

PARLIAMENT OF KENYA**THE SENATE****THE HANSARD****Wednesday, 13th April, 2016**

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

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

PRAYERS**PAPERS LAID****END OF TERM REPORT ON DEVOLUTION BY TA**

Sen. (Prof.) Lesan: Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Wednesday, 13th April, 2016.

The end term Report on the Transition to Devolved System of Government, 2012-2016.

COSTING OF GOVERNMENT FUNCTIONS, 2015

Final Report on the Costing of Government Functions, 2015

(Sen. (Prof.) Lesan laid the documents on the Table)

MESSAGES FROM THE NATIONAL ASSEMBLY

The Speaker (Hon. Ethuro): Hon. Members, I have two Messages to transmit from the National Assembly.

**APPROVAL OF MEDIATED VERSION OF THE
STATUTE LAW (MISCELLANEOUS AMENDMENTS)
(NO.2) BILL (NATIONAL ASSEMBLY BILL NO.33 OF 2013)**

The first one is on the approval of the mediated version of the Statute Law (Miscellaneous Amendments) (No.2) Bill (National Assembly Bill No.33 of 2013).

Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No.40(3) and (4), I received the following Message from the Speaker of the National

Assembly regarding the approval of the Mediation Committee on the Statute Law (Miscellaneous Amendments) (No.2) Bill (National Assembly Bill No.33 of 2013).

Pursuant to the provisions of Standing Order Nos. 41(1) and 142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly.

Whereas the Statute Law (Miscellaneous Amendments) (No.2) Bill (National Assembly Bill No.33 of 2013), was referred to a Mediation Committee on Wednesday 13th October, 2015 and whereas the National Assembly by way of resolution passed on Tuesday, 29th March 2016, approved the mediated version of the said Bill in the form developed by then Mediation Committee;

Now therefore, in accordance to the provisions of Standing Order No. 150(4)(b) of the National Assembly Standing Orders and Article 113 of the Constitution, I hereby convey the said decision of the National Assembly.

Hon. Senators, this Message was received on 31st March, 2016, when the Senate was on recess. Pursuant to Standing Order No.40 (5) of the Senate Standing Orders, I transmitted the same Message to you all. Consequently, the report is listed in the Order Paper as Order No.10. However, I appeal to you to process it expeditiously.

PASSAGE OF THE NATURAL RESOURCES (CLASSES OF
TRANSACTIONS SUBJECT TO RATIFICATION) BILL
(NATIONAL ASSEMBLY BILL NO. 54 OF 2015)

The second Message is on the Natural Resources (Classes of Transactions Subject Gratification) Bill (National Assembly Bill No. 54 of 2015).

Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No. 40(3) and (4), I received the following Message from the Speaker of the National Assembly regarding the passage by the Assembly of the Natural Resources (Classes of Transactions Subject Ratification) Bill (National Assembly Bill No.54 of 2015).

Pursuant to the provisions of Standing Order Nos. 41(1) and 142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly;

Whereas the Natural Resources (Classes of Transactions Subject Ratification) Bill (National Assembly Bill No. 54 of 2015), was published by the Kenya Gazette Supplement No.139 of 18th August, 2015 to actualize the requirements of Article 71 of the Constitution by providing for classes of transactions subject to ratification;

Whereas, the National Assembly considered and passed the said Bill on Wednesday 9th March, 2016 with amendments in the form attached hereto;

Now therefore, in accordance with the provisions Article 110(4) of the Constitution and Standing Order No.142 of the National Assembly Standing Orders, I hereby refer the said Bill to the Senate for consideration.

Hon. Senators, this Message was received on 31st March, 2016 when the Senate was on recess. Pursuant to Standing Order No.40 (5) of the Senate Standing Orders, I transmitted the same Message to you during the recess.

Hon. Senators, Standing Order No.148 requires that a Bill which originates in the National Assembly be proceeded with by the Senate in the same manner as a Bill introduced in the Senate by way of First Reading in accordance to Standing Order

No.129. I therefore, direct that the Natural Resources (Classes of Transactions Subject Ratification) Bill (National Assembly Bill No.54 of 2015) be read a First Time tomorrow, Thursday, 14th April, 2016.

I also wish to bring to your attention that this Bill is one of those Bills that were required to be enacted within the five years of the enactment of the Constitution. This timeline elapsed on 27th August, 2015. However, the National Assembly by resolution extended the timeline by one year. I do not think we can afford any more luxury of time.

I thank you.

What is it, Sen. Wetangula?

The Senate Minority Leader (Sen. Wetangula): On a Point of Order, Mr. Speaker, Sir. We are grateful that you are conveying Messages from the National Assembly with extreme clarity and gusto. These are Messages that bring some Bills from the National Assembly to the Senate.

However, it should not be lost to this House that we have over 18 Bills that we have passed and conveyed to the National Assembly. To date, they have not been dealt with at all. They have not even found their way to the House Business Committee (HBC) to be considered whether they are worth going to the Order Paper of the National Assembly.

This kind of engagement definitely serves to undermine the efficacy, dignity and the standing of this House. We would want to get a clear direction because in a situation such as this, it might be prudent to adopt a *quid pro quo* attitude. If we are expeditiously handling Bills from the National Assembly as we are constitutionally required, what is the fate of our own Bills? They are queuing for as long as two years. Some of these Bills have reached the National Assembly; they have been plagiarized and turned into originating Bills from individual Members and passed there. Sometimes they are sent to the President for assent without any reference to this House.

We need to have clarity on our engagement and the manner in which our constitutional workings with the National Assembly are respected, protected and adhered to.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I rise to seek further clarification on your communication in respect to the extension of the period by one year. Whereas the Constitution gives the National Assembly that particular role, it goes further and says that this can only be done once, and when it is done, it is done only in exceptional circumstances to be certified by the Speaker of the National Assembly.

Since it is coming to us for the first time, could you tell us what the exceptional circumstances were which convinced the Speaker of the National Assembly to agree that the timeline be extended by one year?

Sen. Mutula Kilonzo Jnr.: Thank you Mr. Speaker, Sir. Parliament will generally miss the courtesy that you have had in this Senate. I want to confirm that I am one of the people who received your communication when we were on recess. The courtesy ends there because the courtesy is not extended in similar terms to our colleagues in the National Assembly. We are now at a constitutional crisis level and this is how it looks like. We are 15 months to the next general election. We have presidential candidates in the room and people who want to be governors. Chances are that we have at least 12 months or less of work.

Mr. Speaker, Sir, what directions will you give the Senators like ourselves who are generating more Bills that are going to come into this Senate? Some are pending in your office with the ongoing crisis. How long are you going to be courteous and a gentleman as envisaged in this Constitution yet we are suffering? We only have three Bills now including the one by Sen. (Dr.) Khalwale which the governors are challenging. We can only be proud to say that is the only Bill that has gone through the process.

Therefore, we call upon you to save our reputation because it is at stake.

Thank you.

Sen. Njoroge: Thank you Mr. Speaker, Sir. As we prepare ourselves to deliberate on the Bills coming from the National Assembly, there is a Bill which in the year 2014 was passionately deliberated and passed by this House. Members were too passionate with the Persons with Disabilities Amendment Bill and up to date, I have never heard of that Bill. I wonder whether it got lost on the way to the National Assembly or it still exists in the hands of the National Assembly.

Mr. Speaker, Sir, I wonder why Bills are coming to this House from the National Assembly and yet our Bills are buried somewhere in the National Assembly. Can that appetite be there in this House to discuss Bills coming from the National Assembly yet ours are regulated by the National Assembly?

I, therefore, wonder whether the same message is relayed to the National Assembly Speaker in order for him to come out openly and tell us whether there is a tray where they dump the Bills coming from the Senate because it is very unfortunate that they can ignore and wish away our Bills.

Mr. Speaker, Sir, you know persons with disability had high hope when we deliberated on that Bill which was passed here. I remember the turnout was almost 80 per cent and we have never heard of this Bill at any other time from the National Assembly. I, therefore, wish to say time has come for us to sit down and discuss with the National Assembly before we go further because our Bills are as equally important as their Bills.

Thank you.

Sen. Okong'o: Thank you Mr. Speaker, Sir. You made some ruling before on this matter but each day when you do such a correspondence, you even reorganize the programmes of the Senate to comply with the requirements of the National Assembly.

Mr. Speaker, Sir, you have mentioned that history will judge us if we do what is right for us. This House, as I have spoken before does not want to become saints or martyrs. The nation and our electorate look upon us to make decisions. I need guidance on whether we have legal mechanisms of the House leaderships to engage when we reach such stalemates. We are in a monumental stalemate. We are disrespected and it is important that we take appropriate actions rather than being gentlemen.

Thank you.

The Speaker (Hon. Ethuro): Temporary four!

Order! I have decided to withdraw the request by Temporary four; whoever it was. So, that is the end of it.

We have been there before and we are there again. Let me start by disposing the issue raised by Sen. (Dr.) Khalwale with regard to the reading of Article 261 (1), (2) and (3). You are asking that it qualifies only once and in exceptional circumstances. The same exceptional circumstances have to be certified by the Speaker of the National Assembly. So, I am afraid, I am not in a position to inform you.

I think more importantly, if one House saw the wisdom of commanding more than two-thirds to extend that period, I think it is only fair to give it the benefit of the doubt. Definitely there were exceptional circumstances that warranted this and it is our business to do our part.

On the matters raised by the other Senators; Sen. Wetangula, Sen. Mutula Kilonzo Jnr., Sen. Okong'o and Sen. Njoroge, that is a matter under active consideration. Sen. Wetangula can confirm since he sits in the Rules and Business Committee that we have had correspondence between the two Houses on the status of our Bills in the National Assembly. We have gotten some responses which we found unsatisfactory and we have demanded more explanations.

To Sen. Mutula Kilonzo Jnr., just because your neighbor is misbehaving or is a criminal, it should not be an open invitation to you to conduct yourself in a manner that is not desirable. In any case, how can they know the difference? So, I do not think we should tire in doing what is right. We have a constitutional commitment and obligation to discharge and we are discharging it. Giving priority to Bills coming from the other House is good business because that is business that has already been processed through the House. Kenyans are watching, listening and will look into our records and they will make that determination when it will be necessary. I would not want our House to be seen in the same light. So we will have to do our part.

Next order!

STATEMENTS

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I have three statements to seek.

THE CONTRIBUTION OF THE MANUFACTURING INDUSTRY TO THE GDP

I rise, pursuant to Standing Order No. 45 2(b), to seek a Statement from the Chairperson of the Committee on Finance, Commerce and Budget regarding the contribution of manufacturing industry to Kenya's Gross Domestic Product (GDP).

In the Statement, the Chairperson should:-

(a) Confirm whether the manufacturing industry in Kenya contributes about 10 per cent to Kenya's GDP.

(b) Avail a list of all registered factories in Kenya, indicating those that are still active and those that have closed down and in which counties they are located.

(c) Explain the main reason for the closure of the said industries.

(d) State the number of Kenyans and non-Kenyans employed in this sector.

(e) Provide the number of agro-based industries that have been built, as per the provision of Vision 2030 and indicate the counties where they have been built.

The Speaker (Hon. Ethuro): Chairperson, Committee on Finance, Commerce and Budget.

Sen. Billow: Mr. Speaker, Sir, we will provide the response in two weeks, but I want to seek your indulgence. Some of the questions being asked in the Statement, for example, regarding how much manufacturing factories contribute to the GDP is public

information available in the economic survey which is published every year in May. However, since he has requested, I will provide that information in two weeks.

The Speaker (Hon. Ethuro): Chairman, I looked at it and he was careful enough to use the word 'confirm'.

Sen. Billow: Mr. Speaker, Sir, the Senator was a senior public servant. The information in the Economic Survey is published by the Ministry and it is based on data collected by the Kenya Bureau of Statistics. We have no reasons to doubt it, but we will confirm as a team and then provide the information.

The Speaker (Hon. Ethuro): Do you have another Statement, Sen. (Prof.) Lonyangapuo?

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I have two more Statements.

AGRO-PROCESSING INDUSTRIES IN ASALS

I rise pursuant to the Standing Order No. 45 2(b) to seek a Statement from the Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries regarding agro-processing industries in arid and semi-arid areas in Kenya.

In the Statement the Chairperson should:-

(a) State whether there is a specific policy dealing with the production and processing of daily produce, meat, hides and skins in all arid and semi-arid lands (ASALs);

(b) Provide a list of all agro-processing industries per county in the ASALs;

(c) Explain the steps undertaken by both the national Government and county governments in ASALs to encourage investment in agro-processing industries.

The Speaker (Hon. Ethuro): Chairman or Vice Chairman of the Committee on Agriculture and Fisheries?

Sen. Ntutu: Mr. Speaker, Sir, we will respond in two weeks.

The Speaker (Hon. Ethuro): Two week's time. It is so ordered.

CONSTRUCTION OF A CEMENT PLANT IN WEST POKOT

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, finally, I rise, pursuant to Standing Order No. 45 2 (b) to seek a Statement from the Chairperson of the Standing Committee on Land and Natural Resources regarding the construction of Pokot Cement Plant.

In the Statement the Chairperson should:-

(a) State if he is aware that in June 2010 the then Prime Minister of Kenya launched the construction of Pokot Cement Plant at Sebit in West Pokot County.

(b) Explain what stalled the construction of the plant.

(c) Explain if the investors, Cemtech and Sanghi Group are still interested in the project and if so, when they will start the actual production of cement.

The Speaker (Hon. Ethuro): Chairperson of the Committee on Land and Natural Resources.

Sen. Obure: Mr. Speaker, Sir, we will try and obtain the information sought. We hope to be back here with that information in two weeks.

The Speaker (Hon. Ethuro): It is so ordered. Are there any other Statements?

Sen. Kembi-Gitura: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it Sen. Kembi-Gitura?

Sen. Kembi-Gitura: Mr. Speaker, Sir, there are many Statements on the Order Paper. There are more than nine Statements that were sought and we would like to know their status. Mine is Statement (e).

The Speaker (Hon. Ethuro): Members should also show interest by indicating when the Order is called out, so that I know where to start.

Sen. Kembi-Gitura, I have heard you. Now that you have demonstrated extreme interest, I will start with Statement (e).

REPORT OF THE SPECIAL COMMITTEE ON THE
PROPOSED REMOVAL FROM OFFICE BY IMPEACHMENT
OF HON. MWANGI WA IRIA, GOVERNOR OF MURANG'A COUNTY

Could the Chairperson, Sen. (Prof.) Anyang'-Nyong'o, or the Vice Chairperson, Sen. (Prof.) Lonyangapuo of the Sessional Committee on County Public Accounts and Investment respond to that Statement?

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, give us a week.

The Speaker (Hon. Ethuro): Order, Sen. (Prof.) Lonyangapuo. The statement is not being sought; it is a listed Statement expecting a response and it must be due.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, we are still working on it. We will bring it on Tuesday next week.

Sen. Kembi-Gitura: Mr. Speaker, Sir, I was hoping that the Vice Chairperson of the Committee will say how much work they have done on it. This is a pertinent issue. I believe that the issues that I have raised will not be swept under the carpet. The relevant governor should be called with his team to come and answer those questions and be interrogated. I expect that the Report that was tabled here by this Select Committee will be interrogated and the issues that they raised will be looked into. That is all I am pursuing. That is not something as easy as Sen. (Prof.) Lonyangapuo has made it appear; that they will answer in one week's time. What exactly have they done about it? Have they met to discuss about it? Have they summoned the Governor and his team? It is just a whim that he feels that they can do it in two weeks. I do not think they can do it until they summon the governor here to tell us exactly what he is doing to deal with the situation raised.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, the Deputy Speaker requested for a statement and the Committee was reconstituted recently but we are working on it. As to how the Committee will handle it, the Deputy Speaker has to wait. Whether we are going to summon the governor or not, it is not for him to tell us. We will give even a provisional way forward next Tuesday.

Sen. Kembi-Gitura: On a point of order, Mr. Speaker, Sir. I do not like that attitude. You appreciate that Sen. (Prof.) Lonyangapuo was a Member of the select committee. I respect the findings that they made but it is due to the recommendations that they did that certain things must be explained to the satisfaction of this House, the people of Murang'a and Kenyans.

Therefore, it is not enough for him to tell me that it is not for me to tell them what to do. I am not doing that but I expect them to do what is right. What is right is giving us a chance to interrogate that report further according to the recommendations. I am willing

to wait but I am not going to accept to be told that I have no interest in that matter and I should leave it to them. I do not think that is fair because the Senate has an extremely important role under Article 96, that is, oversight over each and every county as a corporate body and that must be taken seriously.

The Speaker (Hon. Ethuro): Order, Sen. Kembi-Gitura. My understanding of Sen. (Prof.) Lonyangapuo's issue was a basic one; that committees conduct their affairs in the normal way. I do not think he said that you have no interest in the matter. So, let us get some report on Tuesday next week.

I wish to recognize Sen. Leshore but I want the Chairs to go first. There is part (a), Committee on Finance, Commerce and Budget. Proceed with Statement (a).

STATUS OF PUBLIC-PRIVATE PARTNERSHIP PROJECTS

Sen. Billow: Mr. Speaker, Sir, this Statement was sought by Sen. Leshore and it regards the public-private partnerships. I wish to respond to the statement as follows.

The Senator sought to know a number of things. The statement is very detailed and, because the Senator has a copy, I will go straight to the critical information.

The hon. Senator sought to know the number of Public-Private Partnership (PPP) projects undertaken across the country in the last three years and the status of each project.

Mr. Speaker, Sir, following the coming into force of the Public Private Partnership (PPP) Act in February, 2013, the programme in Kenya has gathered considerable pace and is regarded as having gained solid traction. With a growing pipeline of potentially bankable PPP projects across various economic sectors and county governments, sustainable movement in their development has been registered.

The first one is the Kenyatta University students' hostel. This was signed in June, 2015 with a company based in the United States of America (USA) and the details are provided there; the Member can read but the negotiations are going on with the lenders to facilitate ground breaking very soon, hopefully mid this year. Then there is the 960 megawatts coal-fired power plant in Lamu, which is located in Manda Bay. The project is part of the 5,000 megawatts initiative aimed at meeting Kenya's rapidly increasing demand for power. The status is that the power purchase agreement has been negotiated and the Energy Regulatory Commission (ERC) has issued a license and, therefore, discussions are going on. The consortium of companies involved includes Gulf Energy and Centum Investments. This will lead to the grant of electricity generation license.

Then we also have 105 megawatts Menengai Geothermal, the civil servants housing projects which is approximately 10,000 housing units for civil servants in three different sites in Nairobi, including Park Road, Starehe and Shauri Moyo estates.

The other project is the Mombasa Container Terminal. This project is part of an "equip and operate concession" that will require the private sector to operate the terminal from the commission date up to a period of 25 years under the PPP agreement. Again, the bidding process commenced in March, 2015 and the tender process has been suspended on account of petitions and pending judicial review applications at the High Court.

The other project is feeding into the projects in the energy sector. This is on solar, wind and biogas. They are approximately 18 projects ranging between one to 80 megawatts. The other one is the multi-storey car park and commercial facility within

Nairobi Central Business District (CBD). The Nairobi City County has engaged a transaction adviser who is currently supporting them in the tender evaluation stage. This is a facility that will provide 3,100 parking lots with the housing and mixed use commercial facilities in the CBD.

We also have the Phase I Roads Annuity Programme. The Government has tendered for 3,000 kilometres of roads in 45 lots spread across the country. Further negotiations are going on to reduce the cost of financing following funding of the project by IFC. Construction of the first 435 kilometres is expected to commence in the first quarter of the 2016/2017 financial year.

We also have other roads and ports projects. These include Nyali Bridge, dualing of the Nairobi-Mombasa Highway, the Nakuru-Nairobi Highway, operation and maintenance of the Nairobi-Thika superhighway and so forth. As of February, 2016, the feasibility studies of all these six proposed projects have been completed and are undergoing review by the Government.

Mr. Speaker, Sir, the second question the hon. Member asked is to state the cost of each of these PPP projects. As at March, 2016 and based on the provisions of the PPP Act, only the Kenyatta University students' hostels have signed the agreement. The project value is estimated to cost US\$52.5 million dollars.

For the other projects which are in different stages of discussions, the figures are in the Schedule. There is Annex I which provides the details of the estimated costs and they come to almost US\$25 billion.

Mr. Speaker, Sir, the third question was to explain the legal framework to safeguard the interest of both the public and private investors in PPP projects. The Kenya Government has in the recent past been committed to improving and strengthening the PPP legal framework in an effort to create a solid foundation for the private sector engagement. It started in 2009 with the adoption of PPP specific rules under the Public Procurement and Disposals Act of 2005 which was termed as Public Private Regulations of 2009.

However, since then, there have been a number of other accomplishments, for instance, adoption of a PPP Policy in 2011 to articulate the Government's commitment to PPPs. The enactment of the PPP Act on 8th February 2013 and gazettment of the PPP regulation on 19th December 2014 and the development of the draft county PPP regulations which are aimed at guiding institutional framework for the undertaking of PPP projects in the county governments. Several consultations have been held with the county governments in this respect to finalize these regulations.

On the issue of institutions, there is the PPP Committee which has the overall responsibility of approving various projects as well as the Petition Committee which is a tribunal to adjudicate on all the petitions and complaints submitted by the private entity or party in the process of tendering into a PPP agreement. There is also the PPP unit which is established in the National Treasury as a national resource centre for PPP expertise.

On the issue of support to private sector undertaking PPP projects; incentives provided by the Government, include issuance of binding letters of credit to underwrite political and some of the economic risks of the projects. The Government also provides signing off-take agreements that guarantee the private party that demands for the services

as well as allowing the private party to charge a fee where appropriate to recover the investments and other fiscal incentives under the tax legislation.

Mr. Speaker, Sir, lastly, to safeguard the public interest, the PPP Act aspires to implement the PPP programme. In doing so, the National Treasury has developed a sound fiscal commitment and contingent liability management framework. This is intended to ensure that services provided by the private party are affordable and do not bring unnecessary burden to the Government and the people of Kenya. This is consistent with statutory principles underpinning the PPP ideology. The projects are expected and required to be viable financially, technically, socially and legally.

Let me stop there because the rest of the information is provided in the Statement.

Sen. Leshore: Mr. Speaker, Sir, I thank the Chairman for the comprehensive brief about the PPP projects. However, as the Senator for Samburu County, I would like him to tell us when the PPP committees were formed, who they are and whether they have been giving the Senate committee's advice on all the projects as well as giving the status of the projects or do they just report to the National Treasury alone?

Sen. Kagwe: Mr. Speaker, Sir, I wish to seek a clarification from the Chairman regarding the PPP committees. I would like to find out to what extent the committee has been active, particularly to the public to create knowledge about the existence of PPP. You will notice that one of the institutions that can enter into PPP agreements is the county governments.

I do not know to what extent awareness has been created within the county governments that it is possible for them to enter into agreements to release private capital for social development. If the committees were to get active and if we realized that individuals can build roads and other infrastructure necessary for development, we would make a lot of progress.

I would also like to find out what programmes the PPP Committee has to roll out the PPP projects. If you noticed in his answers, no PPP has actually started. All he gave us are stories and theories. We like stories, but we would like to see something in place.

(Sen. (Dr.) Khalwale consulted loudly)

Mr. Speaker, Sir, kindly protect me from Sen. (Dr.) Khalwale because he is shouting "Jubilee". At least Jubilee coalition exists. CORD coalition is dead. That is the difference.

(Laughter)

The Speaker (Hon. Ethuro): Order, Senators! Sen. Kagwe has just disqualified himself from my protection.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. Could the Senator for Nyeri County set the record of the HANSARD straight by substantiating his claim that the CORD coalition is dead?

Sen. Kagwe: Mr. Speaker, Sir, there was a gentleman from the area that the Senator for Kakamega County comes from called Shikuku and Seroney who a few years ago were supposed to substantiate about the death of KANU. They explained clearly that

there was no point of substantiating the obvious. Therefore, do I need to say anything further?

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. The Standing Order No.94 (1) clearly states that:-

“A Senator shall be responsible for the accuracy of any facts that the Senator alleges to be true and may be required to substantiate any such facts instantly.”

Sen. Kagwe has been asked to substantiate. Could you order that he does exactly that?

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. Apart from Standing Order No.94(1) which the Senator for Nyeri is obligated to substantiate and show the accuracy of his allegations---. As you can see, we are here as Members of the CORD coalition in which I am a co-principal and a presidential candidate within CORD coalition which is alive and kicking.

Did you also hear him say that there was a gentleman from Sen. (Dr.) Khalwale’s area called “Shikuku Seroney”? Have we ever had any Member in this country called Shikuku Seroney? The HANSARD will bear me witness. That also leads us to Standing Order No.94(1) on the accuracy of what we say. There has never been a Member of Parliament called Shikuku Seroney.

Sen. Kagwe: Mr. Speaker, Sir, first of all, I would like to clarify that there were two Members of Parliament; Hon. Shikuku and Hon. Seroney. I am quite certain from the body language of the Senate Minority Leader that he is quite sure of what I meant.

Having said that---

The Speaker (Hon. Ethuro): Order, Sen. Kagwe! Standing Order No.94(1) is very clear. The issue is not on what you meant. You could mean whatever you intended, but we speak in order to communicate whatever we mean. You used the words from Sen. (Dr.) Khalwale’s area.

Sen. Kagwe: Mr. Speaker, Sir, I have clarified that I meant two serious and honourable gentlemen from the western part of this country. However, if I were to respond to the other issue that was raised with regard to Standing Order No. 94 (1); there is only one way that parties die. One of them is where the principals, as Sen. Wetangula has referred to himself---. We agree that he was one of the principals of CORD before they cheated him, went and stoned him, somehow acquired Government materials like teargas canisters which normally belong to the security---

The Speaker (Hon. Ethuro): Order!

Order, hon. Senators! Sen. Kagwe, this is a straightforward matter. You have made a very serious statement which you know that in another era, it caused the two “honourable gentlemen”, according to you, detention.

An hon. Senator: Without trial!

(Laughter)

The Speaker (Hon. Ethuro): However, since we have moved on, we are now involved in civility. You have an opportunity if you said things that you never intended to. It is simple, all you can do is just to withdraw and apologise.

I can confirm from where I sit that I have two hands which have been shared by two coalitions; the Majority where you belong and the Minority to my left.

(An hon Senator spoke off-record)

So, definitely, they are Members of the House.

Sen. Kagwe: Mr. Speaker, Sir, I would not want to offend my colleagues. I am sure that I will not even get away by saying that CORD is not dead. It is dying. Therefore, I wish to apologise and withdraw completely.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, we had the very lengthy statement by the Chairman which sounded like the usual Jubilee statements of intent. With no intention of going further than that, can he tell us:-

(1) When the Committee that is responsible for dealing with Public Private Partnerships (PPPs) was constituted and if it was, who are the members?

(2) Whether it is true that it is, in fact, in almost all the intended PPPs apart from one or two, there are only two favoured companies; one called Century Investments and another one called Centum whose directors are well known and who in the past have brought down whole state corporations; these are the ones involved in these PPPs. It is one other way of favouring certain individuals to get public resources and opportunities to continue marginalizing other people in this country.

(3) I heard the Chairman mention about the Annuity Programme. Is he aware that some four or five months ago, the Cabinet Secretary for Transport and Infrastructure publicly announced that the annuity programme had been scrapped? It was not tenable and no bank was willing to put any cent in this programme. Why is he telling the House and the distinguished Senator for Samburu that, in fact, the annuity programme is part of the PPPs while it is dead and buried by those who started it, like Jubilee will be very soon?

Sen. Elachi: Mr. Speaker, Sir, I heard the Chairman say that very soon, a serious housing project will come up. I would like him to clarify to the residents of Nairobi whether this is the same programme we know is about to start. He should also inform us where the people who will be affected will be taken to. Will they be taken to safe places where they will wait for these houses to be built or we will just move people and then in the end, since it is a PPP programme, they will never come back to those houses and that will be the end? Especially now that we will have elections soon, we would like to know whether we are moving people or what will happen?

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, a very interesting aspect has come out of this request and answer in particular, question No.3. It appears that out of the list of legislation and regulations that are now in place, the only one that has not been devolved and is in draft is called the Draft County PPP Regulations. The answer suggests that the absence of County PPP Regulations does not stop the counties from pursuing PPP projects. When we were conducting the impeachment proceedings of Governor Chepkwony, one of the things that the person in charge of this PPP – I think he is called a director – mentioned that the reason why that PPP could not be implemented was the absence of these regulations with regard to county governments.

First, is the Chairman in a position to get a clarification of these answers because it contradicts a record about Kericho County that we already have here. Secondly, he

should find out why in the discussions about these regulations, the Senate has not been involved.

The Speaker (Hon. Ethuro): Proceed, Chairperson.
What is your point of order, Sen. Karaba?

(Sen. Karaba spoke off record)

Sen. Karaba: On a point of order, Mr. Speaker, Sir. This concerns my machine. This one!

(Laughter)

It is indicating that we are communicating with you. It is reflecting interjections here. So, I was waiting for you to call out my name. Can I proceed?

(An hon Senator spoke off record)

This machine! This one!

The Speaker (Hon. Ethuro): Sen. Karaba.

Sen. Karaba: Mr. Speaker, Sir, I wanted to find out from the Chairman---

The Speaker (Hon. Ethuro): Order! Can I dispose of your point of order first?

I confirm that if there was ever any communication between the machines, it can only be a monologue from your machine. My machine has no communication from you.

Sen. Karaba: Mr. Speaker, Sir, then this one is obsolete. It should be discarded.

The Speaker (Hon. Ethuro): You may proceed.

Sen. Karaba: Mr. Speaker, Sir, then there is no point of having these machines here because they are misleading.

Anyway, there is a very serious allegation – I do not know whether it is from the Chairman – about PPP.

Mr. Speaker, Sir, when you go to other countries, you find that there are indications on the roads showing that the road has been constructed through Public Private Partnership Programme (PPPP). We know that Thika Road was constructed through partnership of the Chinese and Kenyan governments. The Chair is talking of it as having been constructed under PPPP which we do not know. It is important for the Chair to tell us clearly the company involved in some of these projects. It sounds like there is double funding from some institutions. That is what I am concerned about.

Sen. Billow: Mr. Speaker, Sir, with all due respect to my colleagues, this Government should be given credit with regard to the PPPP. The PPPP story commenced in 2005 and it was not until 2009 that the policy was done. In 2013, an Act of Parliament on PPPP was passed. Last year, the regulations were passed. We have since then seen all the PPPP advertisements in the media. Pursuant to that, there has been a lot of response from the public. All these projects running in hundreds are the ones which received responses from the private sector who were interested.

It is true that none of them has been completed but they have commenced. I have mentioned the construction of 10,000 Kenyatta University students' hostel units. It has

commenced because they have signed an agreement with the company to design, finance, construct and operate the accommodation in their Juja campus.

Mr. Speaker, Sir, on the coal plant in Lamu, it has been signed with the consortium of companies to provide coal power. I caution Hon. Members that they should not mention companies without evidence. Centum Company is being mentioned yet they went into a consortium with other companies to do the coal plant. The same way a Member's reputation needs to be protected, companies also need protection. If a Member has evidence to the contrary, he or she can table it in the House. However, in this list of nearly a hundred companies, Centum Company appears once in the Lamu coal plant. It does not appear anywhere else. The Century Company does not appear in any of the others too.

Therefore, it is not fair for some Hon. Senators to bring their imaginations in the House.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. Is the distinguished Senator for Mandera County in order to continue giving a spirited half-hearted defence of the company we mentioned when we want to know why he mentioned Centum Company in one project and did not mention the other companies involved?

Sen. Billow: Mr. Speaker, Sir, the Senate Minority Leader should have listened to what I presented. I said that with regards to the Kenyatta University, they went into a PPPP with an American company called Africa Integras Investment Company Limited.

The Speaker (Hon. Ethuro): Order Chairman. We have been following the proceedings and you were clear. You were challenged by the Senate Minority Leader to name where the company is involved. He asked you for another one and you stated that it is not there. Therefore, you gave an exhaustive response.

Sen. Billow: Mr. Speaker, Sir, thank you for that protection. The Senator for Nyeri County asked about the PPPP committees. These committees were set up in 2013 when the Act came into force. I do not have the names but I can provide the Member with the names of the individual members.

We had a meeting with the Chief Executive Officer (CEO) and the Chairman when we were discussing the impeachment of the Kericho Governor. However, they are in office and they were elected in accordance with the provisions of the Public Private Partnership Programme Act.

There was a question on the counties that Sen. Kagwe asked. The regulations regarding the county PPPPs are still under discussion with the various stakeholders. The result will come to the Senate and the National Assembly for approval as required. However, we were told that the Public Private Partnership Programme Act of 2013 provides some functional framework for guiding counties.

This is why some of the counties are currently doing PPPPs based on it. The Treasury felt that there is need to have one for respective counties. That is why those regulations were devolved. However, it is important to note that there is no way a PPPP can be done at the county level without the involvement of the county assemblies and the Treasury.

Mr. Speaker, Sir, the third question was on the Nairobi housing that was asked by Sen. Elachi. This project involved the development of 10,000 units for civil servants in Park Road, Starehe and Shauri Moyo estates. I do not know whether the areas that she

has mentioned are the same ones that I referred to here. However, if she wants details I can find out if these are the same ones.

There is no need to worry because the Act provides clearly that the services provided to the public should be affordable and not a burden on the Government and the people of Kenya. I do not think there is a situation where we shall demolish all the houses and get rid of the people there. There should be a mechanism to provide accommodation for them.

Sen. Mutula Kilonzo Jnr. asked a question about the counties. What I have said is clear. The absence of the county PPPP regulations does not stop the counties from pursuing PPP projects. As the Members will remember, when we dealt with the Kericho issue, we relied on the existing PPPP Act. However, it requires a bit of understanding because it is a big document meant for the National Government projects.

Mr. Speaker, Sir, lastly, there is no double funding. If there is any particular project that the Senator for Kirinyaga believes has already been funded by the Government or any other entity and has been provided for in this list under PPPP, it is important he brings it to our attention and we shall raise it with the Treasury.

Thank you.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, it is a contradiction to say that the Public/Private Partnerships (PPPs) that counties are doing must go to the assemblies for approval and at the same time admit that we do not have the regulations. It is those regulations that would require county governments to submit those PPPs to the county assemblies. The Chairman is, therefore, telling the governors to go ahead and do PPPs without involving the county assemblies. Could he make it clear to us?

Sen. Okong'o: Mr. Speaker, Sir, picking from where Sen. Mutula Kilonzo Jnr. has left, we know that the governors arm-twisted the county assemblies. A case in point is Meru where the Senator for Meru was forced to go to court to stop PPPs. Could the Chair be clear on the role of PPPs with regard to county governments and county assemblies?

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, this matter is very fundamental. In the answer that the Chairman gave – and we cannot blame him because he was reading what has been written for him – he said that the regulations are yet to be put in place. We are talking of situations like the case of Machakos, for example, where the governor has been signing agreements and handing out land to people from Dubai; calling them PPPs. We also had situations where governors signed agreements for wind power and other things.

It is the duty of this House, under the Constitution, to protect counties and their governments and resources today and the future. Could the Chairman tell this House that as long as regulations are not in place, we will put an embargo on any of these PPPs until we have those regulations? When those regulations are ready, they will be tabled in the county assemblies and then brought to the Senate.

(Applause)

Sen. Billow: Mr. Speaker, Sir, there is an Act of Parliament on PPPs. There are also regulations on PPPs that were passed---

(Sen. Wetangula consulted loudly)

Mr. Speaker, Sir, can I be allowed to proceed? There are PPPs regulations that were passed in December, 2014. What is pending are regulations relating to county governments. I want to emphasize that the absence of the county PPPs regulations does not and has not stopped counties from pursuing PPP projects. Counties are required at the moment to apply the PPP Act and regulations in force with regard to any PPP agreement.

That is what we did when considering the impeachment of the Governor of Kericho. We subjected that proposal to the PPP Act and invited the PPPs unit to come and explain whether that agreement was in accordance with the Act and regulations. Therefore, there is no vacuum. Any county government that wants to engage in any PPP arrangement or venture must comply with the PPP Act and regulations which are in force.

Mr. Speaker, Sir, with regard to the---

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. Is the Chairman in order to mislead the House that there is no vacuum, when he knows very well that before an international treaty binds Kenya, for example, it has to be domesticated through Parliamentary ratification? Therefore the vacuum that he says does not exist is actually there because those rules and regulations must be domesticated by the county assemblies. Since when did the Senate become a county assembly?

(Laughter)

Sen. Billow: Mr. Speaker, Sir, I have responded to that matter adequately. There is an Act of Parliament that was passed by the two Houses of Parliament. The PPP Act and regulations were passed by Parliament in 2013 and, therefore, there is no vacuum. To make it more enforceable and applicable---

Sen. Sang: On a point of order, Mr. Speaker, Sir. Is Sen. (Dr.) Khalwale in order to mislead this House that once regulations are published, pursuant to the PPP Act, they must be domesticated in the county assemblies? That is not the case. Once regulations are tabled in this House, they are addressed by this House. As the Committee on Delegated Legislation, we will deal with them. Once we are done there is no need for domestication by the county assemblies. Is he in order?

Sen. Billow: Mr. Speaker, Sir, there is a law on PPPs in place that was passed by Parliament and enacted. If anyone wants to challenge it, there are other avenues to do so. Therefore, all county governments must comply.

The Speaker (Hon. Ethuro): Mr. Chairman, please, conclude.

Sen. Billow: Mr. Speaker, Sir, the last question was on Annuity Roads Projects.

Sen. Okong'o: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Overruled! Proceed, Chair.

Sen. Billow: Mr. Speaker, Sir, there was a time when the Annuity Programme was suspended because of the cost. The Government has since looked at it and in the last Cabinet meeting - about ten days ago - the first 435 kilometres under the roads annuity programme were approved. The relevant committee can provide you with more information, but it will commence in the first quarter of the 2016/2017 financial year.

Part of North Eastern, where I come from, is included in this programme and I met the contractor.

Thank you.

The Speaker (Hon. Ethuro): Hon. Senators, that is the end of Statements' Time.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. I was slated to get a response on Statement No.1, but had mentioned to the Chairman that I would ask the Speaker to slate it for Tuesday next week instead of tomorrow, because there is vital information that I am waiting for to interrogate this Statement.

The Speaker (Hon. Ethuro): Order, Senator! We do not have to broadcast small things, when we are really pressed for time. When I said that we had concluded that Order, you could approach me as we proceed with other matters.

Next Order!

MOTIONS

THANKS FOR THE PRESIDENTIAL ADDRESS

THAT, pursuant to the provisions of Standing Order 24(6), the Thanks of the Senate be recorded for the exposition of public policy contained in the Address of the President delivered on Thursday, 31st March, 2016.

(Sen. (Prof.) Kindiki on 12.4.2016)

(Resumption of Debate interrupted on 12.4.2016)

Sen. Kembi-Gitura: Mr. Speaker, Sir, thank you for giving me the opportunity to contribute to this very important debate on the Presidential Address which was given two weeks ago.

I know that my colleagues have debated several issues that appeared in the Presidential Address. Therefore, I will look into one or two issues. The President spoke at great length about what he called the nationalist covenant. That was very important; he spoke about it because Article 10 of our Constitution talks about the national values. The national values are some of the most important things to consider in our nationalism and in the nationalist covenant. Article 10 of the Constitution sets out the national values and it clearly states why they have to be looked up to, so that we continue upholding our nationalism. National values include patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people.

Mr. Speaker, Sir, Chapter Six of our Constitution provides for issues of integrity. One of the biggest problems is that we have for a long time ignored national values and integrity. At the moment, we take our nationhood for granted. For instance, there is the issue of corruption. I will speak to it at some length. I am on record as having said over time, that one of the most important things in this country is the National Anthem that was done at the time of our Independence. It is a prayer about the importance of our nationhood, staying as one nation and working towards creating that nationhood. That is

why the theme of the nationalist covenant was very important when enunciated by the Head of State on that important occasion.

Mr. Speaker, Sir, we have taken issues of corruption for granted in this country. From paragraph 67 of the Presidential Address, the President spoke at length about corruption in this country. He talked about devolution. He said it is the hope of every Kenyan to see that devolution works and benefits the nation. We do not want to see any part of the country lag behind in terms of development. However, he asserted that it is unfortunate that the dream of devolution has not come true.

Mr. Speaker, Sir, over the last three years, more than Kshs1 trillion has been devolved to the county governments. The hope was that the Kshs1 trillion which has been equitably distributed among the 47 counties could be seen and felt. However, the opposite in virtually all the counties is the truth. Almost nowhere throughout the country can the effect of the Kshs1 trillion be felt.

Members will recall that when the President asked his rhetorical question; whether the Kshs1 trillion is being felt on the ground, the answer from the Floor of this House was that it is not being felt anywhere. Hon. Members of the National Assembly and Senators who were in that gathering realised that in truth, this money is not being felt. Where did it go and why is it not being felt on the ground? I was very happy when I heard the President say on paragraph 77, that he joins Kenyans in demanding total accountability. To use his words, he said; "This is your money." He ended by saying that there are no, and there will be no sacred cows in this country.

What is the truth in the counties? Earlier this afternoon, I specifically raised the issue about Murang'a County. When Murang'a County Assembly brought impeachment proceedings against the Governor of Murang'a, the issue went to a committee and it was found that the threshold had not been reached in terms of what was expected to get to an impeachment. We accepted that report because it was a report of our own committee. There was nothing else that could be done. However, several answers of exactly what happened to the money that was said to have been misappropriated were not given to the people of Murang'a County and the people of this nation.

Mr. Speaker, Sir, Murang'a County Assembly, like all the other county assemblies, is closest to the people and knows exactly what is happening on the ground. The Senate is just like a Supreme Court where only issues of law are brought, but the facts are known at the ground level. So, when we come to the Senate and trash issues that have been brought by a county assembly, because I think that is what was done, it becomes unfortunate in the sense that the truth never comes to be known.

I commend the Committee for the issues it raised. It said that the issues must be looked into further, so that the people of Murang'a, like the people of other counties, can be assuaged and know that Article 96 as being properly pursued by the Senate never came to fruition.

Six months later, the people of Murang'a are still waiting to be told what happened. They are asking exactly what the President said. He said that there are no sacred cows and he joins Kenyans in demanding total accountability for every shilling that has gone to the counties. Murang'a County is not any unusual and more than Kshs15 billion has been devolved there in the past three years. What has happened to that money?

Mr. Speaker, Sir, only a few weeks or months after the debacle, the Ethics and Anti-Corruption Commission (EACC), to which these matters were to be referred, again,

did its own survey. I am sure not everybody was surprised. I was not surprised although I was extremely embarrassed and ashamed of myself that my county followed by Embu County came first and second on issues of corruption. Is it a surprise that those two counties are the same ones that have preceded every other county in this Senate?

I know for sure that some counties are claiming that Murang'a County rigged to be in position one. However, I dare say that whether the survey was right or not, it indicated that there are very serious issues that need to be looked into.

We are talking about accountability. I am on record many times as having said that the money that comes from the national Government and goes to county governments is our money. It is public money because it comes from our taxes. The national Government has no way of creating funds or money apart from the taxes that we pay, which then, in the spirit of the national covenant, is shared equitably amongst the 47 counties.

Are we wrong in asking for accountability when people say that they want to be told how an acre of land can cost Kshs10 million when we know that in Murang'a County, it cannot cost more than Kshs2 million? When they ask for the accountability and how much an acre was bought, nobody gives them an answer. They are left with a very sour and bitter taste in their mouths. They then wonder for what purpose did we have a new Constitution. For what purpose, do we have devolution if the money is devolving into individuals' pockets and not for the general benefit of the people who are supposed to get the benefit of that money?

The Presidential Address, therefore, gave hope to many Kenyans. It showed that there is still hope; that the institutions which are there need to be strengthened because one of the greatest frustrations that we have in our country today is the Judiciary. I have no fear of contradiction in saying that it has been one of the greatest frustrations to the issues of corruption in this country. The wheel of justice spins so slowly that when things that need to be followed up immediately are done, they wait for a very long time.

We are still discussing the Anglo-Leasing Scandal which happened almost 20 years ago. We have the "chickengate" scandal which happened more than 10 years ago and nothing has happened. In the meantime, people are still waiting, and no pun is intended. The chicken thief in the village is jailed for three years within a very short time, because he or she is not able to bribe their way through the wheel of justice.

This is the tragedy of our country today. It is a very big tragedy. We have seen three banks collapse in a very close sequence. Some of us who were around in 1986 and 1993 when Trade Bank and other banks collapsed can remember how people suffered due to the closures of the banks. Why do banks close? When the Senate asks the question about the very high interest rates charged by banks *vis-a-vis* the very high profits that they are making and what the relationship is, we do not get an answer. In the meantime, the same thing goes on happening.

I agree entirely with the National Assembly Majority Leader who yesterday, called insider loaning or trading, "theft of the depositors' money". What will happen? Are we going to wait for another three, four, five or 10 years before the depositors can reclaim their money because corruption fights back? We know they have a lot of money to fight back. When you hear somebody has loaned themselves Kshs7.9 billion, what can they not do with that money if it is still floating around? What justice cannot be bought? What will happen to the poor person?

Mr. Speaker, Sir, corruption should not and must never be glorified. Corruption must be called by its true name and dealt with at the earliest possible time. The Senate has that very important role. The moment we stop assuming the importance of Article 96 of our Constitution, then we might just realise the power that we hold in holding people to account for every cent that comes out of the sweat of our people, going into people's pockets.

For how long will governors line their nests with people's money? How long will they be allowed to do offshore investments? Offshore means investing in the next county, where you expect nobody will trace the money to that county? When will we start lifestyle audits so that we understand how a governor who did not even have one car before elections now drives in a fleet of cars and has a helicopter? They are controlling everybody, including county assemblies. When will justice done in this country? When is a Kenyan going to believe that devolution is a matter of fact and that it will benefit the people?

These are issues that are contained in the Presidential Address that we, as the Senate, must be bipartisan about. I am one person who believes that corruption, being a crime against the economic growth of a country, should be a capital offence. I have said it before. Why are we shy to deal with it? What is the difference between somebody who steals using a firearm in what is called armed robbery under the Criminal Procedure Act of our Penal Code and a robber who robs from the county, impoverishes people, makes them lose hope and faith in themselves and the country and that person is given a pat on the back and told: "That it is okay, you can go away because you can bribe your way through."

What culture are we building? When is the national covenant going to be fulfilled? When will that lady popularly called Wanjiku believe that there is hope in the future of this country? Those are the questions that I gleaned from the Presidential Address and I saw frustration. Even in the Presidential Address, I saw a President who is determined to end corruption. However, it is fighting back so hard that even the coffee farmer in Murang'a, Kakamega or Bungoma counties is not getting their rightful returns because of the cartels and a very long value chain.

The reason for the long value chain is just so that a very select few people can make money for themselves and their families. When somebody is arrested for stealing public money— this is the shame of our nation today – you find people coalescing around him or her because we also have women thieves - you find them saying that it is politics and that it is our people, tribe and clan who are being finished yet. However, when this person went to steal, he did not ask for his clan's or tribemen's consent. They went to steal to enrich themselves personally.

I support the Presidential Address and I hope that it will be---

The Speaker (Hon. Ethuro): Order! Your time is up!

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I rise to comment on the Presidential Address. Let me emphasize that I agree with everybody and, especially the President himself that this was a very important occasion because he was discharging his constitutional right as he is expected under Articles 10 and 132.

I deliberately tweeted to those who bothered to follow me that, on that day, I was not going to sit in the Joint Sitting of the two Houses of Parliament. It is because I wanted to express my disappointment and anger at what has happened over the 12 months that

followed the time that the President gave his other speech to the Joint Sitting of the two Houses. For that reason, I will not debate this report.

Mr. Speaker, Sir, I would like to make it very clear to those people who do not understand parliamentary democracy that representatives of the people have a right to express their protest; to show their disapproval of how the Executive is carrying out its mandate. It is for this reason, before I sit down, that I condemn the decision to punish some Members of the National assembly and a Senator for having risen in their places and expressed the people's disappointment.

Mr. Speaker, Sir, you all remember what happens in the Parliament of South Africa. The President sits there and he is undressed and called names, but no MP is thrown out. You will remember that even in the difficult times of President Moi, hon. Njehu Gatabaki and other patriotic MPs used to stand in their places and express the people's disappointment with the way the President was conducting the affairs of the State.

I appeal to the Speaker of the Senate to find time to talk to the Speaker of the National Assembly so that the punishment that you want to mete out on Hon. Wandayi of suspending him for 11 months is actually punishing parliamentary democracy.

We must congratulate the President when he is right the way we gave him a standing ovation when he read the list of shame. When we denied him a standing ovation or audience the way I refused because, having read that list, nothing has come out of it, why should people be punished? This is important unless the two Speakers of the two Houses of Parliament want to give the impression that they are not what we think they are. This is because people will then say that the two Houses have become an appendage of the Executive.

Mr. Speaker, Sir, MPs must put pressure on the Executive because there are members of the Executive who perpetuate corruption. At no other time in the history of the Republic of Kenya has corruption been this loud, big and damaging to society. Blowing of a whistle only; and all the Member is saying is that we do not want corruption; how would that be a worse sin than the actual stealing of public funds? Sen. Kembi-Gitura has touched me when he said that he views corruption as an economic crime that should attract capital punishment.

Mr. Speaker, Sir, a High Court sentenced the son of Hon. Mwanoyoha to hang for robbery with violence. He robbed somebody of Kshs14,500; violently. We all know the former Cabinet Secretary; Ms. Anne Waiguru, Bruce Odhiambo, Madam Namuye, Nelson Githinji and others, including some Members in this House, named voluntarily through an affidavit by Anne Waiguru--- they are all involved in the loss of billions of shillings. They are being asked to account, yet a boy is being hanged for Kshs14,500.

I also know of an old woman in Nyanza whose sons stole two plastic chairs and brought them in her mud-made house. She was put behind bars when the chairs were found there. The law must not be seen to be selective.

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

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. Whereas I would not have wanted to intervene and interrupt this eloquent presentation by Sen. (Dr.) Khalwale, he alleged that Members of this House have been named in the Waiguru corruption scandal. That is not in favour of this House. Could he substantiate the same or withdraw?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I am in possession of that affidavit because I have been sued by Ms. Anne Waiguru. I have used the same affidavit as my defence. However, if it pleases Sen. (Dr.) Machage that he would rather that affidavit is not mentioned on the record of the HANSARD, I withdraw. It is not important. It is already on record in the High Court of Kenya.

I say these things with a lot of passion. I think about this barefooted old woman in Nyanza---

The Speaker (Hon. Ethuro): Order! Sen. (Dr.) Khalwale, which action have you taken?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I have said that for purposes of the record of this House, then let the mention of the affidavit be expunged from my statement.

The Speaker (Hon. Ethuro): While at it, Sen. (Dr.) Khalwale, you also made serious statements about the Speakers of both Houses. Since I was the accused, I did not want you to get the impression that I am quick to defend myself until you have exhausted that aspect of your submissions. I want to remind you that the House has certain rules. You are one good Senator who always reminds me to enforce those rules in the Standing Orders.

Standing Order No.24(4) says:-

“When delivering an address to Parliament, the President shall be heard in silence and the address shall not be followed by any comment or question.”

Hon. Senator, what do you make of it when people just do other things that destroy that silence? Are we not under obligations to enforce those rules? As a Member of Parliament, do you not have an opportunity provided for? You started very well. You said, “According to the Constitution, the President was doing his constitutional duty.” That is a statement you made yourself. It is factual. It is appreciated.

As a Member of Parliament you are one person with an opportunity which you have been given which you are exercising right now. That is to give your side of the story.

For purposes of ensuring order in the House, it was necessary for some of those actions to be taken. I am not defending the Speakers of both Houses, but I am defending the Standing Orders.

Proceed.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I have agonized over this. I have looked at that Standing Order. With the benefit of the High Court ruling, as the opposition we approached the court over the Statute Law (Miscellaneous Amendments) Bill for which there was a fracas in the “lower” House. The court ruled that as a court, they were not going to make a statement on “the noise that was in Parliament because those were loud consultations.”

I take Standing Order No.24(4), it says “the President shall be heard in silence”, to mean no one can ask for the Speaker to catches his eye to give him an opportunity to interrupt the address. However, one is free to do consultations among themselves. Therefore, to me, the blowing of *firimbi* and everything was loud consultations. All that the Speaker was supposed to do was to warn that Members should lower the tone of their consultations and it ends there.

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

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. I really like the mitigation that the hon. Senator is making on a Member of our fellow sister House. However, would I be in order to draw his attention to our Standing Order No.114 and comment whether the action of the Speaker was also illegal.

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

Sen. Kagwe: On a Point of Order, Mr. Speaker, Sir. I appreciate the sentiments of the Senator for Kakamega. However, just for the record since we are at it, would I be in order to ask whether blowing a whistle constitutes consultation?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, Members might be reacting on the spur of the moment. However, the words that I am pronouncing now are the product of hard and long thinking. If is right even in the House of Commons for that noise to be made; if is right in South Africa and India for this to happen, what magic can we do so that we allow the President to be heard in silence and still not muzzle Members who want to consult?

The High Court has ruled that all that mayhem where Sen. Muthama was undressed and we were physically maimed was nothing other than loud consultations. If that confrontation was loud consultation, then whistling is just loud consultation.

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Khalwale! I will not allow you to give an extra interpretation to the High Court ruling. How can a High Court consider the beating up of our Senators to be loud consultations? How?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I agree with you. In fact, we were as much surprised. It was our evidence.

The Speaker (Hon. Ethuro): What is it, Sen. Kembi-Gitura?

Sen. Kembi-Gitura: Mr. Speaker, Sir, I am a little surprised because Sen. (Dr.) Khalwale is one person I have a lot of respect for when it comes to enforcement of House rules and Standing Orders. A very important thing has being brought to his attention by Sen. (Dr.) Machage. This is Standing Order No.114.

At that moment, what he is calling loud consultations, if they had stopped when the Speaker asked them to stop, no action would have been taken against them. The Speaker was only enforcing Standing Order No.114. He gave them a chance to stop doing what they were doing, whatever you call it, before they were thrown out. They were thrown out for what the Speaker rightly called misconduct under Standing Order. No.114.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. I agree with Sen. Kembi-Gitura. I am not contesting the throwing out of the Member. In fact, the HANSARD has recorded me. I have appealed to the Speaker of the Senate to sit with the Speaker of the National Assembly to consider making the punishment a bit lighter in view of the High Court ruling that those are nothing but just consultations.

Mr. Speaker, Sir, that is the point that I wanted to make; that you need to see how best you can allow us to exercise parliamentary democracy. I can assure you that when I feel motivated that I want to speak about corruption by coming here with a placard, I will come with it. Then the Speaker will make a decision on how to punish me. He may throw me out, but I will have made the point. “Wanjiku” will have felt satisfied that her representative, the Senator of Kakamega---

(Sen. Orenge spoke off the microphone)

Mr. Speaker, Sir, I need the senior counsel to inform me. I needed some legalese.

Sen. Orengo: On a point of order, Mr. Speaker, Sir. It is not legalese, but to inform you of the fact that we are building intolerance because in South Africa, if somebody is making a presentation, the loud speakers are never put off until you finish that presentation. But in our Parliament, when there is a feeling that you are saying something that the Speaker or the Clerks are not happy about, the microphone is turned off. It never even happened in the parliaments that I knew. So, once you begin stopping people from making presentational speeches, then the reaction is to find alternative means of doing the same thing. I would plead that that level of intolerance be stopped.

Sen. Njoroge: On a point of order, Mr. Speaker, Sir. I stand to get clarification from Sen. (Dr.) Khalwale and Sen. Orengo who apparently were not present on that material day. When the whistles started being blown, what had the President said? Are Sen. (Dr.) Khalwale and Sen. Orengo in order to mislead this House that the whistle blowing came from what the President had said? I remember---

The Speaker (Hon. Ethuro): Order! You have done well.

Proceed, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. Sen. Njoroge is right in demanding that I explain what the President had done or said. I cannot because I was not there. You are asking me to be what I cannot be. It is for him and others who were there to challenge me if I am misleading the House when they will be making their interpretation.

Mr. Speaker, Sir, may I appeal to Members that there will be times when it is only Parliament that can stop the country from moving into the wrong direction. Therefore, if we start intimidating Members from expressing themselves on behalf of the electorate, then we are converting this House into an institution that is dictatorial. You have watched that in South Africa, a speaker saying that President Jacob Zuma is a thief. She is ordered to withdraw and she says she will not withdraw because the President is a thief, and it ends there. I am not saying that this is what we should do, but you need to think about it.

Mr. Speaker, Sir, you want to write your own history as the Speaker of the Senate of the Republic of Kenya, so that parliamentary democracy is enjoyed. How can the mere blowing of a whistle---

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Khalwale! If you have nothing more useful on the Speech, you are at liberty to terminate. You cannot spend the better part of your contribution asking me to promote anarchy. I am bound by the rules you give me and you are always a constant reminder of those rules. It cannot be that the moment it is convenient to you, I should abandon them. You do not write legacies by doing something that is terrible. You write legacies by doing what is good and right. Abandon that line of reasoning and make your other contributions if you have.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. I have stood my ground on the need for parliamentary democracy and I wish to waste no words on commending the President's Speech because it is just a talk-show. He does not want to tell us that which he intends to do and end up being seen to be doing what he has said he is going to do.

Sen. Kagwe: Thank you, Mr. Speaker, Sir. From the outset, I want to say that I support and I was impressed with the President's Speech. In doing so, I want to agree with you totally that there is a demarcation point. There is a point that reaches where demonstrations stop and nuisance begins. There is a point that reaches where consultations stop and disorderly conduct begins. There is a point where reasonable

behaviour in the eyes of reasonable people stops and anarchy begins. I believe and support the decisions that were made by both Speakers in that House and I consider that they had no choice in doing so.

Mr. Speaker, Sir, the President spoke of the nationalist covenant among Kenyans and the values that our nation must adopt in order to move forward. I want to speak about the difference between the President's intention and those who work for him and the work of the implementers who work with him. I congratulate the Government for the work they have done. It is important for us as we look forward, to appreciate something that has been done. If you appreciate something that has been done, even as a student, you can then begin to want to do the same thing.

There is no question that the railway is being built. Anybody with eyes can see. You cannot debate a fact. The fact is that since 1902 to 1908 when there was the Kenya-Uganda Railway, this is the first time in our nation's history - for almost 100 years - that we are doing a new railway. That is something which is commendable. Very few African governments have been able to build even an inch of a railway.

Mr. Speaker, Sir, there is no denying that there are roads being built in this country. In every county and sector of our nation, there is work going on. There is no denying that the energy sector is increasing our capacity to industrialize because when you commission a 640 megawatts of power project, you cannot deny that that has been done.

I would have, therefore, expected the Opposition, rather than make sport of the Speech, to say that whereas we have increased our capacity by 600 megawatts, we would have expected to have increased this by 2,000 megawatts, which is oaky. Therefore, I agree with the President that as the people, we must appreciate. The old African saying - I am not saying this to put myself into all sorts of problems with gender issues, but in those days in the cultures that prevailed then, there was wife beating and those kinds of practices that do not exist anymore.

In those days, it used to be that even if you were beating a spouse, you beat the spouse heading them to the house. You do not beat your spouse chasing her away from the house. Similarly, when we are criticizing the Government, it is necessary for us to appreciate certain issues. We are criticizing a government of the country in which we live. There is no other country we will live in if the situation was to become chaotic.

Mr. Speaker, Sir, I agree with the President that we must re-evaluate our thinking and look at ourselves from within. I also agree with him that we must discipline our society. We have become an undisciplined society. No nation has ever developed in anarchy. Whenever you drive on Kenyan roads, for example, all you see is a total symbolism of anarchy. There is indiscipline in some of our institutions, including the ones that create the corruption that Sen. Kembi-Gitura was talking about. A nation cannot develop with that level of indiscipline. Therefore, we must re-create our values, condemn corruption and begin not to glorify those with proceeds of corruption.

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

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

Mr. Temporary Speaker, Sir, in this country, the average citizen in the streets will condemn you for having not stolen. You will hear people claiming that a particular person who held a certain position and did not steal is foolish. This is because he would have made a lot of money when he was in office. That is the indiscipline I am talking about. When you think about it, it is not encouraging in terms of the values that we hold as a nation. Those values must come from our education institutions. It is too late for some people, but it is not too late for our children. I believe that if we were to integrate these values in our teaching and education system, we can save the future generations of Kenyans.

If you look at the challenges that our nation has, one of the biggest threats to the future stability of our nation is tribalism. Tribalism is what creates the circumstance where an individual who is caught engaging in corruption is surrounded by a clan or a tribe. You belong to a certain tribe first and then, secondly, a Kenyan and not a Kenyan first and then whatever background you come from second; be it religion or tribe.

We must change this narrative through our education system. We have legislated and constituted it in our Constitution, but it is not enough to create law; we must also go to schools and teach our children these things. I am one of those who believe in the unpopular notion that all schools in our country should be national schools and be integrated, so that people can get to know each other and fight tribalism from the base. It is only when children associate with and know each other that the tribal feelings and behaviour will diminish in our nation. We must take action now because the future belongs to those who will be Kenyans first and then wherever else that they belong to, second.

Mr. Temporary Speaker, Sir, the implementation of what the President spoke about is key and paramount to the success of the Jubilee Administration. I urge those who work for the President in the Cabinet, Civil Service and elsewhere not to embarrass him. When he says that something will be done, let it be done. For example, when the President comes to Karatina in Nyeri and tells the good citizens of Karatina that a certain market will be repaired, it must be done at a pace that suggests that it is the President who has said it. Two days ago I was watching television and saw my people of Nyeri, especially in Karatina Town, walking in mud and surrounded by clogged drains in a market that does not belong to the county government; it was built by the national Government. I was distraught and called the Cabinet Secretary on the same day to ask why our people are suffering when the President himself has already told them that the market must be repaired.

I realise that the President has got his frustrations because those he has charged with implementing certain things are falling short of doing so. This House and Parliament must use its power to ensure that we support the President in ensuring that what he has said is executed.

At the same time, when you consider the amount of money that President Kenyatta's Government has put in hospitals and see the shortcomings in as far as the health services are concerned, you appreciate that there is something amiss about the way we are managing hospitals. The Nyeri County administration has advertised for the management of the Provincial General Hospital. We want managing directors - people who are used to managing institutions - to manage hospitals. It does not follow that a doctor has to manage a hospital.

Mr. Temporary Speaker, Sir, you as a medical doctor, will agree with me completely that there is a difference between treating a patient and managing a hospital. We want individuals who have managed companies to manage hospitals like the Provincial General Hospital in Nyeri County, so that it can offer services to the people as they deserve. We want to see decisions made, such as the transformation of Othaya Hospital into a teaching and referral hospital, implemented quickly so that Kenyans can benefit. We want to have a digital medical college, which I will propose that it be attached to Kimathi University and known as the Kibaki Medical Digital Training College, so that it becomes an institution that teaches Kenyans the use of technical equipment in medicine. These are the kind of ideas that we should put forward, so that the President's effort is enhanced by our ideas, ideals and values.

Mr. Temporary Speaker, Sir, I want to conclude by talking about the railway again. It takes a long time to plan and build a railway. Therefore, I support and urge that instead of upgrading the railway line towards Nyeri, Nanyuki, Isiolo and towards Ethiopia, as the President said, we should be looking ahead and have a vision of how we will connect ourselves with Ethiopia and other countries to the north and the south. We should plan for the railway line towards Isiolo and Nyeri, so that by the time the railway reaches Kisumu, it can simultaneously reach Ethiopia from the other side in the next three or five years.

We know that there is the Lamu Port, South Sudan, Ethiopia Transport corridor (LAPSSET) project that is supposed to cover Lamu to Isiolo. However, even if it starts from Lamu and we have a fast train from Lamu to Isiolo, there will be no connection from Nairobi to Isiolo. We should, therefore, plan ahead. We must say that when we have completed the railway from Lamu to Ethiopia and from Nairobi through Nyeri to Isiolo, there should be an upgrade of the current railway from Mombasa to Kisumu.

We cannot only have a standard gauge railway from Mombasa alone and we neglect the other railway line. As we build new rail lines, let us continue building and upping the standards of what we currently use. Those with a vision for Kenya will support the President's speech and read in detail what he proposed in the various departments that he heads. Ours is to support him and make sure that his proposals are implemented.

Sen. Sang: Mr. Temporary Speaker, Sir, thank you for giving me this opportunity to contribute to the President's Address. I thank the President of the Republic of Kenya for fulfilling his constitutional mandate. The responsibility bestowed on him to address Parliament; specifically on the State of the Nation is an important constitutional provision in this country. With the new constitutional dispensation he does not sit in Parliament. Therefore, it is important that he has an opportunity to present a State of the Nation Address to Members of the National Assembly whose constitutional responsibility is to represent the people of this country. It is also important for us in the Senate who represent the counties to have an opportunity to interrogate, discuss, critique and appraise him. Therefore, I congratulate him for living to this expectation.

Mr. Temporary Speaker, Sir, the drama that greeted the Presidential address was regrettable. It is unfortunate this afternoon some hon. Members in this House seemed to suggest that it is okay to flout every Standing Order that we believe in and do whatever we deem fit. We have Standing Orders which guide us in this House on how to express our dissatisfaction with regard to the issues that we think the President needs to address

or he has failed to address in this country. We cannot allow a situation where we colour anarchy an attempt to disrupt a constitutional process in Parliament and try to mask it under something we call “parliamentary autonomy and freedom of expression”.

Every right as provide for by the Constitution has limitations. Therefore, we must be people who believe in the rule of law. Sen. (Dr.) Khalwale who focused on this particular element this afternoon complained the other day of the kind of chaos that was visited on them in Kakamega Town. Therefore, if we were to stretch the imagination that one can still engage and voice dissatisfaction we should then have said that the characters who visited chaos on Sen. (Dr.) Khalwale and the Senate Minority Leader when he launched his presidential bid were right to do so. That cannot be the case

Mr. Temporary Speaker, Sir, it is, therefore, important that we, as a country, should think through our Constitution and the legislation that we enact in this House. We should think through the Standing Orders and live by them because that is the only way we can have an orderly state.

Mr. Temporary Speaker, Sir, we know the President addressed himself to a number of issues when he delivered his speech to us. Even if you want to disagree with the Jubilee Administration, it is important to appreciate what they have done. The fact that the SGR is being build is commendable. We can raise issue with the pace at which it is being done and say that it should also cover other regions, but we cannot just dismiss it. It is a fundamental infrastructural development taking place in this country.

We are left wondering; if some of these individuals had the opportunity to run this country, what is it that they would deliver to the people of Kenya? If developing or reconstructing a railway line or expanding the generation of electricity of this country and provision of medical equipment to various hospitals in our counties does not make sense, then I am left wondering what it is that people will consider as a milestone in terms of development.

I congratulate the President in a number of areas that he highlighted. I would like to focus on one particular element. The Senate has a responsibility to look into the affairs of the counties. Whereas we had challenges in the initial years; we had challenges with the Executive as well as the National Assembly in the passage of the Division of Revenue Bill, I am happy that we have come to an understanding in terms of how we discuss and pass that Bill.

The President stated that in the last three years, counties have received more than Kshs1 trillion. That is very important to note that the Jubilee Administration has supported devolution. The Constitution initially predicted one of the greatest threats to devolution would be the national Government. That is why institutions like the Senate and other constitutional commissions were put in place. However, in the last three years, it has become apparent that the greatest threats to devolution are internal mismanagement of counties.

Mr. Temporary Speaker, Sir, I speak with a heavy heart knowing that in the last three days, hospitals across Nandi County have been shut down because health workers countywide are on strike. We know that the issue of health workers’ salaries and promotion are national problems. However, every county government has had opportunity to sit down with their health workers and agree on a formula and even get into some agreement and working formula in terms of ensuring that health services are not disrupted.

I am sad that we had such a crisis in our county. The county government attempted to deal with the issue, but they were unable. We had to step in to mediate in the process and hammered out an agreement between the County Government of Nandi and the Kenya National Union of Nurses (KNUN). We agreed on certain things that the county government had to do and the responsibility of the KNUN. It is sad that the county government has ignored every bit of their responsibility in that collective agreement with the KNUN. This has led to another crisis. Since Independence, we have never witnessed a situation where all the health facilities in Nandi County were closed. It is only happening under a devolved system of government.

Mr. Temporary Speaker, Sir, the intentions and objectives of devolution could not have been that we would find ourselves running into more trouble than we had under a centralized system of Government. Therefore, I call upon the County Government of Nandi led by the Governor that it cannot be business as usual that we continue losing innocent lives of Kenyans who have already paid taxes. These are law abiding citizens who voted in the Senator and the Governor yet we now subject them to untold suffering just because we do not want to sit down and carry out our responsibilities as leaders and Government.

Mr. Temporary Speaker, Sir, the reason health services were devolved was that it was intended to bring the management of health services closer within the county in order to give an opportunity to our county governments to ensure that every bit of the health sector is addressed. However, this dream remains far from being achieved in our county.

I, therefore, call upon the county government to prioritize. One of the greatest challenges of our county governments is lack of proper priority. It cannot be a priority in Nandi County to build some monuments and water fountains just to celebrate and inform people that they are now welcome to Nandi County. How does that help? They have spent millions of shillings on building things that are not useful such as monuments, instead of using the same resources to ensure that our health facilities are up and running.

It cannot be a priority to build a fence and renovate the fences around a hospital yet there are no drugs in the hospital. It cannot be a priority that you organise diners, *keshas* and cultural nights yet health workers have not been paid. Prioritization must be done to ensure that the real intention of devolution is achieved.

Mr. Temporary Speaker, Sir, it is, therefore, important for this House, moving forward that we take keen interest in ensuring that we carry out proper oversight. I am excited that we have come to an agreement. This Senate will be receiving some form of facilitation in order to carry out monitoring and evaluation so that we can ensure that Kshs1 trillion that goes to the counties is utilized in programmes and development projects that are geared towards addressing the real needs of our residents. Therefore, the President addressed himself to that challenge.

The other issue that the President addressed is fighting corruption in this country. If we have to be a country that believes in the rule of law, then, we must give chance to independent institutions. It cannot be that we will be a country that sets up independent offices, guarantees them independence and gives them resources, but we want to direct them in the way they carry out their responsibilities. We need to ensure the EACC is given the proper support that it needs. I thank the Jubilee Government because it has given the EACC the resources it needs.

This Government has also given support in terms of finances to the Judiciary. People blame the Jubilee Government on issues of corruption yet it has facilitated independent arms of Government to handle issues. What do you want the Jubilee Government, the President and his deputy to do if the cases are lying in court or if investigation is within an independent institution like the EACC? If you hear some of the comments coming from the Opposition; they seem to suggest that if they had the opportunity to run this country, they would be directing what the EACC and the Judiciary would be doing just to ensure that they obtain whatever outcome they want from the courts.

We must allow independent institutions to function and give them the necessary support that they need. Therefore, I beg them to understand that once you have independent institutions supported by the Constitution, the only responsibility of a functional Government that believes in the rule of law is to give them resources, political goodwill---

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Abdirahman, are you on a point of order?

Sen. Abdirahman: On a point of order, Mr. Temporary Speaker, Sir. If I got Sen. Sang right, he is pleading with the Opposition. I am surprised when the Opposition struggles to get independent institutions that will work without any interference from any quarters---

The Temporary Speaker (Sen. (Dr.) Machage): Order! What is not in order?

Sen. Abdirahman: Mr. Temporary Speaker, Sir, is the hon. Senator in order to castigate the Opposition when in essence they are fighting for the same thing he is talking about?

The Temporary Speaker (Sen. (Dr.) Machage): Order! Maybe it is not properly executed, but the hon. Senator is completely in order to plead with the Opposition to come to their aid. I see that nothing is out of order. That is his view.

Proceed, Sen. Sang.

Sen. Sang: Mr. Temporary Speaker, Sir, unfortunately, the hon. Senator has just arrived and did not get where I was coming from. I said that the continued attacks on Government by the Opposition on the basis that it has not been forthright in fighting corruption---

The Temporary Speaker (Sen. (Dr.) Machage): Order! Your time is up. I will give you one more minute.

Sen. Sang: Mr. Temporary Speaker, Sir, it is not true that the Government has not been committed in fighting corruption. In fact, they have supported the various independent institutions such as the EACC and the Judiciary. Any other attempt by the Jubilee Government to push that agenda beyond, would amount to interference. Therefore, I would like to inform the Opposition that, we, as Government, can only do as much. What is left is on this Parliament; the National Assembly and the Senate to push these institutions to account in terms of the fight against corruption.

Mr. Temporary Speaker, Sir, with those few remarks, I beg to support.

Sen. Karaba: Mr. Temporary Speaker, Sir, I thank you for allowing me to support the Presidential Address as issued and contained in the documents given to us. This was, and will remain one of the most important key addresses in the recent times and in future in Parliament. I was, particularly, thrilled by his Address. I was happy.

Everybody else was happy, except those who decided not to listen. They never listened and should not even comment because they never heard and were not there to see the mood in the House.

We are talking about our country. One day, we will not be there, maybe it will be talked about by the future generations after we have left. Our country has been independent for the last 50 years. Other countries have been independent for the last 240 years. In this case, I have in mind the United States of America (USA) which became independent on 4th July, 1776. They remember their year of independence and 4th July as the Independence Day. They are proud of that. They take stock of their achievements.

Therefore, the Presidential Address was not a way of wasting time. It is done worldwide. Every country which is proud of its name has to recount its achievements and failures. The President's key Address last Thursday was noted. It was very good. I support everything he said, 100 percent.

Mr. Temporary Speaker, Sir, we were there during Independence. Some of the Members were not there, but they are here today. We could see the struggles that the people experienced before 1963. There were a lot of problems. When we got Independence in 1963, we started to solve our country's problems because we were independent.

The three presidents who have been there before may claim that they have had various achievements. The fourth President, Uhuru Kenyatta, who shall be the president until the people of Kenya decide otherwise, is the President of the people. He told us during the State of the Nation Address that he has achieved a lot within a short time. I have not heard anyone else claiming such a responsibility.

It is true that within three years, he has had the SGR project commenced. He has also started many road networks. It is true we can see a lot of road projects going on. Since we travel around in this country, we observe a lot of projects on course. We see the level of devolution and how it is benefiting the people in the counties.

Mr. Temporary Speaker, Sir, nobody should tell us that the President's Speech was a waste of time and should not have taken place. I remind the Members that every country has its pride and history. Every time we visit countries in South East Asia, the first thing we hear is that our country used to be at the same level as Korea, Malaysia and Hong Kong, yet these countries are now ahead of us. That is the story we hear when we are in South East Asia. Nobody wishes to find out why such countries are ahead of us.

Why can we not do what the South Asia countries did? Why are they currently referred to as the tigers? This is something we should address. When we want to address it, some people say we are wasting time yet it is not true. We need to come down and crack the whip. This country is ours and we should not run away from our responsibilities as the elected representatives. We are Senators - for that matter the Senate is a House of record - elected to inform the electorate what the Government is doing.

In the Speech, the President pointed out that he was short of words every time he remembers that the Cabinet is suffering because of his crackdown on corruption last year. Some of the Cabinet Secretaries have been sacked and others prosecuted. We have never seen this happen before. We shall one day acknowledge the fact that that we had a Government of President Uhuru and his Deputy President Ruto that saw a lot of developments. This is true and I do not understand why there are doubting Thomases.

Those who doubt should continue doubting and those supporting the Government should press on.

Mr. Temporary Speaker, Sir, we support the SGR project. If we do not do this, what else should we do? Do they want us to sit and wait for heaven to come down? When these projects are complete, we shall reap the fruits. We are currently reaping the fruits of a railway which was constructed in 1894. That is the railway that made Kenya a colony and Uganda a protectorate. Through this, the British had to come here and occupy our country. The same thing is likely to happen when the SGR is completed. Through this, we shall generate a lot of revenue because of the many activities like agriculture and other industries along the railway line and many linear development projects. Therefore, this is true because we are a developing country in East Africa. We should be compared to Malaysia, Hong Kong and Korea among others.

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

[The Temporary Chair (Sen. Sang) took Chair]

Mr. Temporary Speaker, Sir, there are countries like France that struggled to reach where they are now. They had problems like we have now. In 1789, they declared their independence and from then on, they have developed. Therefore, development does not come on a silver plate; it calls for struggle. This is the time that we need to sit and carry out development. We will not allow the people who pull strings the other side while we are developing.

We are happy because we have a new Constitution. Since then, we have had a lot of development taking place in our counties. However, to the disappointment of some of us, some of the counties have governors who have taken the development of counties like their own development. Some of them have become kings at the expense of peasants. They are misusing the money. The President asked us to ensure that the governors are accountable. The billions of shillings that are allocated to the counties belong to “Wanjiku”. They are taxpayers’ money. Therefore, such monies should be protected.

Instead of doing that, what we see in counties are governors who are misusing it. Some of them are buying beds worth millions and others are putting up gates of over Kshs 10 million. All these are at the expense of mortuaries which have no refrigerators. Some of them are putting up palaces as if they will be there forever. This is an important reminder to all the governors that what they are misusing is our money and they should be ready to account for it.

Mr. Temporary Speaker, Sir, they are using the same money to entrench themselves in their positions. A governor has a fleet of cars with chase cars and others are used by their wives. In fact, others are assigned to maids. Imagine that is our money being misused. The Senate should ask the Judiciary to toe the line because they should not accept everything. As a result, our efforts are frustrated. Therefore, we cannot do much in terms of transforming what we want. In that case, we will not move ahead. These governors should be tamed so that they realise that the money they are using belongs to the public.

In Kirinyaga County, for instance, we have big dams being constructed. That is what we want the Government to support. When a river dam is built, it will support the

settlers in Mwea Irrigation Scheme. We wish to see Kirinyaga County transformed from what it has been to an industrial county. However, you find the electorate is after money and when they are given money, they sing the song of the governor. That is what is happening in every county.

The governors want more money for road construction, but you find that there are no roads being constructed. Instead, they are putting up magnificent buildings so that they squander the money. Why can they not use the money to purchase drugs and develop the mortuaries which have collapsed? The money should also be used to purchase land for the landless.

Mr. Temporary Speaker, Sir, we need to tell the governors that they are misusing their positions. No wonder most of the Senators are going out there to unseat them, and I wish them the best of luck so that we can see a better transition of our devolution. Without unseating governors who are in power now, this country will not be the way we would like it to be; like the “tigers” of south-eastern Asia.

I need to remind Members here that we have a role to play which is already inscribed in the Constitution. We are going to fulfill our mandate as provided for in the Constitution. Once that happens, the courts should not be between the governors or the county governments and the Senate. That is the frustration we are suffering.

Mr. Temporary Speaker, Sir, you will remember the “Sang Bill” which was blocked even before we even implemented it. We now have the Early Childhood Development Education (ECDE) Bill which requires that nursery school teachers be employed by the Teachers Service Commission (TSC). That is a simple matter yet it has taken four years before being resolved. When shall the nursery school teachers be employed by the TSC yet the Constitution requires that nursery school teachers be employed?

Thanks to the Government because it reduced and abolished coffee levies. I thank the President because Kirinyaga is a coffee-producing county. We thank him for that and hope that coffee farmers in Kirinyaga will use the reduced and abolished levies to improve their coffee production so that they can earn more money and use it for value addition, so that we have more coffee exports from that region. That is what we are asking them to do.

I thank the President for coming up strongly and standing firm because if it were not for his firmness, he would have run away very early when Members began blowing whistles. Due to his courage, he stayed and talked up to the very last minute. Let him be told that we were very happy with his courage. We rate him as one of the best presidents ever for this country and in Africa since Independence and we are happy for the achievement. Let that bell ring that the Jubilee Government is here to stay and it is doing well. If any other country can produce such a party like the Jubilee, let it be.

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

Sen. Chelule: Bw. Spika wa Muda, asante sana kwa kunipa nafasi hii ili kuunga mkono Hotuba ya Rais. Nachukua fursa hii kumpongeza Rais wetu kwa kusimama kidete ingawa alisumbuliwa na kulikuwa na changamoto ya sauti za firimbi ndani ya Bunge. Hata hivyo, alistahimili na kusoma Hotuba yake mpaka mwisho. Pia, nawashukuru Wabunge wa Mrengo wa Jubilee ambao walikuwa na nidhamu ya hali ya juu wakati Rais alikumbana na changamoto ya sauti ambayo hatukuelewa ilikuwa ya nini.

Ajabu ni kuwa Wabunge walianza kupuliza firimbi bila kumpa Rais nafasi kutoa Hotuba yake. Hakuna njia nyingine Rais wetu anaweza kuongea na wananchi wake isipokuwa kufika katika Bunge la Taifa na kuhutubia Wabunge ambao walichaguliwa na wananchi wa Kenya. Hakuna njia nyingine isipokuwa hiyo. Nachukua nafasi hii kumpongeza sana Rais wetu. Amekuwa akiongea na watu wake ambao walimchagua kuwa Rais wa nchi hii. Amekuwa akiongea nao kwa njia ya Hotuba katika Bunge la Taifa.

Bw. Spika wa Muda, ningependa pia kuchukua nafasi hii kuongea juu ya matumizi ya pesa katika serikali za kaunti. Matumizi ya pesa za kaunti yanatuhusu sisi viongozi. Pesa ambazo zinapelekwa katika serikali za kaunti ni kwa minajili ya mwananchi wa nchi hii. Kwa hivyo, itakuwa ni aibu sana wakati hesabu ya pesa ambazo Seneti imeidhinisha zitumwe kwa serikali za kaunti inatolewa na kupatikana kwamba hazikuwasaidia mwananchi kwa njia yoyote.

Kwa hivyo, ni vyema ikiwa umechaguliwa kuwa kiongozi, jinsi magavana walivyochaguliwa katika kaunti zao, kuongoza na kuangalia jinsi rasilmali zetu zinavyotumika. Itakuwa aibu sana iwapo itapatikana kuwa pesa za wananchi zinatumika kwa njia isiyofaa.

Nachukua nafasi hii pia kumpongeza Naibu wa Rais kwa kusimama kidete wakati alikuwa akipitia shida wakati wa kesi yake katika Mahakama ya Kimataifa ya Uhalifu. Alisimama kama kiongozi na kutuongoza. Hakuna hata siku moja alionyesha kwamba ana shida ilhali kesi yake katika Mahakama ya Kimataifa ya Uhalifu ilikuwa shida kubwa sana. Nampongeza kwa kusimama wakati huo, kuongoza na kuwahudumia Wakenya.

Hiyo inamaanisha kuwa Rais wetu na Naibu wake ni viongozi wa ajabu. Sisi tunajivunia wao kuwa viongozi wetu na chama chetu cha Jubilee. Heko na maisha marefu kwa Rais wetu wa Kenya, Naibu wake na muungano wa Jubilee. Tuko nyuma yao na tuko tayari kwenda mbele pamoja.

Asante sana, Bw. Spika wa Muda.

Sen. Murkomen: Mr. Temporary Speaker, Sir, I take this opportunity first to congratulate His Excellency the President for performing his constitutional duty of delivering the State of the Nation Address for the third year and, particularly, for sticking to the constitutional requirements in terms of reporting on the progress and implementation of the national values and principles and also matters related to the security of this country.

Mr. Temporary Speaker, Sir, it is very sad that we are discussing matters of values and principles and the President was supposed to speak about the same. However, even before he spoke, our colleagues in the Coalition for Reforms and Democracy (CORD) were totally in violation of those values. These values include; respect, public participation, good governance and democracy. It was an insult particularly to the people of Kenya to see Members blowing whistles like small kids in a manner that cannot be explained. It is worst that in the process of doing that, Members who blew the whistles were from only one county and largely from one community.

We have been criticised, as the Jubilee Government, for corruption or bias in terms of appointments. However, even in sharing of a whistle alone and protesting, the CORD side could not marshal Members outside one community. To me, it was a terrible embarrassment. I said that in public without hiding. I tweeted that it was a complete

disrespect to see Members of Parliament from one community embarrassing the rest of the nation by blowing whistles.

I wish Sen. Moses Kajwang was here because he was the lone lost individual in the midst of Members of the National Assembly like hon. Wanga who are already known to have a reputation of that direction. It just happened a few days after I showered a lot of praises on him as being level-headed, only for him to prove me wrong within two days in terms of approach.

This is something we must focus on. If Parliament is not the right place to come and debate, give policies and pass laws, then, those who are in Parliament and behave as though they are out there and those who demonstrate inside Parliament with whistles should make a decision to quit Parliament. What is the difference between them and people who voted for them? We were elected to oversight the national Government, debate over such reports and give alternative suggestions and policies but not to whistle.

I salute the President for starting with recognition of our soldiers; men and women, who have sacrificed their lives, time, energy and everything to serve this country out there. It was a great opportunity for us to stand as MPs and recognise those gallant soldiers who are fighting on our behalf within and outside our borders.

Mr. Temporary Speaker, Sir, I also think that like Sen. Karaba said, although he never used this as an example, one of the things that will be remembered for many years from the Presidential Address was the enunciation of a philosophy that the President called “the nationalist covenant”. I thought that was very important. Even in future studies about this country in universities and colleges, what President Uhuru called the nationalist covenant is going to be part and parcel of what will be studied in terms of achieving that covenant.

The President called it a sacred covenant for which all of us have a responsibility. As a people, we are bound together and united by this covenant which is described as our lowest common denominator. He showered a lot of praises on our founding fathers. I was gratified when the President said that one of the founding fathers, Sen. G.G. Kariuki, sits in this Senate. Sometimes we sit here with Sen. G. G. Kariuki and we take it for granted. He is one of the first MPs in this country.

What a great honour for you and me, Sen. Aaron Cheruiyot, and many of us who are young, to share a platform with Sen. G. G. Kariuki! It is a great honour and something that we must always appreciate; that those men and women had a dream and a vision for this country. Sometimes we forget this vision, covenant or dream that they had for this country. It takes such speeches like that of the President to remind us that we need to go back to our values and covenant that, even those who are in the Opposition are part and parcel of this country.

I have said this before. Sometimes I see Kenyans speaking on social media or in foreign countries completely oblivious of the fact that they have a nation called Kenya and that they are supposed to protect the integrity of our country. You can criticize those who are in office, the Government of the day and those who are elected. However, you must not forget that you have a country called Kenya.

I see some Kenyans so gratified and excited about some parody accounts that run on social media that, ooh President Mugabe or President Magufuli said this about Kenya. Of course, in the first place, they are untrue. It is a creation of some people on the social

media. However, you see some Kenyans say: “Oh, yes. We are. We are this kind of people. We are useless, the most corrupt and stupid.” We are not.

There is a preacher who once said that you are what you think you are. I refuse to be part and parcel of the generalization that we are people who have no vision, dream, covenant or a desire to have a country that is united. I will not be defined by those who sit idle at their computer stations, typing things that are not true about this country.

Mr. Temporary Speaker, Sir, we must go back to what puts us together as a country. We must always remember that those who are in office can and must be criticized but within the confines of protection of your nation. That is why when the media reports about the country on matters of security and the economy, they must exercise the restraint that they have a nation called Kenya where their business of journalism is thriving. They must protect the foundation of that.

That is why if you are a journalist, you must first think about the fact that if you lump a general criticism on your country, you are not only just harming the Government of the day but yourself too. We must get out of these cocoons and start thinking as a people who desire to take Kenya forward. That way, if by any chance— which I see is getting slimmer by the day – those who are in the Opposition have an opportunity to come to this side of the Government, they must continue with the programmes that are being run by the Government with the aim of achieving that greater vision for our nation.

The President also mentioned very important things about our economy. There are many stories about our economy doing badly. However, there are statistics speaking for themselves in terms of reports from institutions like the African Development Bank (ADB) and the World Bank which have demonstrated that we are making progress although more work should and can be done.

The President also talked about the opportunity to make our environment better for doing business in terms of what we have done as Parliament, passing certain legislations that create a conducive environment for us to attract foreign investors and for ease of doing business. I am also glad to note the President mentioned a very important flagship project for this Government, which is the railway project. The project will be extended to Naivasha, Kisumu and Malaba. I really like the idea that we will create an inland port in Kisumu County. If there is something that will change the economy of this country, it is that kind of a port. Those who transport their goods to the Democratic Republic of Congo (DRC), Rwanda and Burundi will take advantage of Lake Victoria.

Again, we will turn Kisumu County into a very important economic hub. The benefits will affect all the counties that are in the western part of the country, one of them being your county, Elgeyo-Marakwet, Siaya and Homa Bay. The economies of that area will benefit a great deal if we create a port in Kisumu County rather than just having a railway passing through the Kenyan towns of Eldoret, and Malaba to Kampala.

There is greater benefit when you create a port in Kisumu County. This is important. If those of us on this side were thinking like our colleagues who are seated on the other side, we would have just started saying: “Why is it going to Kisumu County and not Elgeyo-Marakwet, Nandi and other places?” However, we are cognizant of the fact that it does not have to pass my county for it to change the economy of the county. You have to look at where there is a greater and maximum benefit to the nation. I think that is one of the greatest contributions.

Another thing that I need to point out is the question of devolution. The President mentioned very important things about devolution. If there is a failure in devolved governance – let me say this – it is not for lack of money. There is no county in this nation that has used the money that has been devolved to the extent that they are saying: “We are lacking money to do another thing.” The biggest problem in so far as devolved funds are concerned in this country now, is accountability and proper use of those resources.

If you have nearly Kshs1 trillion, something that never used to happen before, being sent to various entities in county governments to serve this country, the results must be seen. The President stopped short of indicting this House. We have a responsibility to oversight county governments and ensure that they achieve the goals that were expected of devolved governance. I think once this House is given the resources that we need for oversight, it will be important for all of us to run to the counties, hold forums and hold those county governments accountable.

We must not fear to be told that so-and-so will run for governor and that is why he is here. It does not matter. What is important is that we are serving as Senators and must do the job of a Senator; to oversight our counties with the passion and commitment that is necessary to ensure that we change this country.

Mr. Temporary Speaker, Sir, finally, I need to comment on the question of corruption. This is one area that we must congratulate this Government. This is because for the President to let go of his Cabinet Secretaries (CSs) and Principal Secretaries (PSs) ---. Governors are being prosecuted. As the President said, gone are the days that one would use their position as a shield against prosecution. We must allow the independent institutions to serve. One of the institutions is the Ethics and Anti-Corruption Commission (EACC). This country has put a lot of money in this institution to ensure that they do their job. They must continue being accountable and do credible investigations. They must not use the EACC as an institution of blackmail.

We must now start thinking, as Parliament, how are we going to ensure that those who have been given enormous power to investigate and prosecute, do not misuse such powers again to run a corruption cartel where one is told: “If you do not give this, we will prosecute you and if you give this, we will let you free.” We must ensure that proper oversight is given by Parliament to this institution so that we achieve the expected results on matters of corruption.

I also know the President complained about the judges and that there is no conviction. As a lawyer, you know this. The process of law does not promise results. It is a process that must be fair. If one is not found culpable, you cannot force the judiciary to find someone guilty. What Kenyans want is that the process be fair, credible, must not be marred with corruption. There must be no sacred cows and the final result will be dependent on the facts and the law. If one is arraigned in court and is not found guilty, we cannot blame the Government that no one has been hanged on corruption charges so that you can show results of corruption. Investigation and prosecution is about getting the process right. If we get the process right, we can get the results right.

Mr. Temporary Speaker, Sir, I thank you and I wish to say that I note this Presidential Address and second it. It goes to the annals of our history as one of the most important speeches in this nation.

Thank you.

The Temporary Speaker (Sen. Sang): Sen. G.G Kariuki, the Senator for Laikipia County who has just been celebrated as one of the founding fathers of our nation.

Sen. (Dr.) G.G Kariuki: Thank you Mr. Temporary Speaker, Sir. I was fortunate to have listened to the Speech by the Deputy President which was followed by the President's State of the Nation Address. What did the President want to tell us through his Address? He wanted to inform the country that this is the direction we have taken; and should you have a better direction, please advice. Here, we are bombarded by so many criticisms as if there was no such a statement. Such criticism is not well founded.

Mr. Temporary Speaker, Sir, when we are talking about other people out there, we should start from the Senate and the National Assembly. Are we doing the best things that we can do without interruption, side shows or without being pulled left and right by some other forces? Are we doing what the public wants us to do? This is the biggest question. We have a habit in this country that the more you talk; you think people will be with you. Yes, for the first term, but for the second term, they will expect you to be open, independent and speak nothing but why they sent you here. Whatever is your personal way of thinking, you should convince them so that you can go together.

Mr. Temporary Speaker, Sir, when I read the Speech and also listened to it, I was very impressed because the President and his deputy are very courageous young men. They acted according to the Constitution. They did not waiver nor try to hide their heads in the sand but came out and said this is what the Constitution says and this is what we are letting you know. There are some people who thought that the intention of the President and his deputy was to address a Jubilee Government or followers. They were speaking according to the Constitution about Kenya. So, they were addressing the Kenyans from where they are.

Therefore, it is Kenyans who are there to decide. I appreciate that Members of Parliament must speak for the ordinary man and woman, but they should speak with appreciation and with the knowledge that some things have been done, and even some things that you thought cannot be done are done.

Therefore, time has come; let us not be where we were in 1961 where we wasted about 20 years talking about *Majimboism*. In the end, we did not achieve anything; just like two neighbouring countries fighting. They just use all the forces, personnel, money and resources and finally they are told by the United Nations (UN) to retreat to their boundaries, having achieved nothing.

Mr. Temporary Speaker, Sir, I think time has come when we should try to graduate in terms of what we want as a country. Even those who do not want to see or to understand; like Sen. Murkomen said, listen to the Kenyans talking to the radio arguing about the future of this country; they are not known by anybody but they speak for this country. Some of them speak well for the country and some of them are perpetuating the ideology of hate.

When time comes where a leader like me thinks that I can only achieve my goals by spreading gospels which have no meaning this country, then I must reconsider myself as a person who does not know. So, a lot has been said. I was not here yesterday when this statement came, but because of what I saw, read and watched, there is nothing new. All that the President wanted us to know is that he is complying with the Constitution.

We have been told that the President does not want to implement the Constitution. Where else would you find a president who would speak about their Constitution freely without fear of contradiction? Here in this country, when we have such a person, the important thing is to build him and support him, provided he is doing what the Constitution says and provided he is giving us enough security because that is his major work in this country and I believe they are trying to do their best.

Mr. Temporary Speaker, Sir, I want to sound a warning. You can buy all the equipment and give them to the armed forces but the strategies are very important. You can only win war through a strategic plan and not just because of the equipment you have. So, I think if we can support to the two gentlemen, I think we will get somewhere. The only thing which can arise is when they decide or some other people try to instigate until they disagree. Those are the criminals; they are people who we should not support because for the President and his deputy to fall apart, then we are done. That is what is called Mutual Assured Destruction (MAD).

We have to guard against that because the country belongs to us. They are just managing it on our behalf. We are here as representatives of Kenyans, to speak on their behalf and tell them the Government has forgotten this and needs to do that. Is there any implementation or is it what we just see?

Mr. Temporary Speaker, Sir, the other thing is corruption. Some people have found a new word to talk about. Corruption was there even before Jesus. It is not something new. It is important to stop it because during those days, there were very few people who could have listened to what they are told but in this country and Africa today, what do they listen to?

I can assure you that in 1974 Kenya used to give aid to countries in the Far East like Mauritius and Indonesia. I do not know what happened since then. People who are hungry like wolves took over the system and mismanaged it. For example, the Speaker should speak on behalf of the system of the Senate, because it will be there forever. Some people say that President Uhuru is not fighting corruption because several senior officers implicated have not been jailed.

However, the purpose of holding constitutional conferences is to find the truth. For example, if Sen. Njoroge's brother is accused of abuse of office, he can be suspended but he cannot be taken to jail. No one has the power in this country to take anyone to jail. The role of the President is to guard the country against enemies.

Mr. Temporary Speaker, Sir, let those who have been implicated in corruption be given the opportunity to defend themselves. They should only be jailed if proved guilty. They should not be jailed just to make a few Members of Parliament happy. If some of those implicated buy justice, how will the President find out whether or not they are guilty? That is the work of the relevant institutions.

As one Member of this House asked, does it mean that if the Opposition takes over the leadership of this country; they will be taking people straight to prison without subjecting them to a court of law? No one seems to talk about that. We have to create a good environment for foreign investment and encourage people to come and work with us. We should not intimidate people even before they leave their country by not assuring them of justice. For us to develop, justice must prevail. Nobody should be subjected to an unfair trial or arrest because he comes from a certain tribe.

As Members of Parliament, we need to appreciate the Constitution that we have today. Some of us want it amended because it has so many loopholes. However, there is no constitution in the world that does not have loopholes. We should implement our Constitution and amend it in a few years to come. Some people think that it should be amended because it is causing some problems, but it is supposed to cause problems to people who do not believe in the rule of law, independence and freedom. They believe in the money that they have, which they can use to buy justice. As a scholar, I can tell you that the people of this country learn very fast. You can tell that by comparing what they used to say and what they are saying now.

Thank you, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Sang): Thank you, Sen. G.G Kariuki.

Sen. (Dr.) G.G Kariuki: Mr. Temporary Speaker, Sir, it is wrong to blow my own trumpet, but it is important to state that I earned my degree; it was not just given. My name is Sen. (Dr.) G.G. Kariuki. It should be on record.

(Applause)

The Temporary Speaker (Sen. Sang): It is well noted. You are Sen. (Dr.) G.G Kariuki, Senator for Laikipia County and one of the founding fathers of this great nation. Congratulations!

Sen. Cheruiyot: Thank you, Mr. Temporary Speaker, Sir, for giving me this chance. I rise to contribute in support of the Speech made by His Excellency the President to the two Houses of Parliament. I want to address some of the issues that are worth noting, especially as a young legislator and someone who is still new in the House. There are some things that I observed on that day that bother me to this day. As political leaders, we should be careful in the way we carry ourselves and behave. We have supporters who draw their actions in society from what we do as leaders.

The Presidential Address to Parliament is of great interest to all members of the society. Therefore, our behaviour as Members of Parliament during the Address greatly affects the country. I wish the Members of the Opposition were in the House as we make these contributions. We need to get to the point where we can disagree and still be civil with each other. That is something that cannot be gainsaid, especially having in mind what happened in the country in 2007 and 2008.

People did not believe that they could disagree or protest and still be civil and obey the laws that are set. They did not understand that the person they were protesting against was not an enemy, but someone whose opinion was just contrary to theirs. Therefore, I was greatly saddened by the unfortunate events early into the Presidential Address. The form of protest that was chosen by some legislators did not please me. It sent out a wrong signal to the country, given that we are fully aware of the challenges that we face as we prepare to go into the general elections next year. As leaders, we should send out a good signal to our supporters through our actions. I want them to take a good example from my generation, and I like quoting this example so many times.

In my generation, you will note that many young people in this country although drawn from different political aspirations and persuasions, sit together. They enjoy time together watching football matches. They debate many topical issues and they agree to

disagree. However, they will never consider themselves as coming from different communities.

In the past, we used to know certain socialization halls or bars were a preserve of people from a particular community who believed in one leader and so forth. This generation has moved away from that. It is our duty as leaders to also set a good example and know that we can disagree and still be civil with each other.

Mr. Temporary Speaker, Sir, there comes a time where we, as leaders, also need to remember that the President and the Presidency are two different and distinct institutions. You may not like the President of the day, but the Presidency is a constitutional office that we all ought to respect as citizens of this country. The person who occupies that seat is not immortal. He is here today and will be gone tomorrow. However, let us preserve and respect that office. You may not like the current person serving in that office today or you may not draw some inspiration from him, but he is in that office at the moment. We need to get to a point where we realize that institutions and individuals are two separate entities. We, as leaders, must show some respect to the institution of the Presidency.

I wish to highlight three or four instances where I got really motivated and excited by the Address of the President. Indeed, this was a State of the Nation Address where the President spoke his mind and shared with us what he feels about values he holds so dearly about this nation. One of the issues he alluded to in his Address was corruption. This has ably been noted by Sen. (Dr.) G.G. Kariuki when he spoke a few minutes ago. I must also join Sen. Murkomen in saying it is a great honour to serve with him in this House because as young leaders, there are a lot of things we learn from his generation. We are proud of him as one of the founding fathers of the nation.

Mr. Temporary Speaker, Sir, the President addressed himself to the issue of corruption and noted that it is a challenge that we have had for a long time. We are getting to a point where we, as a nation, are branding every person as corrupt. The minute you are named in connection with corrupt deals, people judge you as a corrupt individual. Last year when the President addressed Parliament, it was gratifying to hear him asking some of his Cabinet Ministers who were mentioned in graft to step aside to allow investigation to take place.

Therefore, as much as the Opposition criticized him and asked why people are not in jail, I think we are heading in the right direction. It is not a good practice just to condemn somebody as corrupt simply because social media platforms have alleged that he is corrupt. We know somebody can post a message and say Sen. Cheruiyot is corrupt and without having been taken through the due process of law, I am condemned.

The President showed genuine concern about his fight on corruption matters. He elaborated steps he has taken to fight graft in this country. These are not fictional tales. These are things that have happened. We have seen a third of the Cabinet resign as well as 150 heads and boards of directors of parastatals on simple allegations that have been made about them. They were asked to clear their names in courts. I do not know what more the people want the President to do yet we are not in the dictatorship era where he can just send people to jail. To me, he has tried in the war against corruption.

Mr. Temporary Speaker, Sir, he also said a judge who takes bribe to rule in favour of a certain individual is a Kenyan like you and I. This is a Kenyan who has been given the mandate by the President to serve the nation, but allows himself to be corrupted by

some individuals. How then can we blame the leaders of the day? When do we get to a point where we, as Kenyans, address ourselves to these issues? It is time for us to realize corruption affects us, as individuals, our families and nation. We need to behave responsibly.

When a traffic officer who is in charge of a highway takes bribe and does not realize that the minute an overloaded vehicle rolls a few kilometres ahead, people end up losing lives---. If we do not encourage such conversations, intrinsically as a people, and ask ourselves critical questions and realize that when an office has been entrusted to you, then we should have integrity. I would like to laud the efforts by the President for speaking openly about corruption. He has shown the way by saying that we, as a people, need to be honest with ourselves and realize that we have a country to build.

Mr. Temporary Speaker, Sir, on matters of health, worthy of notice is the programme of the leased medical equipment that is being sent to the counties. I appreciate and commend the Jubilee Administration for that programme. I witnessed this first hand because I have been to Kericho District Hospital. It has a new renal unit and Intensive Care Unit (ICU) beds, courtesy of this programme. We used to travel many kilometres to Eldoret or Nairobi for some of these services that we are now receiving at home, thanks to the ingenious programme courtesy of the national Government. I must commend the people who thought out that programme. I believe that it was well thought out, and I commend the President for leading such an effort.

I must also address myself to the issue of energy. I am delighted by the fact that many primary and secondary schools have now been connected with electricity. It is worthy to note that half of what was done in terms of electricity connection in the last 50 years, the Jubilee Administration has been able to achieve it in the last three years. This is something that we cannot gainsay and move so much about it. I appreciate the facts that children can now stay in school late into the night to study.

On matters devolution, I take note that we, as Senators, the President challenged us that we are the institution and the body that is mandated to provide oversight role to counties. He reminded us that we, as Senators, have to question what has been done by the Kshs1trillion that has been sent to the counties. How has that money changed the life of the villagers in all the sub counties? As the Senator for Kericho County, it is my duty to ensure that the public is trained and understand their role.

Although we have devolved a lot of resources to the counties, constitutionally, we are supposed to receive 15 per cent. The president could have as well chosen to devolve only 15 per cent to the counties. However, the fact that we have sent colossal amounts of money to undertake development projects in the villages is worth noting of his administration and support for devolution.

As Senators, we have to play our rightful role and ensure that this programme succeeds. I could go on and on but in all sincerity and honesty, this is one of the best Presidential Addresses that I have ever listened to. I am happy; maybe it could be the effect of listening to it live as opposed to other times where I watched it on television. However, I appreciate the President for elaborating on his programmes and what he has done.

In addition, I remember the solemn moment when we reflected on the duty of our defence forces, including, those who have lost their lives while protecting this country. We have to appreciate them even more than that minute of silence, where the President

led us into paying tribute to these soldiers who sacrificed their lives; they wake up each day to defend this country. We do not celebrate them well enough.

As Senators, we need to do more. For example, the families of the soldiers who recently died in El-Adde; during my campaigns, I went to the homes of two soldiers that we lost from my county. As I listened to the stories of their widows and children, I wondered. I realised that children know that they will never see their father who died protecting this country. It was a challenge to us, as leaders. We need to reflect on what we can do for the families of these fallen heroes.

Mr. Temporary Speaker, Sir, in conclusion, as a leader, I was encouraged to see the composure with which the President took on the challenges that he faced that day. It was a moment of reflection for me. As I discharge my duties, of course, there will be moments when people oppose, ridicule and belittle me. I learnt that you can take it all within your stride and become a better leader.

Mr. Temporary Speaker, Sir, with those remarks, I beg to support this Motion.

Sen. Njoroge: Mr. Temporary Speaker, Sir, I take this opportunity to support this Motion. First, every Kenyan will live to remember the day of this Address for the good things the President said his Government has done. It is very clear and self-explanatory. We can see and hear the much the Jubilee Government has done since it came to power.

However, it is shameful that on that day, Members of Parliament (MPs) from one community and party blew whistles even before the President could start making his Address. As hon. Members, this is the last thing I expected. It shocked Kenyans. They did not expect hon. Members to go that route, especially, noting that every Kenyan was waiting to hear from the President who had a message to them.

Mr. Temporary Speaker, Sir, much has been done by this Government. In the President's Address, he said that for the last 50 years, the country has managed to construct 11,000 kilometres of tarmacked roads. Since the Jubilee Government came to power, it has ensured that 3,000 kilometres of road has been tarmacked. That is an average rate of 1,000 kilometres per year since the Jubilee Government came into power. I do not understand another better way to perform if anybody would criticize the Government for going that far. The construction of the Standard Gauge Railway (SGR) has been fast. In 2017, the SGR would have reached Nairobi. It will be operational. That is a big achievement. Since Independence, it is the first of its own kind.

Moreover, we have witnessed construction of roads. I have talked about them and do not need to repeat myself, it has been fast. We expect the Government to continue constructing more roads. As we all know, there are other roads which are under construction, for instance, those in Marsabit County; Merile River to Moyale; in Taita Taveta County; Mwatate to Taveta; in Kilifi County; the Mariakani-Kaloleni-Kilifi Road; in Migori County; Kehancha-Suna-Masara Road.; in Kajiado County, the road from Isinya to Ngong and in Nairobi County, the road from South C to Kikuyu Town. This is a big achievement.

For that matter, I would not rest my case without noting that even when the President was making his Address, which elaborated many achievements, some MPs continued whistling. I commend the FORD-(K) and Wiper parties for the maturity they demonstrated on the material day; noting that a Senator, who is the secretary general, was in the House. He demonstrated maturity despite the disturbance in the House.

Owing to limitation of time, I rest my case. I know that we have other Senators who would like to contribute.

The Temporary Speaker (Sen. Sang): There seems to be no other interest to contribute to this Motion. I now call upon the Mover to reply.

In the absence of the Mover, I will put the question.

(Question put and agreed to)

Next order!

The Temporary Speaker (Sen. Sang): Chair, you have one hour to move but you have 15 minutes before we adjourn the Senate. Kindly be advised accordingly.

ADOPTION OF REPORT ON THE SECOND BASIS FOR EQUITABLE
SHARING OF REVENUE AMONG COUNTY GOVERNMENTS

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

THAT, the Senate adopts the Report of the Standing Committee on Finance, Commerce and Budget on the second basis for equitable sharing of revenue among the county governments laid on the Table of the House on Wednesday, 30th March, 2016.

The Members of the Committee on Finance, Commerce and Budget had an opportunity as required under the Second Schedule of the Senate Standing Orders to look at the proposal based on the recommendations of the Commission of Revenue Allocation (CRA). They looked at the second generation basis of the revenue sharing formula amongst the county governments.

Mr. Temporary Speaker, Sir, this is in accordance with the provisions of Article 217 of the Constitution which requires that once every year, the Senate by a resolution determines the basis for allocating amongst the counties the share of national revenue that is annually allocated to the county governments.

Section 16 of the Sixth Schedule of the Constitution provides the preparation of the first and second revenue sharing formula which will be on a three year interval. It is significant to note that if this resolution is passed by this House, it will be the first one passed by the Senate. The current formula was passed by the National Assembly before the Senate came into being.

Pursuant to the Standing Order No. 208, the Committee deliberated on the proposed formula and while reviewing the second basis of the formula, we held discussions with the CRA, Council of Governors, the National Treasury and the general public, among others. This is not the first one we are submitting here; we submitted another one last year but the Senate did not approve it. This time, we received useful input from the Members of the Senate and we are hopeful that this House will pass it because of the timeline. We have to pass it by tomorrow so that if the County Allocation of Revenue Bill is published next week, there would be a formula.

Therefore, following the deliberations of the Committee and after extensive consultations with the Senators, the Committee recommends that this House approves the formula recommended by CRA which allocates the revenue among the county

governments. It looks at six parameters and gives weight to each of them as a basis of sharing revenue among the county governments.

The parameters are:-

1. Population. It is recommended that it is given a weight of 45 per cent.
2. Basic equal share at 26 per cent.
3. Poverty at 18 per cent
4. Land area at 8 per cent.
5. Fiscal responsibility at 2 per cent
6. Development factor at 1 per cent.

This makes a total of 100 per cent. So, that is the formula that is recommended by the Committee to the House. It is based on the recommendation of the CRA Report which was tabled in the House.

In cognizant of the role of the Senate, I urge each of the Members of this House that we have an obligation to look at this formula in the large interest of the country but not the interests of the counties that we represent.

Talking to all the other stakeholders, it is clear that this recommendation by the Commission on Revenue Allocation (CRA) incorporates issues which have been raised by Senators when we had a retreat in Mombasa and also in our meeting in Nairobi. As a committee, we have also done some benchmarking visits to some other countries to look at the best practices and experiences on inter-governmental transfers in order to enrich the formula. Members of the public raised quite a number of issues. I think all the views had been taken on board when the CRA was developing this formula.

Some of the key issues that I want to talk about are the parameters. The first parameter is population. Population is a good measure of expenditure needs of a county. We have said before that it is simple, objective and transparent and it ensures predictability. It also provides for stable and predictable allocations of revenues to counties.

The other thing is that the population parameter guarantees this predictability but also ensures equal *per capita* transfers to counties. This is because services that are provided by county governments are provided on *per capita* basis. There is a county that has a population of one million and there is another one with a population of 100,000 people. The needs of these two counties in terms of providing services such as drugs or medicines on *per capita* basis cannot be the same.

Therefore, the cost of provision of those services would be higher for counties with higher population. So, the use of population will ensure that counties deliver functions allocated to them and it is a very good measure of fairness.

The second parameter is basic equal share which provides that there is a minimum amount that is given to every county to ensure that certain functions are funded. These include administrative functions of setting up and running the county executive committees and their offices, paying Members of County Assemblies (MCAs) and all the other administrative establishments that have been set up in the county governments. So, the basic equal share will provide adequate funding to each of the counties.

It is based on the assumption that a number of the expenditures are similar for all county governments to some extent. However, going forward, we believe that in the next formula, it should not be difficult to determine the actual cost of providing those basic services in each of the counties, which is something that we can use in future.

Mr. Temporary Speaker, Sir, the third parameter is poverty. A poverty index provides a measure of welfare of citizens. It is a very good parameter because it looks at the extent of the economic and environmental disparities that exist between the counties. It is a parameter that uses the poverty gap index which is based on the statistics that have been provided by the Kenya Bureau of Statics (KeBS).

In effect, the poverty gap measures the extent or severity of poverty. It ensures that counties with the poorest of the poor get a higher allocation. So, this parameter guarantees allocations to disadvantaged areas in particular but the figures will be spread out to all the counties. It is only that relatively, some counties have higher poverty gaps than others.

In the previous year, we had it and it is 20 per cent in the current allocation. The Commission for Revenue Allocation (CRA) has recommended that it be reduced to 18 per cent because some of the other factors will also address some of the challenges faced in this category in this parameter.

Then, there is land area. A county with a large area is faced with additional administrative costs to deliver comparable standards of service to its citizens. The size of a county, therefore, as a parameter, is important because it compensates the counties for the additional costs incurred in providing services.

An example is my county which is 26,000 square kilometres. Therefore, the cost of providing services in that area is relatively higher than other counties which have a smaller area. However, in the first formula, there was a capping of the land size but not in this formula.

Regarding the fiscal responsibility, county governments receive transfers that they collect and utilize public resources. So, fiscal responsibility looks at the ability of a county to generate its own revenue and also utilize the resources that have been sent to the county in a very prudent manner. So, the first formula has allocated 2 per cent and this time, we are also allocating 2 per cent. The allocations will enable counties to set up appropriate financial management systems to ensure prudent fiscal management.

The last is the development factor which considers access to water, electricity and roads and to capture economic disparities and developmental needs of counties. This is a new parameter that the CRA has recommended. It complements the one of poverty and also ensures that counties with the greatest developmental needs get additional resources to bring services to the level enjoyed in other counties. Of course, the 1 per cent that we are recommending here is a pretty small amount but it is a gesture, nonetheless, symbolic that will help those counties appreciate that some money has been set aside. It goes to all counties but it is relatively higher for counties with those needs in those particular areas of infrastructure that I have mentioned.

Those are the parameters that we have looked at and we believe that those six parameters and the weights that have been given by the CRA are reasonable and that is what we are recommending. As I mentioned earlier, this formula is critical and we have to pass it by tomorrow in order for us to provide the figures that can be used in the preparation of the County Allocation of Revenue Bill for 2016 which is due any time. I urge each Senator to take this matter seriously.

It was agreed in the sessions that we had last month that this time Members approve this formula. Otherwise, it would be really a shame if the Senate in its five years tenure will not have come up with a new formula when it had the opportunity. This is one

of the most important mandates that the Constitution gives exclusively to the Senate; to provide the basis for determining how revenues can be shared. It is very difficult and I appreciate that it is difficult for everyone to agree because we all represent a county.

In essence, we can only look at the recommendation and ensure that everyone is taken care of in this formula. That is the gist of the formula itself. The CRA, in the attachment in the report, has provided an idea on how the figures will look like if those parameters are applied.

I take this opportunity to thank my Committee Members for the time that they have spent in coming up with this Report. I also thank the CRA, the national Treasury, the Council of Governors (CoG), members of the public and other stakeholders who played a key role in arriving at this decision. We are also grateful to the Office of the Speaker who gave us adequate time in the last two years to address this matter. It has been a vexing matter and I appreciate their support.

I beg to move. Sen. Njoroge will second the Motion.

Sen. Njoroge seconded.

(Question proposed)

The Temporary Speaker (Sen. Sang): Hon. Senators, it is now 6.30 p.m. It is time to interrupt the business of the Senate. The Senate stands adjourned until tomorrow, Thursday, 14th April, 2016 at 2.30 p.m.

The Senate rose at 6.30 p.m.