, Sen. Bule, however quiet he may be sometimes here, is recognised by his County Assembly to carry out an important oversight function. If he is given recognition by Tana River County Assembly, how much more should have the National Assembly of the Republic of Kenya – which has called upon the Senate to carry out oversight in the counties –in ensuring that the Senate gets enough resources to oversight.

Mr. Speaker, Sir, not all counties are like Tana River County Assembly. In Elgeyo-Marakwet, I have nothing to oversight the county government. I thought that with this allocation, I would call together various stakeholders in the county; explain to them the role of the budget, the amount of money allocated to the county and how we can collectively carry out oversight responsibilities. However, we have been denied that.

Mr. Speaker, Sir, as we have said here, we will continue to perform our functions robustly with meagre resources. The people of Kenya need us to carry out even more robust work. We thought that the Kshs1 billion allocation to the Senate to carry out oversight was the beginning. Oversight was to ensure that the complementary work of Sen. (Prof.) Anyang'-Nyong'o in Kisumu County in terms of assisting the county assembly, training the county assembly and bringing together different stakeholders in the county would make a difference.

Mr. Speaker, Sir, we knew that that money was little. However, a journey of a thousand miles must start with one step. We believed that that was the right step. The National Assembly Committee believed it was the right step until we allocated more money to serve people at the local level. However, the National Assembly changed its mind that it was not the right step initially to allocate this House Kshs1 billion for oversight.

Mr. Speaker, Sir, that reminded me of a biblical story of a man called David. King David, one day, went for Uriah's wife. Uriah had one beautiful wife. One day, King David admired Uriah's wife and went for her. God sent Prophet Nathan to go and see King David. Prophet Nathan gave a story which was a parable to King David about a certain man who only had one goat. However, there was another one who had over a

hundred goats. The man who had a hundred goats got a visitor. He decided to go to the home of the man who had one goat, took it by force and slaughtered it to feed his visitor. Prophet Nathan asked King David what he could have done to a man who did such a thing despite the fact that he had over a hundred goats. Because it was a parable, not directly talking about him, King David shouted and said that such a person must be arrested and hanged.

Mr. Speaker, Sir that is exactly the case. We had only one goat allocated to us. However, the National Assembly, despite allocating itself over Kshs35 billion decided that it was better to slaughter the one goat for the Senate for their visitor. I do not want to say that they deserve to be hanged. However, a punishment will be from the people of Kenya to those denying governance institutions their responsibility to carry oversight. We tell our people, like king David was told, that they must change their ways and see the light as early as possible because they have failed in their responsibility to carry out the power with honour and dignity.

Mr. Speaker, Sir, the National Assembly, of course, rightly, did what it did. What it did becomes one of the worst decisions. However, this House, the Senate, is the “Upper House”, the House of reason and the sober House. Today, we came here not to write another chapter of “Lamentations”. There is already a Book of Lamentations in the Bible written by Jeremiah. We came to preside over making a decision that will have profound impact and change in this nation forever. Let today – I request Senators – become a moment of reflection that will allow us to make decisions going forward.

When Kenyans look back 50 years down the line, let them say that the Senate of Kenya sitting down at such a time made a decision that strengthened the House going forward. Therefore, that is why I am very happy that this House has reiterated its responsibility to support independent offices. We have reiterated our commitment to work robustly and ensure that we respect the courts.

Mr. Speaker, Sir, we have been affected by courts’ decisions several times but we have restrained ourselves. We have made carefully chosen pronouncements here; pronouncements made by senior counsel like Sen. Wetangula and Sen. Wako who were jurists of respectable international repute. We have been careful in choosing our words, appreciating that although we are allowed to critique – we can critique the courts for whatever decisions they make – however, we cannot mete out punishment on independent offices.

This House has critiqued the CIC Chairman for certain pronouncements that we have said that we do not agree with. But to go ahead and say that you will punish Mr. Nyachae for purposes of what he has done and for declaring that he will go to an independent office of the courts, what does that mean? It means that you are trying to scare the judges by telling them that should you make another decision, next year, you will not get your salaries; should you make another decision next year, we will ensure that you will not even have a secretary; should you make a decision the next year, we will ensure that you do not have a researcher. What kind of a nation are we going to establish if we are going to scare institutions?

This House has made pronouncements and disagreed with the Sarah Serem Salaries and Remuneration Commission (SRC) for many reasons, including being unable to protect the county assemblies when they are actually being denied resources, but this House cannot go ahead and deny resources to the SRC so that they do not function. We must look at institutions beyond the individuals who are in that office at that moment. We must look at institutions and appreciate that the SRC is performing a particular important role of ensuring that the counties do not have a runaway recurrent expenditure.

We have been saying here that we want more development expenditure at the counties. If the SRC was not there, I can tell you today that none of the counties would have spent money on development. If SRC was not there, there would be no checks that politicians like us need so that we do not increase our resources unchecked. You need oversight; you need someone who will tell you: “Wait a minute, you need to stop here”. You need someone, that if you want to make a decision you go and negotiate for them to understand the sense. To say that you want to rubbish these institutions because they are performing their oversight functions is a measure of irresponsibility and pride. It is a measure of arrogance that can never assist this country. We were elected to be servants and not to be arrogant to the people of Kenya. We were elected not to vomit on the shoes of the people who elected us. We were elected so that we can respect them and be their juniors.

Mr. Speaker, Sir, I have often quoted the Bible; in Mark 9.35, Jesus said that whosoever wants to be great must humble himself like a small child. That is the only way we can be able to serve this nation with a measure of humility. Permit me to say this without really disrespecting the Rev. Mutava Musyimi: He is a Reverend who actually preaches the gospel. The same gospel I have quoted in Mark 9.35 is the same one that Rev. Mutava Musyimi preached. In fact, it is the same one that he used to call people to the altar telling them: “Come yee to Jesus and be meek”. I was so saddened to see how politics has changed the good Reverend to the extent that he has become what he has become. I want to remind him that in Revelation, the Bible says: “Come back to your first love”. He should come back to his past ways; the Reverend he was.

Such an institution being chaired by such a person requires humility because there is a lot of power bestowed on him and the Committee. He requires a certain level of humility so that we can serve this nation with honour. When we become faithful to the letter, we can be elevated to greater things. This is why in this House you see great men; people who have been Ministers for many years like Sen. Obure who is sitting there with a lot of humility advising some of us; there is Sen. Wako who has been an Attorney-General for a long time; he is sitting here with a lot of humility. That lesson should permeate to other institutions; that it is important that we have this kind of humility if we want to take this nation forward.

Mr. Speaker, Sir, I do not want to tire the House with a lot of stories, but I want to conclude by saying that this House must not just pronounce itself here. Our pronouncement is an affirmation that we believe in the Constitution. It is an affirmation that we believe in constitutional order. It is an affirmation that we believe in the funding of the counties. There is no better way to demonstrate that than to show here that this

House has received about four impeachments; the Governor of Kericho, the Deputy Governors of Machakos and Embu and the impeachment of Governor Wambora. In all those cases, the Senate, despite the fact that we had so many disagreements with the Governors and those presiding over our resources at the counties, we remained humble, carefully looked at the law and the facts and freed three of the four people brought to this House for impeachment. Had we been convinced that even Governor Wambora was innocent, we would have freed him.

Going forward, even if a matter comes to this House that involves the National Assembly and the facts are in favour of the National Assembly, this House will make a decision in favour of the National Assembly because we believe that we must carry out this responsibility as we know we are stewards and not Lords. We know that we are trustees and not the owners of the institution that we have as a Senate. It is an institution of the people of Kenya and we must use it for the benefit of the people of Kenya, in honour of the people of Kenya.

Therefore, having made this pronouncement, we must move forward in the establishment of the Select Committee that we have agreed to establish. This Select Committee must come back to this House with certain legislative amendments that they think are necessary in strengthening the Senate and other institutions. The Committee must come back to this House with certain constitutional amendments that they think that we can carry out to ensure that this House becomes strong.

Mr. Speaker, Sir, as a Jubilee Senator, I want to make it abundantly clear that there are those people who have gone round saying that in the Jubilee side, Sen. Murkomen or any other person does not support the amendment of the Constitution. That is not the truth. There are those who have said that those who are in the Jubilee side do not support a referendum. That is not true. The true position – we have said it over and over again – we believe that if we have to strengthen devolution, there must be certain constitutional amendments that will strengthen this House. We believe that if we have to strengthen the Constitution, there must be constitutional amendments that will ensure that we make devolution stronger in this Republic.

What we have only disagreed with our colleagues is the timing. There are those of us who say that these amendments should wait and we together prepare the necessary amendments, but in 2017, as we vote during the elections, we can also vote for changes in the Constitution. There are those who are saying that we must do that before then. The Select Committee we are forming now must look for that middle ground on an agreement on time, because both sides of this House agree that the Constitution must be amended and the Senate must be strengthened. All of us must sit down and agree on the timing so that it is relevant and necessary in strengthening this House. We can be worried so much--

**Hon. Senators:** The time is now!

**Sen. Murkomen:** Mr. Speaker, Sir, I am hearing shouts from my side saying that the time is now.

Those of us who have served in the first Senate under the new Constitution have a greater responsibility than those who have not served in this Senate. I am almost

definitely sure that not all of us are coming back to this House after the next elections. Some will desire to retire while some will desire to serve in other capacities. Let it be that the only legacy that the first Senate under the new Constitution will leave in the Republic of Kenya will be the legacy that will say: “We left Senate better than we found it; we left the institutional framework of the Senate stronger than we found it; we left the institutions of devolution stronger than we found them.

When our children and our grandchildren will read the history of this House, they will say that there was a Sen. Murkomen who spoke on a given day and believed that greater is the responsibility to strengthen this House than the responsibility for political reasons and that there was a Sen. Khalwale in this House who was willing to move from his position and come to the middle ground with Sen. Murkomen and together they changed the institution of the Senate. That is the language we must speak to Kenyans and that is the institution we must establish. As Mandela said “It is a dream that we must all be willing to live for and if need be, it must be a dream that we must be ready to die for.”

Mr. Speaker, Sir, I beg to move and invite the Senate Minority Leader to second.

*(Applause)*

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, listening to Sen. Murkomen reminds me of the Bible book of the Acts of the Apostles and of a man called Saul who, when he was on his way to Damascus, he was struck by lightning. I wonder whether Sen. Murkomen was struck by lightning this weekend. We now call him Paul.

*(Laughter)*

Mr. Speaker, Sir, when we were children we used to be told that there is a group of small men with big heads in Congo called pygmies. When you meet a pygmy, he will ask you “Where did you first see me?” You have to tell him “I saw you 10 kilometres away towering over every tree.” Then he will say “you are a good man, go on.” If you tell him “I have just seen you here,” he will knock you down. History tells us that men of small stature have difficulties in human relationships. They are vindictive, pernicious, and malicious and do all the wrong things for all the wrong reasons.

Mr. Speaker, Sir, I listened to the debate in the National Assembly and coincidentally if you look at a man called Mr. Mutava Musyimi, he is of very small stature and falls within those vindictive characters in human life. I witnessed a speech from Rev. Musyimi that shocked me. This is a man who has masqueraded for a long time as a Church Minister; a man who has worn the collar and stood before the altar and purported to preach the word of God, love, peace and unity yet I saw this man assaulting national constitutional institutions. I remembered what Jesus said, that those who stand on the street corners and proclaim their righteousness will never see the Kingdom of God. Musyimi is one of them.

*(Laughter)*



This House is not seeking favours and sympathy. It is fighting to defend the Constitution of the Republic of Kenya. You cannot allocate Kshs283 billion to the counties and refuse to allocate Kshs1 billion to oversight how that money is being used. There is another man in the National Assembly called Aden Duale who talks endlessly.

*(Laughter)*

**An hon. Senator:** He is your friend!

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I also saw him saying that the money being allocated to the Senate was for Senators to go and hold public rallies anywhere and everywhere. How false can that be? We urge our colleagues in the National Assembly to learn from the follies of history. After every election, 75 per cent of them are thrown out. Many of them are on that highway. They are dancing themselves lame before the main dance comes. When the main dance comes, wananchi will show them the way.

Mr. Speaker, Sir, this morning, I took the unusual step of calling the Cabinet Secretary for the National Treasury, Mr. Henry Rotich. He told me that he had been given the impression by the National Assembly that the Kshs1 billion for the Senate had no rules and structures to govern it and no way of being managed in a manner consistent with the management of public funds. Again, this is a falsehood. This is because there is a Committee in this Senate chaired by Sen. Kiraitu Murungi. The “King of Meru” sitting in this Committee with me and many others has designed rules and has sat with the Director of Parliamentary Budget Office (PBO). They have made it very clear. Looking at this Senate, I do not see any Senator who will put his hand in the till in furtherance of an oversight. I can say without any fear of contradiction, there is no single Senator in this Senate who can be given money to vote in a certain way or make a decision in one way or another. These are distinguished men and women of this country.

*(Applause)*

Mr. Speaker, Sir, we have cases down there which we know, where things have not happened in the manner they should and we do not say but now we have reached a level where as the good old saying in Latin goes “*quis custodiet ipsos custodes?*” Who will watch the watchers? Who will guard the guards? The National Assembly has enormous powers under the Constitution. When you go to the Animal Kingdom, the biggest animal; the elephant, will never trample on a rat, a rabbit or an antelope. The biggest animal in the wild is the politest animal in the wild. Here we have a bloated image of persons who think that they are the Alpha and the Omega.

I heard Rev. Musyimi say “Take out money from the Judiciary because they are now embracing activism.” How can that be a reason for denying money to a constitutional office? “Take out money from Ms. Serem because she has been telling us not to increase salaries.” How can that be a reason to deny a constitutional office their

money? As Sen. Murkomen said, I saw another Member of Parliament (MP) saying “We will disband the Commission for the Implementation of the Constitution (CIC) and send Mr. Nyachae home because he has said that we made a wrong decision.” Where is this country heading? As we always say; I may not like what you say but I will put my life on the line to defend your right to say it.

The National Assembly of this country has a responsibility to act above board on every matter. We went to mediation and this House chose some of our very good Senators; the distinguished Senators for Nyeri, Kakamega and the distinguished Nominated Senator and Chief Whip across the Floor. We advised them that you do not go to negotiate from a fixed position. We wanted the Kshs7 billion we had allocated to hospitals but the art of negotiation is “you give and take.” They agreed on the figure and even agreed on where that money will be sourced from. That money was not going to be sourced from the Senate, the Salaries and Remuneration Commission (SRC), the Judiciary or the Integrated Financial Management Information System (IFMIS). They had identified where the money will come from.

The reasons the National Assembly acted the way they did against the Judiciary is because of the decision on the Constituencies Development Fund (CDF). They acted against the Salaries and Remuneration Commission (SRC) because they keep on telling them: “Do not increase your salaries.” They acted against the Senate because of a misguided feeling that the Senate has greater respect, which we are very proud of and is a House of reason. I want to urge the Senate to remain so, so that out there--- I received a call from the Governor of Kericho after the impeachment proceedings and he told me:-

“Senator, I sat in the Gallery and watched the Senate debate my matter. Whichever way you decided, I left going home knowing that in the Senate, we have a future and country.” I was very touched. This is a man whom we could have sent home, as a Governor, but we looked at the evidence and found that, that was tenuous and we could not do that. I want this House to remain in that capacity.

Mr. Speaker, Sir, yesterday I visited Bungoma County Referral Hospital in my county. What I saw would move even the heartless to shed tears. Bodies of dead people have been lying on hospital beds for over 24 hours. Patients told me that flies come from the dead bodies and land on their food as they are eating. The entire hospital – a referral hospital in the third largest county in the country – has no single doctor. Those who are attending to the patients are young boys and girls from the local Medical Training College (MTC). There is not a single mosquito net. Recently, the county governments brought in equipment for the theatre from India. Three months later, they are all dysfunctional. I am sure that this is replicated almost in every other county.

This is why the distinguished Senator for Kajiado should in every sense visit almost all health facilities in his county, to see whether or not they are working. He should go and see whether or not the roads being constructed are giving us value for money. We should go to our counties and see whether the Early Childhood Development (ECD) classrooms that are being built--- I visited one in my county and saw that it is half the normal classroom, barely finished and has cost three times the cost of building a normal classroom. This is what we are asking the Senators to do. The Constitution gives

us the mandate to oversight the counties. I was talking to a Maasai friend of mine and he said:-

“You know, even if you are a father of a home and you slaughter a goat for a mama to feed the children, surely, you can come back and ask how it was distributed.” You cannot be told that, that is hogwash.

Mr. Speaker, Sir, this Senate must stand together. In these matters, there is no “across the Floor.” You either hang together or hang separately. Either way, you are hanging. We must now come together. I want to remind Sen. Murkomen to go and read the book *Song of Lawino* by Okot P’Bitek, where he says: “There is no fixed time for breastfeeding; children are fed when they cry.” Now that we are crying, this is the time for the change of the Constitution, so, let us not talk about the timing. Let us move and change the Constitution and give this Senate the authority it deserves.

Mr. Speaker, Sir, we want to urge you, as our Speaker, that this so-called turf wars are not good for this country. There is a very good saying that when you see a dog barking, do not concentrate on it; look for its owner. Hon. Musyimi and Hon. Duale have owners. They are not just barking. We must look round and see whether they are speaking belligerently, rudely and unpatriotically because they have a force behind him. This is because they are not the sun. The moon only radiates the light from the sun. Hon. Duale and Hon. Musyimi are just but the moon. When there is no sun, you will not see the moon. We must go behind and see where this sun that is radiating the light to hon. Duale and hon. Musyimi is.

If you want to know how these people have gone drunk, you should have watched the debate of the House on Dr. Monica Juma. I was disturbed. Even when hon. Duale purported to move a Motion to amend the Motion, you could see that his body language was not in it. He was just playing games. He went into polemics and by the time he said “I move the Motion” his time was up, and there was no Motion moved. In a heckling match, they denied one of the most distinguished ladies in this country a chance to work for this country, for reasons that are not reasons; totally flippant and flimsy.

The letter that they used to deny Dr. Monica her job is, in fact, addressed to the Senate. If you look at the newspapers today, they have reproduced it and it is addressed to our Clerk. So, if there are any people to complain about Dr. Monica, it should be the Senate, but we have no business complaining. The reason Dr. Monica is being punished is because she has closed the ATM at the Office of the President. That is where people walk in and walk out with bulging envelopes, and she has said “no.” We, on this side, are very critical about the way the Government does things, but for the first time, we saw that the President had nominated somebody who fits the bill.

Mr. Speaker, Sir, we want Kenyans to know that the National Assembly is letting the country down. In the matter of Dr. Monica Juma, if you look at that report, they say that she is immensely qualified and has a good academic record. Then, eventually, they say that her relationship with people is bad. A Secretary to the Cabinet is not going to engage in a relationship with people. She is simply going to take minutes of the Cabinet, interpret them and do paperwork. I put it on record here that I head-hunted Dr. Monica Juma and recommended to President Kibaki to appoint her as an Ambassador. The

records show that since Independence, she was the best Ambassador that Kenya has ever had at the African Union (AU). She did a fantastic job, rising to chair the Security Council of the AU. That is the person we are now mistreating, for saying: “Do not troop to my office to ask for money, because I do not have money to give you.”

Mr. Speaker, Sir, I am saying this because in law, we have what we call *ejusdem generis*, “matters of the same nature.” A House that is hell-bent on vindictive behaviour is being vindictive in every direction. In the last vettings, they vetted some lady who had been nominated to go to Canada as an Ambassador. They said that she was immensely qualified and could become an ambassador. When her *agreemos* was sent to Canada, Canada said: “This is not the quality for Kenya to send to us. Take her back. We want a better quality person.” She was rejected and the Government quietly diverted and sent her to Harare, where she is now the High Commissioner. That is the person that the National Assembly had said was immensely qualified. When an immensely qualified person now comes, they say: “She is immensely qualified, but her human relations are bad.” These inconsistencies do not help the country.

I want to urge that the Committee that we want to set up has to look at how to fast-track the move to change the Constitution. One, this Senate should become the “Upper House” properly in the Constitution. Secondly, we should urge the country to move the vetting of appointees of the State that require parliamentary vetting to the Senate. This is because we have seen – luckily they are televised – a person with a stinking record of corruption appearing before a vetting Committee and then a Member of the Committee asks that person:-

“You have been accused of corruption. Can you shed light on this?”

Is that vetting? You have evidence that the man has a stinking record of corruption and instead of confronting him with facts, you ask him to shed light on this? They will eventually say that person is qualified. That is what we are dealing with.

Mr. Speaker, Sir, today we have dedicated ourselves to deal with this matter. That is why we are sitting this morning and this afternoon. We will act in a manner different from that other House. As you preside over our proceedings in this House, you have seen that even at our lowest moments, this House has never degenerated into a heckling match, spilling water on Clerks or into goons masquerading as Members of Parliament (MP) going to the Speakers Gallery to assault people who are sitting there. Sen. Orengo, Sen. (Dr.) Khalwale, Sen. Muthama and I were victims of those goons. They attempted to assault us. Those goons included a woman MP who attempted to assault Sen. Ong’era. When Sen. Ong’era gave her a good look, she froze and walked back.

Mr. Speaker, Sir, we, as the Senate, want to bear and owe our fidelity to the Constitution as the Motion says. The Judiciary can pass judgment against us, but the avenue for us is to go to the higher court for an appeal. Let us, as leaders of this country today, send a warning that if the National Assembly feels that the Senate is not entitled to a small fund to carry out its oversight role, then they will be in for a rude shock. The High Court made a ruling that CDF is unconstitutional and there will be no CDF without the concurrence of the Senate. Whatever clothing they want to give CDF will still go back to that judgment. This Senate should rise up and say it is either a fund for all or a

fund for none. It is as simple as that. We want CDF to go to the counties, the governors' office. The Senators will oversight how that money will be managed and used.

Mr. Speaker, Sir, with your guidance and leadership in this House, if they pass any misguided Bill because the language they are using is that they will tailor CDF to only focus on national functions, then they are wrong because CDF cannot focus on national functions because its philosophy, genesis and management is of a devolved fund. Therefore, it will remain squarely within the ambit of devolution and under the watchful eyes of the Senate, including the distinguished Senator for Baringo who we hope will be attending sessions and contributing to this as often as we want him to do.

Mr. Speaker, Sir, if a new law will be passed on CDF, this Senate should be ready to go to court if it is passed without passing here because the court said that it must have our concurrence. Our concurrence means it will be passed there and be sent here for debate, passage or rejection. It will then go to mediation. This time round, the Senate may also want to negotiate from a fixed position.

Mr. Speaker, Sir, as I finish, I want to salute one man in the National Assembly called T.J Kajwang. In the mediation, hon. Musyimi attempted in all manner possible, in every way he could, ways that are most unreligious even as he masquerades to be a reverend to get T.J Kajwang to stand with them against the Senate. Hon. T.J Kajwang told them that he comes from CORD which is agitating for more money in the counties. He asked them: How can I deny the counties an extra Kshs7 billion when I am saying they should get 45 per cent of the national budget? We salute him and what he did is not in vain or wasted.

I want to end by saying this and it goes to our President as the authority that assents to Bills that when a Bill has gone through mediation, it is not a private matter. When it is eventually passed and taken to him for assent, the first question he ought to ask or to be advised on is whether the Bill reflects the outcome of the mediation or not. If it does not, then it is not a Bill he should assent to.

The President has been probably tricked because he has so many things to deal with. Sometimes he may be tricked to sign on a dotted line. He believes that the Attorney-General has read things for him and that he is bringing him proper advice. We also want to put the Attorney-General on notice that if he is sleeping on the job, there are ways of dealing with him because we cannot go to mediation on Bill, reach a finding and then a different version from what is mediated on is taken to the President for assent.

Mr. Speaker, Sir, as a matter of procedure and practice, I want to encourage that when a Bill has gone through both Houses and it is taken to the President for assent, it should carry a certificate from each Speaker of each House. This is to show that they are convinced that this is what was agreed by both Houses. That way we will have an orderly way of legislating. However, if the Speaker of one House after passing the Bill, within less than six hours, he sneaks into State House for the Bill to be assented to, even if I was the one to assent, I would ask questions. Why this rush? Why come to me in the night? We have been seeing on television Bills being assented to after working hours. That raises serious questions.

The President should be advised for free by those who know, including Sen. Murkomen, that it is important that he adheres to the Constitution faithfully by respecting the decisions of both Houses. He can only do that not by one Speaker taking documents to him, but by both Speakers taking documents that have gone through both Houses to him. That is the only way this House will also be respected. The views of this House will be taken on board and you as our speaker will be seen and respected as a Speaker who respects the law, due process and what both Houses do. That is why I said that when you hear dogs barking you should look for the owner. When you find the owner you will see that the mischief is, probably, not these two men who are shouting themselves hoarse. We want to send a message to hon. Duale that we are watching him. Hon. Musyimi we are on your tracks in whatever you do.

Mr. Speaker, Sir, as I finish, the same hon. Musyimi, presiding over the Budget and Appropriation Committee last year, fraudulently allocated---

**The Speaker** (Hon. Ethuro): Order, Sen. Wetangula! I think you should call them honourable. They are honourable Members.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, okay. Hon. Musyimi, the Chair of the Budget and Appropriation Committee whose conduct is highly dishonourable.

Last year, he presided over the Budget and Appropriations Committee which purported to allocate Kshs100 million to each Member of the Budget and Appropriations Committee for projects of their choice, over and above the CDF. Is this a man of God? So, one can even go and build a personal residence in his constituency as long as he colours it with "public utility". That is the hon. Member we are talking about. Despite the rules, I am sure that you will agree with me, that the hon. Member is the most dishonourable.

Mr. Speaker, Sir, I beg to second.

**The Speaker** (Hon. Ethuro): Sen. Wetangula, the rules are that you call them "honourable."

*(Question proposed)*

**Sen. Lesuuda:** Mr. Speaker, Sir, thank you for giving me an opportunity to also add my sentiments to this very important Motion. First of all, I want also to congratulate and thank my colleagues, Sen. Murkomen and Sen. Wetangula, for what they have said in this House. I do not know whether it is because yesterday was a Sunday and we are filled with the Holy Spirit. They kept making reference to the Holy Scriptures. This is because what we do as legislators is what God demands of us and what leadership is all about. It is not just about politics, but when we are given a chance to be leaders then we are called upon to lead in a manner that also pleases God. It is also unfortunate that hon. Musyimi, who is the Chairman of the Budget and Appropriations Committee, as Sen. Wetangula said, is so aware of what the Holy Scriptures say. It is said better one who goes against it who is not aware of it, than that one who is aware of what is demanded of that person.

Mr. Speaker, Sir, it is very unfortunate that we always find ourselves in this same position as a constitutional House of this country. Several other times when various processes have been conducted, we have always found ourselves in the same position where many would then tend to think that we have been reduced to cry babies. It must be clear that we always have to register our voice to the processes that are going on in this country. I also think that many Members of the National Assembly still have hangovers of the old constitution and how we used to run this country. They have not accepted that we have a new Constitution in place. This Constitution is no longer new anymore. This Constitution is our guiding principle and it has put two Houses to govern this country.

We are seeing how they run their business and how they continue to make reference to this honourable House. We have also seen how they make reference to honourable Senators in this House. They have no regard or respect for this House and other constitutional institutions in this country.

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

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

Kenyans are watching. Kenyans are tired that the National Assembly consistently continues to belittle this House. They are also belittling the Judiciary by reducing their allocations because they are not happy with some rulings made by them. Instead of them going to do what the Judiciary has asked them to do, that is, to align the CDF with the Constitution, they are now busy punishing that constitutional office. Again, tomorrow we are going to blame the Judiciary for not performing and yet the National Assembly has refused to allocate them the resources they deserve.

Mr. Temporary Speaker, Sir, many times the Senate has not been happy with the Judiciary. We even met here when we had issues with the impeachment processes, but never did we ever threaten and curtail their work or deny them resources they need. We have also seen the Constitutional Implementation Commission (CIC) being threatened. The chairman knows his role and he has to continue to do his job.

It is so unfortunate that a few Members of Parliament led by the National Assembly Majority Leader, hon. Duale, that he thinks he has the monopoly of ideas, insults---

*(Loud consultations)*

I would kindly request that you bring order especially to Sen. Murkomen, who already spoke and we listened to him and now when other Members are contributing, he is distracting them.

Mr. Temporary Speaker, it should be known by our colleagues in the National Assembly that they have no monopoly of ideas, insults or reason. All of us, as leaders in Parliament, have a responsibility to serve Kenyans and safeguard the Constitution. We have even heard the words that they use when they refer to this honourable House and its Senators. Most of the time, they are busy in political rallies instead of doing their work in

the National Assembly. They should pass the necessary laws and legislations that will benefit Kenyans. That is what Kenyans expect of them.

It is also unfortunate when I listen to the Senate Minority Leader saying that the Cabinet Secretary, Mr. Rotich, was advised by the National Assembly that there were no regulations for oversight money. I do not think it is the role of the National Assembly to give opinions. It is the role of the Cabinet Secretary himself to find out whether the regulations are there or not. The National Assembly is not supposed to guide the Cabinet Secretary.

Mr. Temporary Speaker, Sir, as nominated Members of this House, we were not happy with the allocation of the Kshs1 billion and we registered it in our Kamukunji and also in this House. That does not mean that we do not support the Kshs1 billion for oversight. That is what we are saying; you do not always have to agree, but it should be on principle and not necessarily on what you are getting as an individual. Sometimes, it takes a lot of sacrifice and also the general principle of what that money is going to do.

We know and understand that we are giving counties a lot of money. We are also giving county assemblies a lot of money. But how are we going to oversee their expenditure? That is what the Senate wants to do with counties and not to go and prefect them. They want to be able to move around. A Senator was elected by the whole county. If you consider the geographical area, they are not just supposed to come, sit in Nairobi and earn salaries. They have to work which they have to do at the counties.

Right now, we are seeing the Members of the National Assembly fighting for CDF and not thinking about the allocation given to the counties and its oversight. It is very selfish of them. I also agree that we need to oversee the National Assembly. Who is going to oversee the National Assembly? They are holding everybody at ransom, from individuals to institutions. We saw what they did to Dr. Monica Juma. It is an onslaught on the women of Kenya.

How could they say that all her credentials and everything else are perfect, but the only problem is that she is arrogant? We will have to speak about it because that is just the same thing that we are seeing even with the money. I hope there is no under-hand deal in the issue of Dr. Monica Juma. We have heard the outcry of Kenyans and seen the issues that we are talking about here come out. She is capable of doing her work. We saw some of the references that were made.

Why was the Majority Leader in the National Assembly unable to whip and lobby Members on critical issues like those ones? On the other hand, they are able to lobby each other and even support each other when it comes to matters that benefit them as the National Assembly. It is normal in the National Assembly that when you see both coalitions coming together, then you know that there is a problem. That is what we have been seeing. They come together when it comes to issues of reducing budgets, attacking the Senate and their own issues like the CDF and their own monies.

It is important that we, as a House, stand up and speak out together. As we come up with this Committee, I call upon all the leaders of this country to remember that Kenyans gave us a responsibility. We should not always be bickering and pitting this



House against the National Assembly. I totally agree that we, as a country, have to agree which House deals with what matters.

Mr. Temporary Speaker, Sir, there is a reason why, in the Constitution, we have two Houses. The budgeting process now follows a certain procedure and manner different from when we did not have a bicameral system. We even have a mediation point when we do not agree. Why then do we follow all those necessary procedures, just for one House to disregard the tireless efforts of what our Senate Committees and the mediation process has done? They just disregard it so that we get a sense or a feeling of *mta-do*? What will you do? That is the sense that we keep getting every time. What will you do as the Senate? There is nothing you can do. All you will do is convene a special sitting, talk and bash. That is what they are saying on the corridors.

I am happy that today we will not just talk. We will also go a step further to institute this special Committee. I hope it will come up with clear guidelines on what we need to do as a Senate in order to put these matters to rest, once and for all.

**Sen. (Prof.) Anyang'-Nyong'o:** Thank you, Mr. Temporary Speaker, Sir. I rise to contribute to this both timely and important Motion, ably moved by Sen. Murkomen on behalf of the Senate Majority Leader and seconded by the Senate Minority Leader. In the spirit of the Sunday sermons that we have had in this House today, let me say, Father forgive them for they do not know what they are doing. I would like to appeal to the Senate that this "Lower House" really does not know what it is doing.

First and foremost, regarding the relative issue of Monica Juma, she was my student at the University of Nairobi and she was an able student. I have many students who have risen to high places, including Sen. Kagwe in this House, hon. Mukhisa Kituyi and many more. So, I am a very proud teacher of very able students.

Mr. Temporary Speaker, Sir, having said that, if you look at the reductions that the House did, take for example, IFMIS; that is extremely important. We, in the Senate Committee on Finance, Commerce and Budget and the Committee on Public Finance know that one of the problems that we have in the counties is the uptake of IFMIS, particularly in county assemblies. Without the county assemblies using IFMIS, it is very difficult for them to have good financial management, but further to also be effective oversight bodies in the counties. It is extremely agent that IFMIS is properly resourced so that good financial management is enhanced in order to avoid both impunity and mismanagement of finances of other counties both in the assemblies and the executive.

That also goes to the Kshs1 billion that has been slashed from the Senate. This money was meant specifically to capacitate Senators for purposes of oversight and nothing more. This morning the Mover of the Motion very capably explained how this capacitation of the Senate was going to be done. A proper institution has been set up by the Senate, chaired by Sen. Murungi, to ensure this.

Mr. Temporary Speaker, Sir, unfortunately, the Cabinet Secretary, Treasury, has become unnecessarily beholden to the National Assembly. He is more or less held hostage by the National Assembly. He begins listening to information from the National Assembly and does not care to check that information before he makes up his mind on anything. This is extremely important. If the Cabinet Secretary had contacted the

Speaker, Clerk or the Majority Leader about the allegations made by the “Lower House” over the truth behind the Kshs1 billion for capacity building in the Senate for oversight, he would have gotten more information. He would have then questioned the National Assembly’s stand on this before it was too late. I would like to encourage the Cabinet Secretary for finance to understand that he is the Cabinet Secretary for the whole of Kenya and not just the National Assembly for that matter.

One of the reasons Senators would like to be in a position to move around the counties is to fulfill one very important function or principle of public participation in the Constitution. The Constitution, precisely because it begins by saying, the people are sovereign, further goes on to state that in making certain decisions and passing certain laws, participation of the public is extremely important since the Senate is the body that represents the counties in legislation and the body charged by Article 96 of the Constitution to defend and promote the interest of the counties. When it comes to issues of the Budget, it is Senators who should be in a position to go to counties and ensure that public participation in the process of budget making is important and effective.

You cannot do this if you cannot convene meetings and have service providers and experts to discuss the Budget. The National Assembly seems to think that the Budget is just a document of negotiating between them and the Cabinet Secretary. Not at all! The process of budget making begins with public participation by the people from the counties and all interest groups so that they understand the proposals that the Government is making with regard to raising money and how that money can be best spent to meet the people’s basic needs and promote social and economic development.

Mr. Temporary Speaker, Sir, in the morning it was said in this House that there may be a process going on of undermining the Senate with a view to abolishing it. If anybody has such a thing in mind, it is a very tall order because abolishing the Senate would mean a complete re-look and renegotiation of the Constitution. It is not that easy. You may frustrate the work of the Senate, but one thing you will not do very easily is abolish it.

Mr. Temporary Speaker, Sir, I remember I was a student at Alliance High School in 1964. That was before Sen. (Dr.) Khalwale was born. The then Minister for Economic Planning and Development, Hon. Kibaki, came to Alliance High School to talk to us about “*Economic Development in Kenya*.” He was asked by one of the senior students, “Mr. Minister, when you went to the Lancaster House to negotiate the Constitution, you came back as the Kenya National African Union (KANU) and said that you did not agree with *Majimbo*, but you accepted it just to get Independence. What will you do with *Majimbo* now that you have got Independence?”

This was between December 1963 and December 1964 before we became a Republic. I remember Hon. Kibaki saying very clearly that “We shall break it.” KANU went ahead and broke the *Majimbo* Constitution. I am saying this because when the *Majimbo* Constitution was broken, the whole Constitution, more-or less, came under revision. Amendment after amendment was made to enhance the authoritarian regime.

Mr. Temporary Speaker, Sir, again, the essence of this Constitution is to ensure that we do not, in this country, have another authoritarian regime. We have seen the

consequences of authoritarianism in this country. Devolution was brought precisely to have two levels of governance; one closer to the people and the other one at the national level. This is a principle in our Constitution that nobody can break as easily as the KANU amended the *Majimbo* Constitution in 1964.

Mr. Temporary Speaker, Sir, if anybody thinks that he has a lot of power and control over the people of Kenya to that once more, it will be very difficult because we will not allow another authoritarian regime to emerge in this nation.

Mr. Temporary Speaker, Sir, I want to speak about another issue which is extremely important. That is the issue of oversight. I think the “Lower House” suffers from what I call a very low quotient in both wisdom and experience. By all intents and purposes, this House has a higher quotient in both wisdom and experience. It is just an objective fact that down there, wisdom and experience is on the lower side of things. That is why I want to explain oversight very clearly so that we understand what it means.

Oversight does not mean that you just receive a document or information and get to find out how true or fair it is. Regarding the budget, it is not about finding out if the money voted for expenditure is enough and how it will be allocated to meet our expenditures. That is not the case. Oversight is much more than that. It means that you get informed about the purposes for which a decision is about to be made. You must be informed regarding the purposes for which a decision is about to be made.

Mr. Temporary Speaker, Sir, let me give you a good example. In the traditional African society that I grew up in, we never had refrigerators, electricity or all modern things in life. When a visitor arrived, a mother had to make a decision about what the visitor could eat. She could decide whether to slaughter a chicken for the visitor or not. That was the tradition in my community. She could ask one of us to get some flour and another one to go to the garden to get some vegetables. In other words, the arrival of the visitor set in motions certain decision-making process by a mother which finally resulted into a meal.

Mr. Temporary Speaker, Sir, unless you already have the knowledge of what it takes to prepare a meal; you could not make a decision. So, quite often, men or husbands were never cast in the role of deciding what to prepare for the visitor. This is because there was somebody in the homestead called the mother who had knowledge that there were vegetables in the garden behind the homestead and somebody had to prepare flour and that the main meal for a visitor was chicken.

Mr. Temporary Speaker, Sir, oversight means that there must be an institution somewhere. There should be a body of knowledge somewhere which, when decisions are being made, can be consulted so that the decisions that are made meet a certain purpose. The Constitution has recognised that. First, that the people for whom decisions are being made must be consulted. We must see the kind of needs to be met in our communities. Do we need a road or a dispensary? If they have a dispensary, is it working well and what does it need? You have to consult them so that they bring in the needs which then go to the kind of things to be financed in a budget.

The process of oversighting the making of the budget, which has been stipulated by the Constitution, resides in this House; to look after and defend the interests of the

counties. We will not look after and defend interests of counties if in the process of budget making we do not know the needs of counties. We should go to our counties and find what their needs are. That is oversight. Oversighting does not mean that in our various committees we should wait until money is spend by governors and then we decide what is wrong. That is just part of the job.

Mr. Temporary Speaker, Sir, I would like to inform the Rt. Rev. Musyimi that this Senate asked for Kshs1 billion to perform an extremely important job of oversighting or making sure that when budgets are made for counties, we know why they are being made. We want to be properly informed when the document comes before us that the things we saw and consulted our counties on are catered for. In that regard, we will also be in a position to advise our counties. We can, for example, tell them that something may look as a need, but we can postpone it. Development requires postponing certain forms of gratification.

Finally, Mr. Temporary Speaker, Sir, an issue which concerns me most is that we, in this Senate, are very concerned that education; lock stock and barrel except for Early Childhood Education, is still in the hands of the national Government. My consultation with people in my constituency and my discussion with them show that the national Government is performing this function very poorly. First, it is not in a position to know what the needs of the people at the grassroots level are. Secondly, it cannot properly oversight what is happening at the grassroots level notwithstanding the fact that the National Assembly says that it will be financing education because that is a national function. That is completely against what the CDF was established for in the first place.

The CDF was not to perform national functions, but it was a devolved fund to perform functions which the national Government was not doing anyway well in the first case. Precisely because the National Assembly has identified education something that should be funded by the CDF at the local level, for that very reason, basic education should be left to the counties as a devolved function. When education is devolved, counties will be in a better position to process their needs for education from the grassroots level but not to have a system imposed on them from above since they are the people being educated. They know that unlike boys, girls perform poorer because they are given too many responsibilities when they go back home in the evening. That is a kind of change system that this Senate needs to engage in a dialogue with people at the grassroots level to see what kind of good education we should have for our children. That cannot be done if education is still in the hands of the national Government.

This is one of the reasons we need this Fund. We should begin having a dialogue with our people to begin preparing for constitutional changes we want in the Constitution. The Constitution should respond to what it says; that we have two levels of government; one closer to the people to look at their basic needs and promote them and the other one at the national level to defend the nation and promote national development. That is an enormous task in the hands of the Government. For you to perform an enormous task of promoting national development, you must have policy makers who can make good policies in all Ministries. They should consult widely and deeply so that they know what kind of policies are being proposed in the legislative organs of this nation.

Mr. Temporary Speaker, Sir, I think---

*(Sen. (Prof.) Anyang'-Nyong'o spoke off record)*

**The Temporary Speaker** (Sen. Mositet): Your time is up!

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, I want to join my colleagues in supporting this Motion. On the outset, we need to correct the impression that the Kshs1 billion which was given to the Judiciary was floating; money which was an after-thought. That money had been budgeted for and was not an additional fund that was generated this financial year so that, suddenly, the National Assembly chopped off that money which was erroneously added so that they had to find other use for it. This was money which was budgeted for. Even in the previous year, this money had been allocated to the Judiciary. We have affected very many things in the process of removing the Kshs1 billion from the Judiciary. We have affected development which had been going on in every county because the Judiciary had gone into rehabilitating and building new law courts in most of the counties. If there was work that was ongoing, it stalls.

The Judiciary was doing recruitment. Recently they put up an advert to recruit more staff so that their work could go on. The National Assembly Members never looked at these facts. They just thought of an imaginary enemy to them and it came out of what was overruled by the Judiciary when they said that the Constituencies Development Fund (CDF) is unconstitutional. It is written in the Constitution; Chapter 1, Article 2(4) that any law, including customary law that is inconsistent with this Constitution of 2010 is void to the extent of the inconsistency and any Act – and that includes the CDF Act - or omission in contravention of this Constitution is invalid. The courts did not just wake up one morning and attack the CDF because it was only constitutional prior to August 2010 and it is extremely unconstitutional. A proviso was given to remove it with time.

Mr. Temporary Speaker, Sir, CDF was mooted to assist development at the grassroots level that time because there was no other channel. But with the arrival of the new Constitution, it came with money called devolved funds going to one particular point called the county where constituencies are subsets of the county. Therefore, every development that was being purported to be done by the CDF like roads was ceded to the counties. Nursery schools are now being done by the counties. It is a devolved function in Schedule Four. Dispensaries and hospitals have also been devolved. That is why the wisdom of this House as indicated in Article 96 states that “We the Senate participates in the law making functions of Parliament by considering, debating and approving Bills concerning counties, including money Bills that touch on counties”. That is why we deal with the Division of Revenue Bill as provided for in Article 103 to 113.

The Senate also determines allocation of national revenue among counties which is our prime duty. This is provided for in Article 217 and exercises oversight over national revenue allocated to the county government. Just as the National Assembly has erroneously been entertaining CDF for three years after 2010, it does not mean that the Constitution does not declare it illegal. Therefore, it must be ratified. After 2013 money for oversight was supposed to be set aside in 2013 and 2014, but it was not done. We are

now doing it two years later. The fact that it has not been factored in for the last two years, it does not mean that it should never be allocated. Some people are arguing that because it was not there for the last two years, it means that it is not required. If you recall our discussions between the Senate, the National Assembly, the SRC, the CRA and CIC we agreed that there is need to get the Senate an oversight support unit which was approved in this House. The Senate oversight support unit has functions. This is where Sen. Murungi's Committee was able to generate the rules of how the Kshs1 billion was supposed to be used.

Mr. Temporary Speaker, Sir, the Senate oversight unit was strongly recommended and not the Senator to run around the country. It was supposed to be a unit headquartered in Nairobi, reporting to the Clerk and some members in the county. A budget was even drawn and out of Kshs1 billion, over Kshs200 million was supposed to go to support this oversight unit. Some of the activities that were supposed to be done by this unit include: Analyze revenue collection of counties in relation to the revenue potential, analyze and prepare reports on plans and expenditure of counties to ensure equity within counties, analyze and evaluate expenditures of counties and assess value for money to redress challenges of duplication and misappropriation of public funds, monitor and prepare reports on implementation of projects and programmes. If you stay away for a month or two, you will be surprised to see a new building germinating on the highway purportedly built by the county and yet---

*(Sen. Mbuvi entered the Chamber)*

**An hon. Senator:** There is a stranger in the House!

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, I think the hon. Member is not a stranger unless you rule it so.

**The Temporary Speaker** (Sen. Mositet): Order, hon. Senators! We have no stranger in the House. I only saw Sen. Mbuvi at least with a good hair cut.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, we may restore the peace haircut tomorrow. The other function was to monitor and prepare reports on implementation of projects and programmes. Almost all the Senators here, including the National Assembly Members do not know what projects are ongoing in the counties and in the constituencies. This is the oversight that was supposed to be done by this unit. They were also supposed to research and analyze all current and emerging issues of national policy and also research and advise Senate on emerging issues in the counties which are restricting the entrenchment of devolution. Did the National Assembly Members dare read this?

It looks like they did not. It is as if they closed their eyes when it came to the Judiciary when they were ruled out of place. I do not know whether Members can remember the amount that has been allocated to the CDF. This year, the amount that has been allocated as CDF is Kshs37 billion while last year it was Kshs35 billion. An increase of Kshs2.8 billion has gone to them yet they never saw it fit to remove that money. They quickly remembered to kill the SRC, the Judiciary and the Senate yet they

have extra money which they do not require. Nobody has re-written how CDF is being utilized. I am told that they are cheating people that it is a national function. If they are national functions, all of them must resign from that House because now they have become tools of the national Government.

On national functions, the Fourth Schedule says that all primary, secondary schools and tertiary institutions are being done by the national Government headed by Prof. Kaimenyi as the Cabinet Secretary, not Mr. Muturi or Mr. Duale. So, that money should be removed.

*(Applause)*

Again, in the new budget that has just been presented, they allocated Kshs2 billion for retirement of 5,000 teachers and yet there is a shortage of a staggering 110,000 primary and secondary teachers in the whole Republic. This Kshs37 billion floating in the name of CDF and now they have baptized it by calling it “national” should quickly go to the Ministry of Education and hire teachers. This is the surprising bit. If we hire teachers with the Kshs37 billion, we will hire 92,500 teachers and the problem of shortage of teachers will be a thing of the past.

*(Applause)*

Now, we are demanding and that is why we have this sub-Committee, that we will pursue and make sure that money, Kshs37 billion, is quickly reallocated so that the schools which are suffering in the counties, including dormant schools in Garissa, Wajir and Marsabit should get teachers. This is the folly of our colleagues. We will tell them where they need to belong.

Mr. Temporary Speaker, Sir, Article 10(2)(c) talks about national values and principles of governance. This is not governance. This is revenge and maximum arrogance. We need to tell Kenyans not to be cheated. They have been running around in meetings and public rallies trying to cheat Kenyans that the Senate is looking for this money for other reasons. It is not for employment, it is not for me. One Member of the National Assembly dared to say that it will be used for campaigns in 2017 yet I have realised that one Member in my county has opened a hardware shop where every day all CDF cheques quickly go - to that small hardware which was opened, particularly during this period. Cement and everything is bought at exorbitant prices from that hardware. We should bring this to a stop. I visited Kapenguria County Hospital and was shocked to find that there were no beds and nets. Everything is not there. That is why this provision was given.

Lastly, Mr. Temporary Speaker, Sir, this money that was agreed upon by the Mediation Committee was not supposed to come from Mars. They identified where it was supposed to come from. Why did they err from following what was agreed on and quickly went to attack the other commissions? They even went ahead and said that even

Mr. Nyachae and company should wait for them. We are telling Kenyans that we will not lie low even when we have no money for oversight, we will tell you where the problem is. The story of 1966 when the Senate was disbanded will never happen in our time.

We are also telling the national Government that we have been watching. Recently, the President went to oversight the construction of the new railway. Over 13 helicopters flew there because the President went there. How much money was spent? Even when the MP goes to oversight the little projects they think they do, all CDF employees go. How much money is spent when the Governor goes to inspect projects? Like my Governor, the other day, over 15 vehicles followed him just because he was going for some harambee. What is the harm? Why is it that when the Senate wants to go and oversight these billions of money, it becomes an issue?

People are building houses that are proportional to their appetites in the village. What is wrong if we reserve this money? This is the question that we must ask. If this is the trend, the Senate has to be firm by all means. We will not be stopped from talking; we will talk. Somebody says it is a “talking” House.” Talking sense is what we want and we will not be stopped. If we are saying, “no oversight,” we are also saying that the executive of the national Government should not go out of the Office of the President or State House. Cabinet Secretaries should not go out of their offices. All directors should cease from moving out of their offices. They should just sit permanent and pensionable in their seats. Is that what we are saying?

*(Laughter)*

Mr. Temporary Speaker, Sir, this is very serious. It looks as if Article 145 on Impeachment--- People think that it is only the National Assembly that can bring about an impeachment. No! If you read the whole of it, actually, it is the Senate that has the final say. Nobody should purport that he or she can humiliate Senators. Even if you hate me, I am the Senator for West Pokot County in this House for now. We have to stand firm. Senators have no boundaries, they are not CORD or Jubilee. This unlimited access and unlimited choice of power where the National Assembly Members just wake up when their hearts think like doing anything, we have then to think of it. This Select Committee that will be established should think---

**An hon Senator:** Referendum!

**The Temporary Speaker** (Sen. Mositet): Order, Senator! Your time is up. Proceed, Sen. Wako.

**Sen. Wako:** Thank you very much, Mr. Temporary Speaker, Sir, for giving me this opportunity to speak on this very important Motion. First of all, I thank the Senate Majority and Minority Leaders for the way they moved this Motion which shows that, indeed, the Senate is a mature House and we debate at a higher level.

Mr. Temporary Speaker, Sir, the pain that I have is to see our Constitution being flouted left and right and one institution emerging. We fought against the tyranny of the executive and the imperial presidency, but it is now the tyranny of the National Assembly



which is emerging and has begun attacking each and every other organ of government. They attack the Senate, the Judiciary, the SRC and so on.

We have to stand firm and let everybody know. That is why I am supporting this Motion. This Motion says that in spite of the obstacles, challenges and difficulties that we are facing and so on, as the Senate, we stand firm to respect, uphold, defend the Constitution and ensure that devolution takes a firm root in this country. We stand firm to ensure that the Senate plays its role as envisaged under the Constitution. If the Constitution cannot be interpreted and implemented in good faith, which we are all expecting, then we shall have to amend it to ensure that, that is done.

Mr. Speaker, Sir, I have taken trouble to read the HANSARD on this debate. I do actually respect hon. Musyimi. He is a friend of mine and we have gone through many struggles together. I know that he is for the new Constitution and devolution. But when I read this HANSARD, I do not see that appearing. For example, if you read page 20 of the HANSARD, you will find that actually hon. Mutava Musyimi did mention that this extra amount must come from among others the Parliamentary Service Commission. By that he meant the Senate and the National Assembly itself. He said:

“We Members of the National Assembly must also pay the price and contribute something, so that we are seen to be supporting devolution.”

But at the end of the day, what we see is no contribution at all or whatsoever from the National Assembly. In fact, when hon. Duale, the Leader of Majority was moving, he did not mention the National Assembly. He just mentioned the Judiciary, Senate and the SRC. Then he went on to say:- “I have now given hon. Musyimi food for thought.”

Indeed, hon. Musyimi removed the National Assembly’s contribution because of what he had been told by hon. Duale and others in the National Assembly. Why did he not stand firm and say the Members of the National Assembly must also contribute? The way to contribute, to me, was very easy. In fact, there was no need for contribution at all from any other organ. The contribution should and ought to have come from the CDF. This is because the court itself had said that it is unconstitutional, unless certain matters are attended to.

Part of those matters would be amending the Constitution. However, if we want it to continue in the present state, maybe this whole objective must be focused on something that is constitutional. Although the Budget says that the CDF will only focus on national projects, what ought to have happened is that because we have that ruling and no amendment of the Constitution has been done, at the very least, maybe they should have preserved the amount as it was last year, pending these other issues being dealt with. If they had done that, there was more than enough money to make the Kshs3.3 billion.

Mr. Speaker, Sir, it is ironical that the Senate should be refused the Kshs1.1 billion because of a lame reason which is not even true, as Sen. (Prof.) Lonyangapuo has stated. Those regulations were not in place. If we have to proceed with that interpretation, those regulations were not in place. Therefore, the Senate was not entitled to Kshs1.1 billion, then that same reasoning should be with even greater force, because we are not talking about legislation, but amendment of the Constitution on matters of the CDF.

Since that has not been done, there should have been no allocation whatsoever as far as the CDF is concerned. So, this was very badly targeted against the Senate.

Mr. Speaker, Sir, the other troubling feature that I have seen is the attack on the Judiciary. This attack starts with the Chairman of the Budget Committee, hon. Mutava Musyimi, whom I had respect for and would have been President of this country. He now says: "Because judicial activism has put us in this mess through advisories, we must go there and take out at least Kshs1 billion." So, the Judiciary is being punished because of the advisory opinion it gave.

As we know, the Judiciary is the final interpreter of the Constitution and legislation. Therefore, hon. Musyimi is saying that because you have done your job, you must be punished by removing a certain amount from your budget. It was not just hon. Mutava Musyimi. Also, the Leader of Majority, instead of respecting the opinion given by the court, went at length to state and quote the section of the Constitution which says: "Only the National Assembly can determine."

He went on to praise one of the Judges who dissented from that opinion of the Supreme Court, whereas, under Article 10 of the Constitution, each state official must in his work and everything else apply and interpret correctly the Constitution. He should not substitute his own personal opinion with that rendered by the court. Hon. Duale, in pursuing his interpretation, he is enforcing it through Parliament. I think that was violating the Constitution. At least, the letter and spirit of the Constitution was being violated.

But it is not just the Leader of Majority in Parliament. I was very disappointed that even the Leader of Minority in the National Assembly subscribed to that view. As Sen. Lesuuda said, when you see two sides uniting in Parliament, then there is something. Therefore, there is something which we must deal with. I like this particular Motion which states that the Judiciary should continue to interpret the Constitution without fear or favour and should not be subjected to any other person or authority. So, we see threats to our Constitution.

Mr. Temporary Speaker, Sir, when hon. Duale told hon. Musyimi "that is food for thought," hon. Musyimi appears now to have forgotten the contribution of the National Assembly. When he replied, he just said: "We shall target the Senate, the Judiciary and the SRC." When he said that, there was applause in the House. That was quite something. So, this tyranny of the National Assembly is something that we have to deal with.

Mr. Temporary Speaker, Sir, I am glad that a Committee is going to be appointed. Apart from amending the Constitution, there is need to relook at the various legislations in the budgeting process and ensure that the role of the Senate is clearly spelt out. Of course, we have a committee that discusses the budget. As things stand now, a number of decisions that touch on budget issues are made at that very Committee and the Senate is not represented. I think this is part of the problem that we have. Matters are discussed by the Chair of the Budget Committee of the National Assembly in that particular committee chaired by the Deputy President and so on. All other stakeholders, including the Governors are there. Somehow they agree on an issue and when you try to amend what

they have agreed, it is seen that the Senate is now interfering with what all other people have worked very hard to arrive at.

All legislation relating to budgetary issues should be looked at so that we can minimize the differences between the National Assembly and us. As I said, the differences have been there because the Senate has not really been involved in the process. We come in at the last moment, so they feel that they have worked very hard and that we are spoiling everything and yet they had agreed. That is a matter that must be looked at seriously.

Mr. Speaker, Sir, the other point I want to make is the fact when we began the amendment of the Constitution, we were working together with the governors led by the leader of minority and the majority and all of us. We formed a Committee to begin drafting possible constitutional amendments. We went to court, on the issue of the Division of Revenue Bill and the whole issue of Bills should be clarified, once and for all. We actually made amendments; the Committee on Legal Affairs and Human Rights drafted amendments and we all agreed. However, because of some political situations, it was not possible to proceed with those amendments because the time was not opportune. We, as a House, both the Government side, the Opposition side had agreed with the governors. It is time that we should be thinking seriously on how we should be moving those amendments forward, which will ensure that on matters of legislation, the Senate is there and that even if we concede that the National Assembly must have the final say on the Money Bill, the role of the Senate in the process leading to that—

**The Temporary Speaker** (Sen. Mositot): Order, Senator! Your time is over.

**Sen. Moi:** Mr. Temporary Speaker Sir, thank you for giving me this opportunity to contribute to this very worthy Motion which from the outset I would like to fully support. I would also like to congratulate those Members who took it upon themselves to call us yesterday from our county duties to come and deliberate on this very important matter.

The Constitution grants extensive powers to the National Assembly. However, they must exercise these powers on behalf of the people of Kenya in a just and fair manner. But in the last two weeks, the Constitution has been violated. I say this because of the actions of the National Assembly. What they did is not lost on all of us. The National Assembly has reduced or taken away funds from the Judiciary amounting to Kshs800 million; it has also taken out from the SRC a total of Kshs200 million and the IFMS to a reduction of Ksh325 million and finally to this honourable House, Kshs1 billion.

Their action was not based on the budgetary needs nor on any criteria of similar objectives; rather, it was based on what was perceived by various Members to be the conduct of these institutions, including ourselves, against the interest of the National Assembly and its Members. How far from the truth is that? This was a personal vendetta by the National Assembly against these institutions. It was an onslaught against this House.

The actions of the National Assembly can be equated to releasing the foxes into the chicken coop. Today we have about Kshs3 billion going to the counties with no

oversight capacity or capabilities by anyone. Now what role is it that they expect of us or what do the public expect of us? They expect us to conduct ourselves using the oversight role that they have given us, but that capacity has been taken away by the National Assembly because of their own perceived interest.

I want to give an example that Members have given here because I do not want to be belabour it. When the President went to launch the SGR, he took 14 helicopters on that trip. How are we meant to oversight for example in my county of 11,000 square kilometres? There are others here who have a county of 20,000 or 30,000 square kilometres, how are they meant to oversight that? All this capacity building and public participation has been rendered useless by the actions of what the National Assembly. Ours is not to lament, I think the time for lamentation is over, it is time for action. As Sen. Lesuuda said, the National Assembly said “*Uta-do?*” You will go there, call for a special meeting, talk and “*utaenda, uta-do?*” I am happy for what has happened here because now we shall show them that *tutawado*.

(Laughter)

Mr. Speaker, Sir, I want to touch very briefly on three things because I know there are Members who want to put in a word before we break off. First, as the sub-committee deliberates on this matter, the first action is that we must separate ourselves from the National Assembly. We do not want to be cocooned together, especially about this PSC. I am happy that Sen. Kiraitu has a Bill which is in the Second Reading to put mechanisms in place to disassociate ourselves completely from the National Assembly so we have our own agenda.

Secondly, I understand why they guard CDF with outmost jealousy. The CDF is devolved. The genesis of CDF was to be devolved down to *mashinani* and to constituencies. What is going to happen no matter what they gerrymander with down in the House, that Bill will have to end up here. When it does, we all know what is going to happen and how it will be treated. That is a devolved function and the way they have taken our Kshs1 billion to the county which they are saying even CDF will find its ways into the counties. Then we will deal with the issues at hand as it is. It is very important that the Committee which is dealing with this takes that into consideration.

Lastly, what is important is that the differences between the Senate and the National Assembly will continue to persist. It is time we all recognized that we must put away these differences because they are irreconcilable, in my humble opinion. Our relationship has reached a situation where it is irretrievable to reach a condition of mutual working relationship. It has come a time where we need to take this to the people. The only way we can take it to the people is through a referendum. We have no choice, but to go to the referendum so that the people will iron out these differences that we have. We need to clearly set the mandate of both Houses, so that we deliver to the people the services that they require and expect from this honourable House.

Mr. Temporary Speaker, Sir, as I finish, I would just like to tell the Members of both Houses to read from a British poet called Rudyard Kipling. He talked about power

and said that power without responsibility is the prerogative of, you know whom, throughout the ages.

I beg to support.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, thank you for giving me this opportunity. First, I support the Select Committee although I think that it is top-heavy. However, the Senators who have been selected are the best in the business.

One of the things that I want to agree with Sen. Moi about is that we should not lament too much. We should move ahead and give this country direction. All the places that we have gone to, the people of this Republic have disagreed with the National Assembly in the work that they have done. As far as I am concerned, just like everybody has quoted the Bible, the writing is on the wall for the Members of the National Assembly.

Therefore, just like the parable by Sen. Murkomen on King David, what he did not say is that Prophet Nathan told King David that he must pay for his sins.

**The Temporary Speaker** (Sen. Mositet): Sen. M. M. Kajwang, do you have an intervention?

**Sen. M. Kajwang:** On a point of order, Mr. Temporary Speaker, Sir. The good Senator for Makueni County has talked about some people who have been selected to sit in the Select Committee. To the best of my knowledge, that has not been tabled here yet. Is the Senator in order to anticipate debate on this matter?

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, my good brother came in late and maybe he was given a wrong document. This document has been distributed while we were seated here. My brother, Sen. M. Kajwang, the last page at the bottom reads: "And resolves to establish a Select Committee." Most of the contributors before me have made recommendations on this committee, unless I am wrong.

**An hon. Senator:** Which document was distributed?

**Sen. Mutula Kilonzo Jnr.:** The document containing the names was distributed. The document is here on the front desk. It has names at the end.

**The Temporary Speaker** (Sen. Mositet): Sen. Mutula Kilonzo Jnr., you are supposed to debate the Motion as it was moved. There were no names which were read.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, this document was actually brought after---

**The Temporary Speaker** (Sen. Mositet): The Motion which was read was clearly read without names. Strictly stick to that.

**Sen. Mutula Kilonzo Jnr.:** Does the document that we were given not contain names?

**The Temporary Speaker** (Sen. Mositet): No, it does not contain names. Otherwise, the Speaker should have also read the names, but he did not.

**Sen. Mutula Kilonzo Jnr.:** Then the Serjeant-at-Arms made a mistake to give us a document that should not be debated. Then that contribution should be expunged from the HANSARD, if that is possible.

Mr. Temporary Speaker, Sir, on the question of the violation of these institutions; when I read the bodies whose funds have been reduced; unfortunately, the National

Assembly Leader of Majority got a tongue lashing when he raised this issue somewhere in Rift Valley. However, you ask yourself the question: When the President says that Kenyans want to be served, how then will Kenyans be served if the Judiciary's allocation is reduced by Kshs800 million? How will Kenyans be served if the allocation of IFMIS, which is supposed to insure financial prudence under Article 227, is reduced? How will Kenyans be served if the SRC does not do job evaluation on those Kenyans who the President is insisting must be served?

**The Temporary Speaker** (Sen. Mositot): Sen. Mutula Kilonzo Jnr., you have a balance of 11 minutes when debate resumes.

### ADJOURNMENT

Hon. Senators, It is now time to interrupt the business of the Senate. The Senate stands adjourned until today, Monday, 15<sup>th</sup> June, 2015, at 2.30 p.m.

The Senate rose at 1.00 p.m.