

SEN/LIAISON COMM/(1)

Clerks Chambers,
The Senate,
NAIROBI.



25th November, 2015

PAPER LAID

Mr. Speaker Sir, I beg to lay the following Paper on the Table of the House, today Tuesday, 1st December, 2015.

THE REPORT OF SENATE LIAISON COMMITTEE ON

THE STUDY VISIT TO THE KINGDOM OF BELGIUM

6TH – 12TH SEPTEMBER, 2015

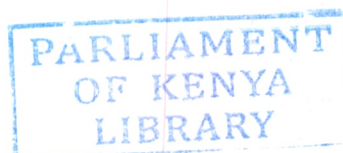
DEPUTY SPEAKER AND LEADER OF THE DELEGATION,

SEN. KEMBI-GITURA

Copies to:

The Speaker
Deputy Speaker
The Clerk
Hansard Editor
Hansard Reporters
The Press

Hon. Speaker
for my approve.
25/11/15
Approved
1/12/2015



REPUBLIC OF KENYA



THE SENATE

ELEVENTH PARLIAMENT - THIRD SESSION (2015)

REPORT OF THE LIAISON COMMITTEE

ON THE STUDY VISIT TO THE KINGDOM OF BELGIUM

6TH – 12TH SEPTEMBER 2015

Clerk's Chambers
PARLIAMENT BUILDINGS
NAIROBI

NOVEMBER, 2015

COS
Endorsed for tabling

25/11/15

Hon. Speaker
You may approve
for tabling.

25/11/15

Mr. R. W. N. N.

11/12/2015

**REPORT OF THE HOUSE LEADERSHIP DELEGATION ON STUDY
VISIT TO THE KINGDOM OF BELGIUM
6TH – 12TH SEPTEMBER 2015**

INTRODUCTION

Mr. Speaker Sir,

Articles 124 of the Constitution provides that Parliament may establish committees and make Standing Orders for the conduct of its proceedings, including committees. The Liaison Committee of the Senate comprises Chairpersons of all Standing and Sessional Committees of the Senate as well as the Joint Committees of Parliament. It has an overarching mandate to guide and co-ordinate the operations, programmes, policies and mandates of all Committees.

The Liaison Committee membership comprises of:

1. **Sen. Ekwere Ethuro, MP**
2. **Sen. Kiraitu Murungi, MP**
3. **Sen. James Orengo , MP**
4. **Sen. Billow Kerow, MP**
5. **Sen. Abu Chiaba , MP**
6. **Sen. Daniel Karaba , MP**
7. **Sen. Stewart Madzayo , MP**
8. **Sen. Yusuf Haji , MP**
9. **Sen. Mutahi Kagwe, MP**
10. **Sen. Amos Wako , MP**
11. **Sen. Mohammed Kuti , MP**
12. **Sen. Lenny Kivuti , MP**
13. **Sen. Dr. Boni Khalwale , MP**
14. **Sen. Kipchumba Murkomen , MP**
15. **Sen. Stephen Sang , MP**
16. **Sen. Gideon Moi, MP**

Mr. Speaker Sir,

A delegation of the Committee visited the Kingdom of Belgium from 6th to 12th September 2015. The visit's objective was to share and exchange experiences with the parliamentary leadership and counterpart committees on operation of bicameral legislatures as well as the devolved governance systems.

Mr. Speaker Sir,

The following Senators constituted the membership of the delegation during the visit:

1. Sen. Kembi-Gitura, MGH, MP (Deputy Speaker of the Senate and Leader of the Delegation)
2. Sen. Billow Kerow, MP
3. Sen. Bonny Khalwale, MP
4. Sen. Fatuma Dullo, MP
5. Sen. Naisula Lesuuda, MP

Mr. Speaker Sir,

The delegation wishes to thank your office for facilitating the study visit in conjunction with the office of the Clerk and for providing logistical and technical support that made it an overwhelming success.

On behalf of the delegation, I wish to present and commend this report to the House for consideration and adoption.

SEN. KEMBI-GITURA, MGH, MP

LEADER OF THE DELEGATION

SIGN:

DATE: 25th Jan 2015

ACRONYMS AND ABBREVIATIONS

AMISOM	African Union Mission in Somalia
ACP	African, Caribbean and Pacific States
EAC	East African Community
ECOWAS	Economic Community of West African States
EPAs	Economic Partnership Agreements
EU	European Union
JPA	Joint Parliamentary Assembly
MP	Member of Parliament
NATO	North Atlantic Treaty Organization
SADC	Southern African Development Community
SPS	Sanitary and Phytosanitary Measures Agreement
WTO	World Trade Organisation

CONTENTS

REPORT OF THE HOUSE LEADERSHIP DELEGATION ON STUDY VISIT TO THE KINGDOM OF BELGIUM.....	1
INTRODUCTION	2
ACRONYMS AND ABBREVIATIONS	4
CHAPTER ONE.....	6
THE KINGDOM OF BELGIUM	6
1.0 Introduction.....	6
1.1 Political Profile.....	6
1.2 Belgian Parliament	7
1.2.1 Composition of the Two Chambers.....	7
1.2.2 Separation of Powers under the Belgian Constitution.....	7
CHAPTER TWO.....	10
THE STUDY VISIT.....	10
2.1 Briefing on the Program	10
2.2 Meeting with the Governor of Antwerp	11
2.3 Meeting with the Staff of the Kenya Embassy at Brussels.....	12
2.4 Tour of the Belgian Senate	14
2.4.1 Meeting with the President of the Belgian Senate	14
2.4.2 Meeting with the senior staff members of the juridical department of the Belgian Senate.....	15
2.4.3 Working Lunch hosted by the Belgian Group of the Inter-Parliamentary Union.....	16
2.5 Visit to the Wallonia Regional Parliament in Namur.....	17
2.5.1 Parliament of the French Federation at Namur	17
2.6 Visit to the Flemish Region.....	19
2.7 Meeting with President of the Brussels Parliament, Mr Charles Picqué	20
2.8 Courtesy Call on the Secretary General of the ACP	21
2.9 Meeting of the Delegation with Kenyan Community (Diaspora) in Brussels.....	22
CHAPTER THREE	23
OBSERVATIONS AND RECOMMENDATIONS	23
4.0 OBSERVATIONS	23
4.1 CONCLUSION	26
4.2 DELEGATION RECOMMENDATIONS	27

CHAPTER ONE

THE KINGDOM OF BELGIUM



1.0 Introduction

The name Belgium is derived from Celtic language of the Belgae people that originated in present day Belgium. They were conquered by the Roman emperor Julius Caesar in 57 BC and later they mixed with Germanic elements.

Presently, Belgium occupies an area of 30,528 square kilometres of which land mass is 30,278 square kilometres and water mass 250 square kilometres. The capital city is Brussels, which also hosts the European Union (EU) headquarters, key EU institutions, diplomatic corps as well as several international organisations, notably the Northern Atlantic Treaty Organization (NATO).

1.1 Political Profile

The King is head of State while the Prime Minister is the head of Government. Belgium's monarchy is representative, constitutional and hereditary in nature. Power changes are tied to birthright, though some Monarchs have abdicated the throne. King Philippe (or Filip) is the current King having ascended to the throne on 21st July 2013.

Following legislative elections, the leader of the majority party or the leader of the majority coalition is appointed Prime Minister by the Monarch with parliamentary approval. The current Prime Minister Charles Michel was appointed in February 2011.

1.2 Belgian Parliament

The Belgian Parliament consists of the House of Representatives and the Senate. The Houses are independent and both represent the nation.

1.2.1 Composition of the Two Chambers

The Senate has 60 Members as follows:

- 50 Senators directly elected in three constituencies (Dutch Flanders, French Wallonia and the bilingual Brussels-Halle-Vilvoorde). Of the 50 Senators, 29 are from the Flemish Parliament, 1 from the German Speaking Community Parliament and 20 from the French Federation Parliament;
- 10 Senators appointed by and from the Assemblies of the three Communities. Of these, 6 are co-opted by the Flemish Parliament while the other 4 are appointed by the French speaking group.

The House of Representatives consists of 150 Members, who are directly elected from 20 constituencies. The number of seats assigned to each constituency is based on population.

1.2.2 Separation of Powers under the Belgian Constitution

- i. Under Belgian constitutional architecture, separation of powers is an unwritten but binding principle of law. However, the principle that each power is independent in its own sphere is not absolute, because in practice, there is no rigid delimitation of an exclusive sphere of each power. Nevertheless there is independence of each power within its principal function.
- ii. Both Houses of Parliament perform legislative functions. As such, Bills are only adopted if both chambers agree on an identical text. The same applies

to the Constitution and it is interesting to note that the Constitution remains an exclusive federal matter.

- iii. The Budgetary function is exercised by the House of Representatives alone. It includes not only the adoption of the budget but also the oversight of its implementation.
- iv. Parliamentary interpellations or questions to the Executive followed by motions take place solely in the House of Representatives. They constitute the most important means of oversight of government action.
- v. The members of the Federal Government are answerable to the House of Representatives, in accordance with Article 101 of the Belgian Constitution. Upon taking office, the Federal Government must have the confidence of the majority of the Representatives. The confidence in the Federal Government may be revoked by the Chamber at any time by the adoption of a motion of no confidence or by the rejection of a motion of confidence.
- vi. The Senate constitutes a sort of a house of reflection. The Bills of the Government are tabled in the House of Representatives. When that House has adopted a Bill, it then sends it to the Senate. If fifteen senators request it, the Senate examines the Bill in its turn and may amend the Bill within a period of sixty days and send it back to the House of Representatives for reconsideration.
- vii. The Senate has the power of political information. The Senators may put written or oral questions to the ministers.
- viii. The Senate may, just like the House of Representatives, form enquiry committees for examining a societal problem, and, if it turns out to be necessary, take legislative initiatives for solving this problem.
- ix. The Belgian Constitution provides for an independent judiciary with powers equal to those of the executive and legislative departments. The

highest tribunals are the five courts of appeal, which sit at Antwerp, Brussels, Ghent, Liège, and Mons and the Supreme Court of Justice at Brussels.

- x. Article 159 of the Constitution assigns to the judiciary the function of control of the Executive Branch. Judges may check the legality of regulations and decisions of the Executive Branch at the different levels (federal, regional, local), and may set them aside if found to violate higher legal standards (Acts of Parliament, Constitution, international and European law).
- xi. Under the Constitution, functions are divided among the Federal Government, Regions and Communities. The division of functions is based on historical experiences where matters to do with culture such as language, arts and education are the competence of regions and communities.

CHAPTER TWO

THE STUDY VISIT

This Chapter narrates the activities that the delegation undertook, such as meetings with their counterparts in the legislative Houses as well as government representatives.

2.1 Briefing on the Program

Sunday, September 6, 2015

The Kenyan Ambassador to the Kingdom of Belgium, Luxembourg and the EU, Amb. Johnson Weru received the delegation and welcomed them to Belgium. He took the delegation through the programme, highlighting the issues likely to come up at the various meetings. It was noted that Belgians were interested in learning about the Constitution of Kenya and the process of its implementation.

The leader of the delegation explained the purpose of the benchmarking study tour, stating that it was broadly aimed at sharing experiences and best practices on devolution. Specific objectives of the tour included to:

- i. Enhance parliamentary diplomacy and strengthen bilateral relations between Kenya and the host country;
- ii. Explore opportunities to establish/strengthen parliamentary friendships associations for pursuit of exchange visits;
- iii. Capacity building through training for parliamentarians and staff;

- iv. Share lessons learnt in implementing devolved structures of governance and operations of bicameral parliamentary systems in each jurisdiction

2.2 Meeting with the Governor of Antwerp

Monday, September 7, 2015

The delegation held consultations with Ms. Cathy Berx, the Governor of Antwerp. Antwerp is a city of about 500,000 inhabitants that lies on the Scheldt River. It is the capital of the Antwerp Province in the Flemish Region and has social cultural and economic significance as one of the biggest contributors to the Belgian economy. The Port of Antwerp is among the largest and busiest in the world.

At the meeting, the following was noted:

- a) The Governor is a state appointed public servant. She is a representative of the King and a neutral administrator. Her roles lean towards administrative co-ordination such as the issuance of gun permits and road safety in conjunction with the Police Department. She sometimes sits in ad hoc commissions on topical issues such as reform of the civil security and is a commissioner of the Flemish government. The Governor is appointed for life and therefore works with the government of the day.
- b) Belgium has had a mix of federalism and devolution. While in 1970 Belgium transformed from a unitary state to a federal kingdom, the competencies of each level of government as defined in the Constitution depend on the particular region. In addition, Belgium was increasingly applying the principle of solidarity where the federal state or regions could assist a region in need when called upon.
- c) The defined competencies are well respected. No one body can attempt to perform a function designated to another body. The division of competencies has a long historical basis in culture and economics. For instance, communities have competencies on functions that are related to culture such as schools.
- d) There are three classes of taxes: federal, regional and municipal. Federal laws prevail on matters taxation.

2.3 Meeting with the Staff of the Kenya Embassy at Brussels

Monday, September 7, 2015

The delegation was introduced to the staff of the Kenya Embassy at Brussels and briefed on their work.

A visiting staff in the Ministry of Foreign Affairs and International Trade, Mr. Josiah Rotich from the Directorate of Economic Affairs and International Trade gave the delegation a brief on the ongoing negotiations on the Economic Partnership Agreement (EPAs). Below is a summary:

- a) 79 former colonies of countries in the EU known as the African Pacific and Caribbean (ACP) Group of Countries came together under the Georgetown agreement to secure special trade arrangements with their former colonial masters- the European Union. Later in 2000, a new trade agreement was made at Cotonou. However, the Cotonou agreement faced many challenges and ACP countries sought a more favourable trading regime. Negotiations for new agreements known as EPAs are in the final stages;
- b) EPAs are an ACP initiative started in 2006 to have an agreement that not only responds to concerns by ACP countries but also conforms to the WTO regime. It had gone through many phases and at the time of the visit, the presenter was in Brussels for legal scrubbing, a process through which an agreement initialled by countries is scrutinised for conformity to existing laws;
- c) EPAs were being negotiated regionally and Kenya was negotiating as part of the East African Community (EAC);
- d) EPAs had faced challenges. For example Tanzania had expressed reservation to signing the agreement as part of the EAC countries as Tanzania is also a SADC member. However, Kenya was working to allay Tanzania's fears;
- e) It was important for Members of Parliament (MPs) to understand EPAs as even after signing by the member states, the agreements would require ratification by Parliament;

- f) Members raised questions on the skewed balance of trade with EU, the rules of origin and the subsidies given by EU states to their farmers. In response, the expert explained that EPAs had factored in improved terms for ACP countries with regard to rules of origin which would be more simplified. EPAs would also assist in opening up more market segments and EU would have to do away with export subsidies.

Members also heard from a newly appointed Kenyan fisheries expert at the ACP, Mr. Peter Wekesa. He gave an overview of upcoming agenda in the fisheries sector at the ACP secretariat. This included implementing mechanisms and legislative frameworks to protect against illegal fishing and benefit sharing from fisheries especially to fisherfolk (communities that traditionally depend on fishing for a living). It was also brought to the attention of Members that Kenya and EU were working on a Fisheries Partnerships Agreement under which the challenges of Sanitary and Phytosanitary Measures (SPS) and establishment of fish labs would be dealt with.

2.4 Tour of the Belgian Senate

Tuesday, September 8, 2015

2.4.1 Meeting with the President of the Belgian Senate

The delegation visited the Belgian Senate where after a tour of the building, they held consultations with its President (Speaker) Mrs Christine Defraigne.

The talks featured the general state of affairs in Kenya in implementation of the new Constitution and challenges thereto including implementation of the two thirds gender rule, tension in division of functions between national and county governments, Senate as an arbiter of inter governmental disputes as well as the problems in the security sector especially with terrorist threats from Somalia.

The meeting discussed possible solutions to the problem of terrorism in the horn of Africa including global distribution of Somali refugees, more funding of African Union Mission in Somalia (AMISOM), repatriation of Somali refugees, stabilisation of Somalia as a joint effort by the international community and relocation of Dadaab refugee camp to within the boundaries of the Republic of Somalia. The running thread in the discussion was that terrorism is a global problem and its resolution was a shared responsibility. The delegation urged Belgian Parliament to support Kenya in the fight against terrorism, especially through intelligence sharing, training of security forces and support to AMISOM forces.

2.4.2 Meeting with the senior staff members of the juridical department of the Belgian Senate

The juridical department supports the politicians in their legislative roles. The staff gave a presentation of the workings of the Senate of Belgium where the following was noted:

- a) Belgium is a unique federal state- The country comprises of three distinct regions brought together by a shared history. The competencies of the Senate of Belgium had been greatly reduced when Belgium held and passed a referendum in 2014.
- b) The Senate had equal footing with the House of Representatives up to the 1995 constitutional amendments. Since then, and with the 2014 referendum, Senate's competencies were substantially reduced. They include institutional funding of federal entities, intra-federal co-operation and dispute resolution, constitutional courts, use of language in administrative affairs, non-discrimination, funding of political parties and the welfare of Senators. At present Senate had four committees.
- c) In response to questions, it was explained that Senate had been diluted in defence of sub-national interests. The regions wanted to keep as much autonomy as possible without the intervention from the centre. They therefore ensured that as few decisions as possible would be made from the national level, thereby depriving the Senate of the traditional role of representing the interests of sub national bodies at the national level. The issue was also considered from the point of European politics where increasingly, sub national entities were getting more direct representation at the EU Parliament.

2.4.3 Working Lunch hosted by the Belgian Group of the Inter-Parliamentary Union

The delegation was hosted to lunch by the Belgian Group of the Inter-Parliamentary Union (IPU).

Members discussed topical issues among them the threat of terrorism in East Africa. The Kenyan delegation was concerned that terrorism as a global issue had threatened the social fabric and harmony among East African residents and called for more international dialogue on a global solution to the issue. The Belgian delegation noted that such an exchange of ideas was important in shaping international policy both at EU level and at parliamentary diplomacy circles. Other issues discussed was implementation of Kenya's Constitution and especially challenges in meeting the gender threshold, corruption and division of functions between national and sub national governments.

Members expressed a desire to establish parliamentary friendships where they could share legislative experiences on emerging global issues on a regular basis.

2.5 Visit to the Wallonia Regional Parliament in Namur

Wednesday, September 9, 2015

2.5.1 Parliament of the French Federation at Namur

The delegation was specially received, being the first ever Kenyan delegation to the Parliament of the French community's Wallonia region.

This was a parliament bringing together the two French speaking regions – Wallonia and Brussels. The main competencies of the regional Parliament were on social and cultural issues, therefore focusing on matters such as education, arts and language.

The Parliament is unicameral with 75 members. Senators elected from this parliament represent the region in the Federal Parliament in Brussels. These Senators maintain membership at the regional parliament.

The region had a parliamentary system of government and it was noted that the notion of cooperation among the arms of government was taking the stead of strict separation of powers. Regional entities were equivalent to Parliament at national level. The delegation also noted the nexus between EU policies and the work at the Parliament. For example, migration was a topical issue. While the Federal government may take a decision to take refugees, provision of services for the refugees such as housing, integration and education was a regional government competency. The regions would therefore need to be consulted beforehand.

The delegation informed the host of Kenya's aspirations to become a middle income country by the year 2030. In addition, Kenya had also undertaken a major constitutional reform, resulting in one of the most progressive constitutions in the continent. The delegation took the opportunity to invite the host to visit Kenya in upcoming international meetings including the WTO Ministerial Conference in December 2015 and TICAD in January 2016.

The meeting expressed the desire to forge greater ties between the Senate of Kenya and the French Federation Parliament. This would enable more exchange of legislative

intellect and experiences as both countries implemented new constitutions. The idea of forming friendships between counties in Kenya and Wallonia was also mooted.

2.6 Visit to the Flemish Region

Thursday, September 10, 2015

The Flemish region, also known as Flanders, prides itself in playing a significant role in the economy of Belgium and it contributes around 7 billion Euros per annum to the Wallonia regional government. The regional capital as well the Parliament is at Brussels.

Due to the economic strength of the region, it had negotiated a level of autonomy during the constitutional reforms process. While the federal government has functions of railways, defence and security, justice, social security and the kingdom, all other competencies belonged to the region. Examples of competencies of the region are employment, agriculture, energy, water, environment, town and country planning, housing, foreign trade, transport and public works. For this reason, the Flanders budget has for the past few years been higher than that of the national government.

For every competency that the regional government has, it also has the power to make international agreements on the competency. The Flanders government has had diplomatic ties with Mali, South Africa and Madagascar.

The organisation of the region was such that competencies were divided between the regional government and the provinces/communities. One of the regional competencies was education and it was noted that the Flemish region gives scholarships to Kenyans to study in Flemish universities every year.

Noteworthy was that this region had a good budget record where in the last three years, it had a budget surplus instead of a deficit, thereby playing its part in balancing the national budget.

2.7 Meeting with President of the Brussels Parliament, Mr Charles Picqué

Friday, September 11, 2015

The delegation toured the Brussels Parliament and later held talks with the Mr Charles Picqué, President of the Brussels Parliament. The talks featured culture as a basis for political division and hence the division of functions between the levels of government. Mr Picqué took the delegation through a history of the Flemish people who prided themselves with works of their hands and were especially skilled in among others, shipbuilding and masonry. The Flemish, proud of their history acknowledged their cultural differences with the French but were also desirous of keeping to their cultural heritage. Hence the Belgian Constitution gives the competencies of matters culture to regions, which in turn have decentralised matters such as education, language and arts to communities (lower entities). Notably, the Flems had outstanding world class universities with scholarship programmes that many Kenyans have benefitted from.

Belgium was therefore a unique state where the right of communities to determine their own destiny was balanced with that of nationhood as there was another community within the State of Belgium. In order to pacify the regions, Senate, which is viewed traditionally as a national institution that makes decisions that affect the regions was weakened.

The meeting also discussed about the various parameters for revenue sharing and the principle of solidarity, where assistance is sent to weaker regions was explained.

2.8 Courtesy Call on the Secretary General of the ACP

Friday, September 11, 2015

The delegation made a visit to the ACP House where they paid a courtesy call on the Secretary General of the ACP, Amb. Patrick Gomez. The talks revolved around the following issues:

- a) ACP as a group had secured great benefits for ACP members in the EPAs negotiations. It was noted that in Africa, ECOWAS region had completed legal scrubbing of EPAs while SADC and EAC were in the process of legal scrubbing. In the Pacific, two countries had concluded negotiations. ACP was however concerned about SPS as well as the challenges of regional integration especially in the EAC. Another challenge noted was that the EU was conducting bilateral agreements outside of EPAs, agreements which would dilute the benefits of EPAs. The language used in EPAs was also viewed by some as loose, and therefore non-binding.
- b) It was desirable to have more unity within the ACP groups, even within the WTO processes. ACP was supportive of the Nairobi WTO process and would like to see the conference succeed in concluding the agreements.
- c) Members were briefed about the Joint Parliamentary Assembly (JPA) of the ACP and EU. The JPA brings together parliamentarians from the ACP and EU countries to consider matters within the ACP-EU cooperation. The Assembly had in the past considered issues such as EPAs and terrorism. JPA therefore enhanced democracy within the member states as legislators also shared experiences.
- d) The delegation noted that ACP provided a good study on south-south cooperation. However, the relationship with EU could be made more meaningful by making it more equitable between African and Caribbean countries VS. European Union countries. This could be achieved through more consultation in decision making and management. The delegation also thought it desirable to extend the ACP cooperation beyond the EU.

2.9 Meeting of the Delegation with Kenyan Community (Diaspora) in Brussels

Friday, September 11, 2015

The delegation had the opportunity to meet the Kenyan community in Belgium. The community has an association that brings together Kenyans living in Belgium and Luxembourg.

In her address, the Chairperson of the Association, Ms. Doreen Walsweer-Sore intimated that the association had over 100 members and they were continuing to recruit more. Some of the members were distinguished professionals in the country who had achieved great heights, including being outstanding doctors, media professionals and in politics.

The Kenyans sought more inclusion of Kenyans in the Diaspora in national development by for example taking in their professional expertise in development projects as consultants and contractors. They were concerned about the preparations for Kenyans in the Diaspora to vote in the next polls. They advocated for legislative frameworks to protect against brain drain in critical sectors such as health and to ensure transfer of knowledge that would help in development of counties. They also asked the Senate to promote sports and talent and use sportsmen as brand Kenya ambassadors.

The delegation Members briefed the Kenyan Diaspora on progress of implementation of the Constitution. They also explained the role of the Senate and its connection to devolution. They expounded on their mandate as well, giving highlights of some of the tasks that had been undertaken by each of the committees represented.

There was a question and answer session where Kenyans raised issues such as the rising public wage bill and the role of MPs in resolving the problem; Kenya's development progress after 50 years of independence; bureaucracy that Kenyans face when trying to invest back home; questionable standards of university education in Kenya; Kenyans suffering in the Middle East and the teacher's pay dispute.

The delegation responded to the questions, pointing out those which they had dealt with at committee level. They thanked the Association and its members for availing themselves and giving the Members feedback on their work.

CHAPTER THREE

OBSERVATIONS AND RECOMMENDATIONS

4.0 OBSERVATIONS

The delegation made the following observations:

1. **Culture and Governance:** Belgium is a uniquely constituted state. It got independent in 1830 and developed into a federal state through several constitutional reorganizations in the 20th Century. The reforms were on three fronts: language, where the Germanic speakers separated from Latin speakers into different communities; economic interests that led to recognition of three distinct regions; and the Federal State that unites the communities and regions into one Belgium. The two main language groups- the Dutch and French, and the minority group- the Germans, have separate governance structures, each with varying competencies. It was interesting to note that while the language groups have made every effort to preserve their different cultures separately, they have managed to live in harmony because all organs respect the Constitution, and their institutions work well and are respected.
2. **Weakened Senate:** A curious observation was that Belgium had systemically weakened the Senate over the course of constitutional amendments. Presently, the Senate acts as a reflection, legislative and conflict resolution Chamber. It does not originate laws and has limited oversight powers. It was explained that the Senate was diluted because the regions wanted to retain as much power and competencies as possible at regional level. Asked about the question of national unity or a Chamber where the interests of the region are protected at federal level, those the delegation spoke to were of the view that Belgium was increasingly practising federalism and therefore did not want decisions about them being made at national level. This is in contrast to the Kenyan case where due to historical reasons, there must be mechanisms through which formerly marginalised areas can be assisted to achieve development through equity. In addition, the Kenyan Constitution envisaged that while counties spur development at sub

national level, it was important to have national unity even in that diversity. Kenya is also much more diverse than Belgium and the interests of the different peoples are best looked at in a national dialogue such as at the Senate which brings together representatives from the counties for such discussions. Finally, Kenya's quest for a new Constitution was driven by a desire to equitably decentralise resources from the centre to the periphery and therefore Senate was created to ensure that the interests of the sub national governments were protected in national processes.

3. **Separation of Powers:** While there is strict delineation of competencies by law, it was observed that in practice, there is more of cooperation between the executive and the legislature as opposed to strict separation of powers. For example, in Namur, the delegation heard that the executive attends parliament from time to time to answer questions from the legislature. The legislature may intervene in emergency situations to allow the executive to appropriate funds. For example, with the issue of refugees in Europe, the delegation was told that while it was a Federal competency to admit refugees, they had to consult closely with the regional governments to determine the number of immigrants that could be supported in the various localities of the regions.
4. **Solidarity:** The delegation noted that while the Dutch are very proud of their significant contribution to the economy of Belgium, they were also keen to support the French region so that all Belgians across the regions could enjoy dignity and a high quality of life.
5. **Subsidiarity:** The Belgian division of functions is done to the last role. Interestingly, competencies are divided from the lowest level (villages) to middle level (provinces and cities) to regions and then to the Federal level.
6. **Institution Building:** The delegation heard of situations when it was not possible to negotiate formation of the federal government, yet the country did not grind to a halt as the other institutions performed state functions under the guidance of the Constitution. For example, in the 2010-11 crisis, the French and Dutch regions could not agree on the policy for a coalition government. For 589 days, the

affairs of the government were run by a temporary committee headed by the former Prime Minister.

7. **International Policy:** The delegation held useful discussions even with regional parliaments. The members of those parliaments sought to get views on global discourses such as emerging Constitutions, governance in Africa, the threat of terrorism, agriculture and trade. This is because even regional parliaments have a direct relation with the European Union and on equal footing with the Federal Parliament.

4.1 CONCLUSION

This was a successful study tour as the delegation was able to meet and share experiences with their peers, counterparts and Kenyans in the Diaspora. Members also witnessed the interest with which the implementation of the Constitution of Kenya is followed worldwide.

The delegation drew useful lessons which can be cascaded down to the counties through legislative activities. The decision of Belgians to weaken the Senate was interesting as Kenya is seeking to strengthen the Senate. The delegation also viewed in action the principle of subsidiarity, where devolved functions were further devolved to smaller units. The success of Antwerp, a province within the Flemish region that contributed significantly to the economy of Belgium was such an example. The delegation therefore makes recommendations for consideration by the Senate on furthering the relationship between the Parliament of Kenya and that of the Kingdom of Belgium.

Devolution is arguably the most significant pillar in the new constitutional dispensation. While the current challenges are teething problems associated with the transition, it is important to strengthen the Senate in tandem with the practice of other established democracies such as U.S.A. and Australia, as a House of review.

Diversity is a good idea as long as it is anchored on strong principle, values and rule of law.

There is need for the Government to support and budget adequate funds for civic education to enable citizens appreciate the devolved system architecture.

4.2 DELEGATION RECOMMENDATIONS

Mr. Speaker Sir,

The delegation noted many differences between the organisation of government in Belgium and in Kenya. However, there were principles that applied in the Belgian case that Kenya could borrow from. These include the clear demarcation of competencies, subsidiarity, where devolution is practiced at the lowest possible level and the need for strong institutions. Similarly, the Belgians admired some principles from the Kenyan case especially under the Constitution of Kenya such as the national values and principles. The study tour therefore presented many opportunities for learning and further cooperation and the delegation makes the following recommendations:

1) Strengthening Parliamentary Friendship with Parliaments in the Kingdom of Belgium

As noted, the Kingdom of Belgium has gone through many constitutional changes, the latest being in 2014. They face challenges similar to ours in implementation and institution building. In addition, being at the heart of EU politics Belgian legislators have a keen interest in international policy and cooperation. The delegation therefore recommends that the Senate establishes formal friendship with the Parliament of the Kingdom of Belgium to create a platform for intellectual engagement and sharing of experiences. Such a platform would enable both Parliaments to promote cooperation and best practices for the good of both countries.

2) Deeper Participation of Senate in International Policy Processes

As the House that defends the interests of the counties, it is important for Senate to continually update itself on matters international policies so as to adequately prepare counties on decisions that may affect them. For example, in the

discussions on EPAs it is imperative that Senators keep tabs on the negotiation process and the issues in question so as to be able to intervene as necessary and also for purposes of ratification when the agreement is finally signed. The same applies to the upcoming WTO Ministerial Conference to take place in December 2015 in Nairobi and the Tokyo International Conference on African Development (TICAD) in January 2016.

Deeper participation may be achieved through having more discourse between the Senate and international bodies and cascading this discourse to the counties.

3) Awareness on Kenya's devolution model

From the visit, it was apparent that Kenya's new constitutional dispensation had created a lot of interest worldwide. Belgian MPs wanted to hear from the delegation on the new architecture as well as the challenges faced in implementing the ambitious devolution project. As Senators may not be able to meet all interested persons to share their insights on the Constitution, it is recommended that Senate makes publications on Senate and devolution to assist in advancing the discourse on constitutional reform in Africa.

-END-

OFFICE OF THE DIRECTOR,
COMMITTEE SERVICES,
THE SENATE

MEMO



TO : The Speaker

THRO' : The Clerk of the Senate

FROM : Director, Committee Services

DATE : 25th November, 2015

**SUBJECT : REPORT OF THE LIAISON COMMITTEE ON THE
STUDY VISIT TO THE KINGDOM OF BELGIUM**

The above matter refers.

Attached is a report on the above subject matter for your approval and signature.

A handwritten signature in black ink, appearing to be 'S.N. Njuguna'.

S.N. Njuguna

