

**INFLUENCE OF KENYA'S SENATE ON THE DEVOLUTION PROCESS,
2013-2017**

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DECLARATION

This research project is my original work and has not been presented for a degree in any other University

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DEDICATION

This Research Project is dedicated to my loving wife Gloria Nelima, and my adorable children Keith Avel, Lloyd Sisungu and the late Shujaa Kaycie, for their unfailing support, faith and love during my study time.

To my parents, the late Mr. Timothy Sisungu and Mrs. Cicilia Nasaba Sisungu, for all that you sacrificed to make me who I am today.

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ABSTRACT

The world over, new systems and institutions are meant to achieve that which was not achieved by the already existing ones. The History of devolution and bicameralism in Kenya informs us that both were tried immediately after independence and failed. After the enactment of the Constitution of Kenya (2010), Kenya reverted to a bicameral Parliament with a devolved form of governance; the National Government consisting of the Executive, the Judiciary and the Legislature (National Assembly and the Senate) and the County Government consisting of the County Assembly and the County Executive. The Senate as conceived in the Constitution of Kenya (2010) article 96 was meant to play a pivotal role in entrenching and strengthening the devolved system of governance. However, many questions have been raised on the effectiveness of the Senate in as far as helping strengthen and entrench a devolved form of Government in Kenya is concerned. The study sought to investigate the measures the Senate (2013-2017) had put in place to guarantee the protection of Counties and their Governments, it also analyzed the contribution of the Senate in strengthening and entrenching a devolved system of governance in Kenya between the years 2013-2017 and finally examined the challenges encountered by the Senate in performing its roles. A descriptive research design was adapted in the study. The study interviewed 25 senators, 120 Members of National Assembly, 56 Members of Nairobi County Assembly, 100 parliamentary staff, 12 government officials and 8 residents of Nairobi County. Theoretically, the study made use of the Structural functionalism theory as advanced by Hebert Spencer and Robert Merton (1896), John Locke's (1689) representative democracy theory and J.J Rousseau's (1762) Social contract theory. The study established that the COK (2010) was not clear on the legislative role of the Senate of the republic of Kenya. However, it was revealed that the Senate (2013-2017) enacted legislations aimed at protecting Counties. On the other hand, it was also established that despite the COK (2010) being clear on the Senate's oversight and representation roles, there were perceptions from the respondents that the Senate did not play these roles as expected. This was majorly attributed to the poor working relationships between the Senate and other arms or levels of Government and the Media. These poor working relationships and the ambiguities in the COK (2010) were also revealed as the major challenges facing the Senate of the republic of Kenya.

ABBREVIATIONS AND ACRONYMS

CA	County Assembly
COG	Council of Governors
JU	Judiciary
ME	Media
COK, (2010)	Constitution of Kenya (2010)
CPIAC	County Public Investments and Accounts Committee
MCA	Member of County Assembly
MNA	Member of National Assembly
MPPA	Master in Public Policy and Administration
NACOSTI	National Commission for Science, Technology & Innovation
NE	National Executive
PSC	Parliamentary Service Commission

DEFINITION OF OPERATIONAL TERMS

Parliament;

A parliament is a legislative body of government. Generally, parliaments have three functions: representing the electorate, making laws, and overseeing the government activities.

Senate;

A senate is a deliberative assembly, often the upper house or chamber in most countries of a bicameral legislature.

Devolution;

Devolution refers to the transfer of political, administrative and legal authority, power and responsibility from the centralized government unit to some unit at local or regional level. Such a transfer is legal if provided for under the constitution. It is a practice in which the authority to make decisions in certain spheres of public policy is delegated by law to sub-national level. In a devolved system, the units of devolution to which power and authority is devolved or transferred are autonomous from each other, though interdependent functionally.

Bicameral Legislature;

A legislature with two houses, or chambers. For instance, the British parliament is a bicameral legislature, made up of the House of Commons and the House of Lords. Likewise, the United States Congress is made up of the House of Representatives and the Senate and the Kenyan parliament is bicameral for it consists of the Senate and the National Assembly.

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CHAPTER ONE: INTRODUCTION

1.1 Background to the Study

Parliament plays various roles in different jurisdictions mostly depending on the governance structure and systems. Various studies have been carried out on the roles of Parliaments in various jurisdictions. Holland (2009) carried out an extensive study to evaluate the direct outcomes of Senate committees on the legislative agenda of the Australian parliament. In analyzing the works of these committees, he reflected a wider role of parliament as an establishment of governance rather than the effects it had on entrenching federalism in Australia.

Sangma (2012) in his paper on “Functioning of Parliamentary Democracy in India” has broadly discussed the role Parliament of India plays and how citizens, elected leaders and the Indian Government can help strengthen its legislative role. Staunton (2000) writing on the function of the Senate in the Legislative development in the Canadian jurisdiction only brought out the role the senate plays in as far as bill origination and processing and the veto power the Senate has over bills.

Mahmood (2015) sought to compare systematically the operation of the Senate in the United States of America and Pakistan, by way of a case study. He noted that equally the Senates, with some differences, execute the role of enacting

legislations, raising and appropriating money, protecting the federating units, supervising the administration and giving advice and approvals to other Arms of Government. He further noted that the Committees of the Senate in the United States were authoritative, their verdicts remaining obligatory on the government and they possibly would comprehensively weigh the legislative, analytical and managerial oversight roles of the senate. On the other hand, the Pakistan senate committee decisions and suggestions were merely advisory in nature.

Kirui and Murkomen (2011) have analyzed the history of the Kenyan legislature pre and post-independence coming up with a chronology of the major changes across a century of its lifespan. They have also examined the reasons why Kenya, after four years of self-rule, regressed to a nation with a unicameral parliament. Further to this, they also delved into the changes anticipated by the Constitution of Kenya (2010), especially the legislations relating to the reintroduction of a bicameral parliament. They looked at the re-designed formation of the legislature and how the various components were to interact with each other.

Similarly, Kangu (2015) noted that the Independence Constitution of Kenya had created a quasi- federal system with three levels of government: the National and regional, with local government as a competency of the regional government. Seven regions were created with each having legislative and executive powers over certain matters. He notes that the executive authority of the regions were

however subject to the national government. The Senate's primary role was to take care of the interests of the people of various regions otherwise referred to as regional governments.

The Constitution of Kenya (2010) Chapter Eleven, provides for two levels of Government-the National and County Governments-distinct from each other but inter-dependent and conduct their affairs through consultation and cooperation. The National Government is comprised of Parliament (National Assembly and Senate), the Executive and the Judiciary while the County Governments (47 County Governments) are composed of County Assemblies and County Executives.

According to the Commission on Implementation of the Constitution (2015), the Transitional Authority and the Commission on Revenue Allocation in an article jointly published on 13th December, 2015, the Senate had not successfully guarded the interests of the county government against the dangers of constitutional violations owing to inadequate legal mechanisms and public participation in the law-making process. As a result of this, most county governments had not been able to achieve their planned objectives. This therefore called for a more critical study on the effects of the Senate on Kenya's devolution from 2013-2017.

1.2. Statement of the Problem

The Constitution of Kenya (2010) intended the Senate to serve a key role of representing and protecting the interests of counties and their governments. The Senate and County Governments are structured to work together to accomplish various goals of devolution which were seen as the pillar of the Constitution of Kenya (2010) (Nyamwamu, 2013).

However, there are a number of issues that have undermined the work of the Senate. These include: the frequent squabbles between the Senators and Governors, numerous failed attempts for Senate to impeach Governors, court cases pitting the Senate against other institutions like the National assembly and futile efforts to increase County allocations as it was usually vetoed by the National Assembly. Also, the declaration by various Senators of their intentions to vie as governors or Members of the National assembly in the 2017 general election increased tension between the Senate, Council of Governors and the National assembly. These put the Senate's role as the guardian angel of devolution in doubt. (Petitions 3,381 &430 of 2014)

The aforementioned issues therefore called for an in-depth study on the effect the Senate had in guarding and guiding devolution as spelt out in the Constitution of Kenya (2010) and determine the relevance of the Senate in spearheading the devolution agenda in Kenya.

1.3 Objectives of the Study

The study sought to:

- i. Investigate how the Senate of the republic of Kenya (2013-2017) has put in place requisite legislations to guarantee the protection of counties in Kenya,
- ii. Analyze how the Senate of the republic of Kenya (2013-2017) has helped in the oversight of resources in the Counties,
- iii. Determine the effectiveness of representation of Counties at the National level by the Senate of the republic of Kenya (2013-2017),
- iv. Determine the working relations between the Senate of the republic of Kenya (2013-2017) with other key institutions in the devolution agenda,
- v. Examine the challenges encountered by the Senate of the republic of Kenya in performing it's roles between 2013-2017.

1.4 Research Questions

The study sought to answer the following questions:

- i. Were the legislations enacted by the Senate of the republic of Kenya adequate to protect Counties in line with the COK (2010)?
- ii. To what extent did the Senate of the republic of Kenya oversight the Counties in line with the COK (2010) from the year 2013 to 2017?
- iii. To what extent did the Senate of the republic of Kenya represent the interest of Counties at the National level?
- iv. How are the working relationships between the Senate and other key devolution stakeholder namely; the National Assembly, Council of Governors, National executive, County assemblies, the Judiciary and the Media?
- v. What challenges were experienced by the Senate of the republic of Kenya in the discharge of its mandate from 2013-2017?

1.5 Research Assumptions

- i. The Senate of the republic of Kenya passed legislations aimed at protecting Counties from 2013-2017,
- ii. The Senate of the republic of Kenya played a significant role in the oversight of Counties from 2013-2017,

- iii. The Senate of the republic of Kenya played an effective role in the representation of Counties at the National level from 2013-2017,
- iv. There existed good working relationships between the senate and the National Assembly, Council of Governors, National Executive, County Assemblies, the Judiciary and the Media,
- v. The major challenge encountered by the Senate of the republic of Kenya (2013-2017) in the protection of Counties is resistance by the National Assembly.

1.6 Justification and Significance of the Study

It is now more than seven years since the inaugural Senate in Kenya under the Constitution of Kenya (2010) was elected paving way for the discharge of its mandate as the representative and protector of Counties and their Governments. Tax payers' money was allocated all through to sustain the operations of the Senate. On the other hand, many arguments especially through the media by elected leaders, constitutional law experts, the clergy and citizens in general have been advanced some calling for the abolishing of the Senate claiming that it has no functions while others calling for its strengthening so that it plays its integral role of guarding and guiding devolution (www.nation.co.ke/January 3, 2017).

However, there is barely any academic work which comprehensively deals with the roles of the Senate in Kenya and especially as the representative and protector of counties and their governments.

This study sought to contribute to knowledge on the role the Senate of Kenya played since the promulgation of the Constitution of Kenya (2010) especially as the representative and protector of Counties and their Governments. It was also hoped that the findings when well disseminated will help bring about a harmonious relationship between the Senate, the Council of Governors, the National Assembly and other arms of government.

The study was conducted in Nairobi City County because this is the legislative capital where the parliament of Kenya, the Nairobi City County and most people involved in facilitating Counties who formed majority of the respondents are based. It therefore made it easy to access the targeted respondents.

Seven years after the promulgation of the constitution of Kenya (2010) and a new governance structure, together with the ongoing debate on the need to review the constitution also provided a good opportunity to carry out an academic review of the relationship between the Senate and devolution, together with any other intervening variables and share well-grounded findings and recommendations that may inform the decisions of Kenyans on the debate about the country's governance structure.

1.7 Scope and Limitations

The study examined the role of Senators in guarding and guiding devolution in Kenya while performing their duties in Parliament since they were elected under the Constitution of Kenya (2010). The geographical scope of the study was limited to Nairobi County which is one of the 47 counties of Kenya, the Capital and National legislative city.

1.8 Limitations

Collection of primary data was hampered by non-responsiveness of some of the respondents, majority of whom were politicians. To surmount this, the researcher utilized the people who were close to these politicians to get responses from the targeted sample population

Secondly, some respondents gave subjective responses based on their political or institutional inclinations. For instance, a member of the National Assembly gave a negative score on the Senate while Senators gave positive scores on the Senate. To regulate this, the researcher framed the same question in a different version to see if the response changed or remained the same.

Thirdly, there was insufficient literature on the roles of the Senate under the Constitution of Kenya (2010) especially as the representative and protector of the Counties and County Governments hence did not benefit from different scholarly

views on the subject. This being an appraisal of performance, the researcher largely relied on primary data and information from the chosen respondents.

CHAPTER TWO: LITERATURE REVIEW AND THEORETICAL FRAMEWORK

2.1 Introduction.

This chapter presents the literature reviewed by the researcher in relation to the role of the Senate of the republic of Kenya (2013-2017) on the devolution process. It also presents the various theories within which the study is anchored.

The Senate and the effectiveness of its role in Kenya is an emerging area thus not much literature exists with specific reference to its role as a legislative and oversight body and the challenges it faced while carrying out these functions. The review looked at the role of parliaments in general, how the Senate of the republic of Kenya is established and how it functions within other arms of government amidst the challenges encountered.

2.2 Literature Review

The COK (2010) chapter eight establishes a Bicameral Parliament comprising both the National Assembly and the Senate. Parliament, as established, is the body that exercises the legislative authority at the National level on behalf of the citizens. It manifests the diversity of the nation, represents the will of the people, and exercises their sovereignty. It may consider and pass amendments to the Constitution and alter county boundaries as provided for in the Constitution. It also protects the Constitution and promote the democratic governance of the Republic of Kenya.

The Kenyan parliament as established in the COK (2010) is bicameral. Bicameral legislatures are those whose deliberations involve two distinct assemblies (Tsebelis and Money, 1997). This definition however, does not bring out clearly considerable differences in the roles of each chamber in policy making and legislation. Many “upper” chambers have legislative privileges that are incomplete in important ways; for instance, the British House of Lords is not capable of originating monetary bills and at best, can only delay them for a year rather than permanently veto those they do not agree with (Cutrone and McCarty, 2006). Tsebelis and Money (1997) further defined bicameralism as the necessity of concomitance of majority support from separate assemblies for new bills. Their work brought out the Senate as simply an ‘organ that advertised or confirmed the decisions of government’.

No specific attention was given by these writers on the role the senate played legislatively to guard devolution.

Further literature revealed that in Switzerland there are two chambers, the one that introduces a bill sends it to the other chamber and the bill shuttles back and forth until one chamber decides to vote on the bill. (Tsebellis and Money, 1997). These writers also discussed the historical evolution and geographical distribution of bicameralism and models of bicameral institutions; the diversity of bicameral institutions both historical and geographic; models investigating different aspects of bicameralism and finally empirical evidence confirming different predictions

of the models. Tsebellis and Money (1997) have given a brief history of bicameralism as was discussed by the founding fathers of the American Constitution which Kenya has greatly borrowed from.

The American Constitution founding fathers advocated for two important dimensions of bicameralism. The first was efficiency: improvement of legislative product, finding the common grounds between the two chambers (in the Kenyan case the Senate and the National Assembly). The second was political and redistributive: representation of societal preferences (protection of County Governments' interest), seeking a compromise between the two chambers and reflecting the relative balance of power. They thus gave an overview of bicameralism and an aspect of Senate's role to protecting the counties but it was not specific to the Kenyan one and did not give an appraisal of the Senate in so far as performing the said role was concerned, which was the core interest of this research.

Tahir (2015) has described the Parliament of Pakistan as the federal and supreme legislative body of Pakistan. It has a bicameral federal legislature that consists of the Senate as the upper house and the National Assembly, as the lower house. According to the Constitution of Islamic Republic of Pakistan (1973), the President of Pakistan is also a member of Parliament.

The Senate of the republic of Kenya as established in article 96 of the constitution represents the Counties, and serves to protect the interests of the Counties and their Governments. It participates in the law-making function of Parliament by considering, debating and approving Bills concerning Counties. It determines the allocation of national revenue among counties and exercises oversight over national revenue allocated to the county governments. It also participates in the oversight of State officers by considering and determining any resolution to remove the President or Deputy President from office.

Similarly, according to Tahir (2015), the main purpose for the creation of the Senate of Pakistan just like the Kenyan case, was to give equal representation to all the federating units since the membership of the National Assembly was based on the population of each province. Equal provincial membership in the Senate, thus, balances the provincial inequality in the National Assembly and dispels doubts and apprehension, if any, regarding deprivation and exploitation. The role of the Senate is to promote national cohesion and harmony and to alleviate fears of the smaller provinces regarding domination by any one province because of its majority, in the National Assembly.

What comes out from the above literature reviewed therefore is that the Senate is a body which represents the provinces/territories of the country and promotes a feeling of equality, peace and harmony, which according to Tahir (2015) is so

essential for the growth and prosperity of a nation. Thus, according to him, the Senate in Pakistan, over the years, has emerged as an essential organ and a stabilizing factor of the federal units. In so saying therefore, Tahir (2015) seems to allude to the fact that the Senate plays a pivotal role in strengthening and entrenching federal units in Pakistan.

Shri (2012) while writing on the functioning of parliamentary democracy in India brought out a clear distinction between Parliamentary Democracy from Presidential Democracy within a federal system of governance. He enumerated the similarities and differences in terms of balance of power among the different arms of government, appropriation process, representation, government engagement with the opposition, law making process and public participation. He however failed to bring out the specific roles the Senate plays in representing the federal units in either a parliamentary or presidential democracy.

The roles of the Senate in different jurisdictions have few common roles; first, they all represent a group of people: for instance, in Ethiopia the House of Federation; a second chamber represents the country's ethnic assemblages (Constitution of the federal democratic republic of Ethiopia, Article 61). Secondly, they take part in legislation; for example, in the Netherlands, legislation is always initiated in the lower house, upon approval, is then submitted to the

upper house (senate) which then votes it down or up without the possibility of amendments.

Nyanjom (2011) discussed the implications of devolution on service delivery. This was important as it provided an insight on the roles of various stakeholders under devolved system of governance. He discussed the intended impact of devolution in the country. However, he did not specifically discuss the effectiveness of the roles of the Senate under a devolved system of governance in relation with other arms of government.

Ghai and Cottrell (2011) unpacked the constitutional provisions underlying the citizens' role in achieving the desired change under the new constitutional dispensation. They too however did not discuss the role of the Senate under the devolved system of governance in relation to other arms of government.

Mukaindo (2014) discussed emerging issues in the relationship between the Senate and County Governments. Her study was however limited to the conflicts between the governors and senators in Kenya. It did not address how effective the Senate had been able to discharge its duties of protecting the counties under the devolved system of governance.

Kirui and Murkomen (2011) suggested for the establishment of a legislative mechanism through which Senators were to be made accountable to the counties in the performance of their duties. They had foreseen a working conflict between the senators and counties. This, according to them was to help solve the conflicts between various players in the devolved system of government. They did not however examine the roles of the Senate under a devolved system of governance. A number of other publications have also explained the history of bicameralism system in Kenya.

Kirui and Kipchumba (2011) also examined the history of the Kenyan legislature pre and post-independence, coming up with a chronology of diverse changes across a century of its existence. The changes were largely typified by two competing forces: one characterized by a strong executive holding onto power from other arms of government, while the other by pro-reform forces agitating for an expanded democracy, better governance and accountability, and the promotion of the rule of law. Of interest was the period immediately after independence when Kenya had a bicameral legislature until the period the Senate was abolished and merged with the lower house. This was important to this study as the study borrowed greatly on the weaknesses that led to the abolishment of the Senate then. However, the independent Constitution laying ground for bicameralism greatly differed from the constitution that was promulgated in 2010. Their works

however did not address the performance of the Senate under the devolved system of governance and the Constitution of Kenya 2010.

Kangu (2012) on the other hand argued that the independence Constitution did not expressly provide for revenue sharing between the then national and regional governments which resulted to underfunding of the regional governments thus affecting service delivery. This was stated as one of the reasons why regional governments and bicameralism were abolished in 1966. His writing on the Senate and Devolution generally was crucial in understanding the effectiveness of the roles of the Senate in relation with the National government under a devolved system of governance. He however did not address the effectiveness of how the Senate under the Constitution of Kenya (2010) had discharged its mandate.

Hornsby (2013) sequentially delved into the social, economic and political history of post- independence Kenya. He too provided important insights as to why the independent Senate failed and hence was abolished. This was important to this study although his work did not specifically address the performances of the Senate given that the legal regime then and under the constitution of Kenya (2010) had drastically changed. He therefore did not discuss the post 2010 constitutional dispensation period and the challenges the Senate faced.

Sihanya (2011) on the other hand, explored the challenges and prospects of implementing the Constitution of Kenya 2010 and the role of various agencies in

the implementation process. He did not however look at the challenges that were facing the Senate in discharging its constitutional duties under a devolved system of governance.

An examination of the above available literature reveals that, whereas there was a wealth of information on the Senate, devolution and the Constitution generally, there was limited academic material on the influence of the Senate to devolution after the promulgation of the Constitution of Kenya 2010. Very little had been written on the effectiveness of the Senate in discharge of its mandate under the devolved system of governance. Even the scarce literature sources available, are those that were published prior to the new government and devolved system or immediately after promulgation of the constitution hence devolution had not fully taken shape. Practical matters arising under the Constitution of Kenya, 2010 especially the effectiveness of the roles of the Senate had not been fully catered for.

This research therefore sought to bridge this gap by updating the history of senate and devolved government in Kenya; having in mind the many changes that had taken place since the new government came into office under the 2010 Constitution. It has also provided recommendations to address the challenges that the Senate in Kenya had faced.

The study also sought to address the knowledge gaps on the nature and extent of functions of the Senate and how it had or had not been effective in representing and protecting the interests of counties and their governments as contemplated in the Constitution of Kenya, 2010.

2.3 Theoretical Framework

This study made use of three theories: Structural functionalism theory as advanced by Hebert Spencer and Robert Merton (1896), John Locke's (1689) representative democratic theory and J.J Rousseau's (1762) Social contract theory.

2.3.1 Structural Functionalism Theory

Structural functionalism theory brings an understanding of the structural, institutional and legal relationship of various organs in the devolved system of governance. Structural functionalism theory looks at society as a multifarious system whose parts work together to enhance solidarity and stability. The theory enabled this study to dissect the structures of the devolved system of governance and their relationships in order to appraise the roles played by the Senate in Kenya especially as the representative and protector of counties and their governments interests'. Hebert Spencer and Robert Merton were the major proponents to this theory with important concepts being social structure and social functions. Spencer depicted constant struggle among various organs with organs with stronger structures surviving while those with weaker structures suffering

(Spencer, 2015). This can be likened to the various organs of the state including the Senate, National Assembly and county governments. The weaker organs are likely to suffer. Merton and other functionalists likened a society to an organism with a variety of parts, and each part has a function to perform (Merton, 2015). Merton acknowledged that some functions were deliberate and other functions were not. He further recognized that some functions actually disrupted society. These functions are known as the manifest (deliberate), latent (hidden) functions and dysfunctions (disruptive). The significance of this theory to this study is that it explained the functional relationship between the Senate, other arms of government and devolved units. This therefore revealed that whenever one of the organs failed in the performance of its duties as required by the constitution, then there was also failure on the part of the Senate.

The study therefore places the Senate within a structural functionality theory in an attempt to appraise the roles played by it especially as the representative and protector of counties and their governments' interests' (Chilcott, 1998). The senate, as conceived, ought to play a very important role in the structure of the devolved system of governance. It is the representative and protector of the counties at the national level. Failure by either of these organs of the state in performance of its duties or the inefficiency of either level of government has a negative impact on the whole success of devolution.

2.3.2 Representative Democracy Theory

Representative democracy is a type of democracy established on the principle of few elected individuals representing the masses (Dovi and Zalta, 2014). In this form, people allow few representatives who form an independent governing institution to represent them in the different forms of democratic process and may not be directly involved in any of the processes of legislation or lawmaking. Chapter 7 of the Constitution of Kenya (2010) has aptly set out the process, rules and regulations that set forth a framework through which the representation of the people of Kenya is achieved.

This study used Locke's representative democratic theory to offer a philosophical argument on the mandate and role of the senate as the representative of the people in various counties at the national level (Dovi and Zalta, 2014). According to Locke (1690), the consent of the majority to be represented must be given "either by themselves or their representatives chosen by them. Locke also insisted on the centrality of accountability of the representative organ to the people. According to Locke, the government is entrusted with the right of making laws for the public good, that is, in the interest and for the benefit of those represented, and if it breaches that trust, the people may rescind their authority and place it in another government. Representative democratic theory therefore brings in the understanding of the relationship between Senate and its role as the protector of devolved units and the people who voted for them. The study therefore sought to

establish whether the senate had the interests of the people who elected them at heart.

2.3.3 Social Contract Theory

The theory classically addresses the questions of the origin of humanity and the legality of the power of the state over the individual. The arguments presented in this theory postulated that the masses had given consent, either openly or tacitly, to give up some of their freedoms and work under the authority of the ruler or magistrate (or to the decision of a majority), in exchange for protection of their other rights. According to Locke (1689), the social contract and the political order it creates are simply the means towards an end; the benefit of the individuals involved, and legitimate only to the extent that they fulfill their part of the agreement. Locke propagated that when the government fails to secure their natural rights or satisfy the best interests of society (called the "general will" in Rousseau), citizens can withdraw their obligation to obey, or change the leadership through elections or other means including, when necessary, violence.

The theory is well understood within the larger classical theory of democracy. Rousseau's social contract theory set the restriction of relationship between an individual and the state within a civil society (Chilcott, 1998). Article one of the Constitution of Kenya (2010) emphasizes the peoples' sovereign power which is entrusted to the legislatures at both the national and county levels of government. This is further reinforced under article 98 which provides that the Senate shall

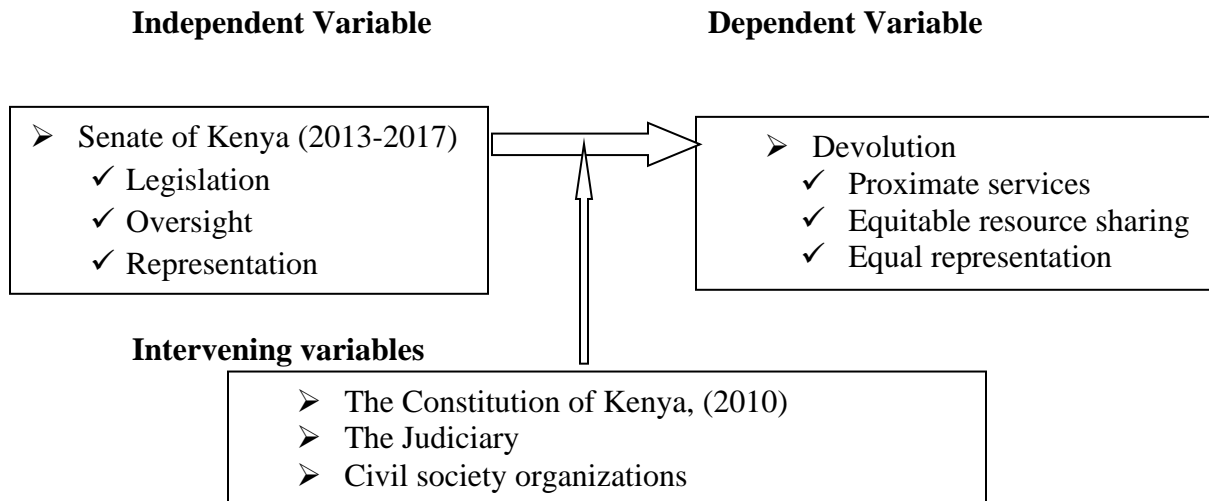
comprise of the members elected from 47 counties and gives them the representative function in article 96.

In investigating the influence of the Senate of the republic of Kenya-2013-2017 on the devolution process, this study examined whether the senate had remained committed to the ideals of the social contract as contemplated by both Rousseau and Locke; to the extent that the people of Kenya approved for the enactment of the Constitution of Kenya (2010) which brought forth the establishment of the senate, they, according to Rousseau consented openly to give up some of their freedoms and submit to the authority/senate. So, the question the study unraveled was; has the Senate under the Constitution of Kenya (2010) protected the people in the counties, their rights and aspirations?

2.4 Conceptual Framework

Structural functionalism and social contract theories indicate that the Senate performs its constitutional duties within a system of other constitutional institutions drawing its mandate and existence from the people of Kenya specifically, to guide and protect devolution. Based on these theories, the study was conceptualized in a framework explaining the relationship between the independent variables which is the Senate (2013-2017) and how it has affected devolution which is the dependent variable (outcome) as shown in the schematic diagram below.

Figure 2.4: Conceptual Framework



2.5 Variables/ Categories of Analysis

Article 96 of the constitution of Kenya 2010 established the Senate to represent the counties, and serve to protect the interests of the counties and their governments. It gives the Senate powers to participate in the law-making function of Parliament by considering, debating and approving Bills concerning counties, as provided in Articles 109 to 113. Further, Senate determines the allocation of national revenue among counties, as provided in Article 217. These functions of the Senate (Independent variable) of legislation, oversight and representation have a direct impact on achieving the objects of devolution (dependent Variable) as set out in article 174 of the constitution of Kenya (2010). The objects of devolution are: to promote democratic and accountable exercise of power; foster national unity by recognizing diversity; give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them. Devolution also recognizes the right of

communities to manage their own affairs and to further their development; protect and promote the interests and rights of minorities and marginalized communities; promote social and economic development and the provision of proximate, easily accessible services throughout Kenya. Furthermore, it ensures equitable sharing of national and local resources throughout Kenya; facilitate the decentralization of State organs, their functions and services, from the capital of Kenya; and enhance checks and balances and the separation of powers. However, because both the Senate and devolved units are fairly new institutions in Kenya, they need to work in relation with other already existing institutions (intervening Variables) so that the relationship between the Senate and devolution is enhanced.

CHAPTER THREE: RESEARCH METHODOLOGY

3.1 Research Design

The study adopted a descriptive research design in collecting and analyzing data from the respondents. This design gives out an accurate profile of persons, events and account of characteristics like behaviors, opinions, abilities, beliefs and knowledge of a particular individual, situation or group (Burn and Grove 2003). This was also preferred because according to Kothari (2008), it ensured a complete description of the situation making sure that there was minimum bias in the collection of data.

3.2 Site of the Study

The study was carried out in Nairobi City County. This County was established in the year 2013 with similar boundaries as the former Nairobi Province, after establishing the 47 counties. It borders Kiambu on the North, North West and North East, Machakos on the South East, Kajiado on the South and South West.

In particular, the study was restricted to the members of Parliament of Kenya consisting of both the Members of the National Assembly and the Senate, Parliamentary service commission employees, Nairobi County Assembly members and some government officials directly involved in facilitating the functioning of devolved units.

3.3 Target Population

Population is a group of people or objects from which the sample for statistical measurement is going to be taken (Mugenda & Mugenda, 2003). The target population was drawn from the sixty-seven (67) Senators, three hundred and forty-nine members (349) of the National Assembly, one thousand two hundred and ninety-three (1,293) parliamentary service commission staffers, one hundred and twenty-four (124) Members of the County Assembly of Nairobi, twenty (20) key government officials from the ministries of Devolution & Arid and semi-Arid Land, treasury and health and seventeen (17) Nairobi County residents drawn from the 17 sub-counties. These people directly or indirectly influence or are influenced by the functioning of the senate of Kenya and devolution.

3.4 Sample size and Sampling techniques

A sample is a part of the population that one intends to study while a sampling technique is the procedure a researcher uses to select the final sample to study (Orodho & Kombo, 2002). In this case the research used stratified random sampling and purposive sampling methods to get the sample size. Stratified random sampling is a method of sampling that involves the division of a population into smaller groups known as strata. A random sample from each stratum is taken in a number proportional to the stratum's size when compared to the population while purposive sampling is a sampling technique that allows a researcher to use cases that have the required information with respect to the

objectives of his or her study. Therefore, subjects are handpicked because they are informative or they possess the required characteristics. (Mugenda & Mugenda, 2003).

The research therefore arranged the Senators, Members of the National Assembly and Members of the County Assembly of Nairobi into strata of elected and nominated members and randomly select the ones to be interviewed. The respondents from the Parliamentary service commission and government officials were picked purposively depending on the nature of their job descriptions while the Nairobi residents were picked depending on the constituencies they hailed from. The research collected responses from twenty-five (25) senators, one hundred and twenty (120) Members of the National Assembly, one hundred (100) Parliamentary Service Commission Staff, fifty-six (56) Members of the Nairobi County Assembly, twelve (12) government ministries employees and eight (8) Nairobi County residents. In total, a number of three hundred and twenty one (321) people were interviewed.

3.5 Research instruments

The study used questionnaires to collect primary data. The questionnaire consisted of both closed ended questions and a few open-ended questions. Questionnaires are appropriate because they are easy to analyze and are cost effective (Streubert & Carpenter, 2003). According to Mugenda and Mugenda (1999) questionnaires also give a detailed answer to complex problems. The

researcher conducted oral interviews with the targeted respondents who had time while others that did not have time or were unavailable in their offices at the time the researcher visited filled a questionnaire that was collected at a later time. Oral interviews were more preferred in this research because the researcher asked for clarifications and probed for more information from the respondents.

3.5.1 Validity of Research Instruments

In this case, validity can be defined as the extent to which the research findings accurately reflect the phenomena under study (Munro, 2005). This determines the quality of data collected and hence that of the whole research. To ensure this is achieved, the researcher discussed the research instrument developed with the supervisor and also sought a second opinion from a research expert.

3.5.2 Reliability of Research Instruments

According to Munro (2005), reliability is the ability of an instrument to measure something consistently and repeatedly. To ensure the research achieve this, the researcher pre-tested the research instrument on a few staffers of the Parliamentary Service Commission who were not included in the final sample size. The researcher then debriefed them individually and compared the responses for consistence.

3.6 Data Collection Procedure

After the University approved the research proposal, the researcher obtained an introduction letter for data collection from the University. The letter from the

University also helped in obtaining a second letter from the National Council for Science, Technology and Innovation granting authority for field work and data collection. The researcher later requested for permission from the secretary to the Parliamentary Service Commission to be allowed to carry out the research within parliament buildings in Nairobi. After the permission was granted, the researcher called some of the targeted respondents to check their availability for oral interviews, while other respondents were picked randomly from the clusters developed because most of them were known to the researcher. A cover letter developed by the researcher was used to introduce questionnaires to the respondents who were not available for oral interviews.

3.7 Data Analysis

Data analysis is the process of inspecting, cleansing, transforming, and modeling data with the goal of discovering useful information, suggesting conclusions, and supporting decision-making. It is therefore a process of bringing order, structure and meaning to the mass of collected data (Marshall and Rossman, 1990).

Since the researcher was personally involved in sending and receiving the questionnaires and administering some, there was no need for data validation. The researcher carried out a data editing exercise by scanning through the questionnaires to ensure that the questionnaires were completely filled. The thematic statements suggesting a particular variable as developed in the questionnaire required a respondent to either strongly agree, agree, indicate if not

sure about the statement, disagree or strongly disagree. This therefore formed the quantitative aspect of the data. There was also a provision for the respondents to give more information about his/her choice of answers given hence providing the qualitative aspect of the data.

To extract quantitative data, the researcher developed a table of frequencies of the choices on each statement on a particular objective and converted them into a percentage of the total responses. The researcher also read through the information obtained from the respondents several times while revisiting the research objectives to establish patterns and connections in order to get the qualitative aspect of the research findings. Therefore, the researcher used both quantitative and qualitative data analysis methods to get the information for presentation and discussion.

3.8 Data Management and Ethical Considerations

The researcher obtained prior informed consent from each respondent either through a phone call or face to face communication before any oral interview was done. A brief introduction of the study was given either directly by the researcher to the respondent or through a letter where confidentiality of information given by respondents was assured. This encouraged respondents to give honest responses and ensured that no unauthorized persons accessed the data collected.

CHAPTER FOUR: DATA ANALYSIS, PRESENTATION AND DISCUSSION

4.1 Introduction

This chapter presents data collected and analysis of the findings thereof from the data collected. Out of the 321 questionnaires given out, 298 were completely and well filled out while 23 of them were partially and poorly filled out hence were not used in the analysis. This translated to a 92% response. The purpose of the study was to investigate the influence of the Senate of the republic of Kenya (2013-2017) on the devolution process and most of the sampled respondents were in one way or the other involved in working to strengthen the devolution agenda or are beneficiaries of devolution.

4.2 Demographic information

From the research findings, all the respondents who filled the questionnaires were above the age of 35 years, 58% were male respondents while 42% were female as indicated in the table 4.1 on: **Demographic information**

Gender	Frequency	Percentage (%)
Male	186	58
Female	135	42
Total	321	100

4.3 Influence of the Senate’s legislative role on the devolution process

The first objective sought to examine whether the COK (2010) was sufficient and to guide proper legislation by the Senate on devolution and also determine whether the Senate of the republic of Kenya (2013-2017) had enacted requisite legislations to operationalize and entrench devolution,

Table 4.2: Response on influence of Senate’s legislative role on devolution;

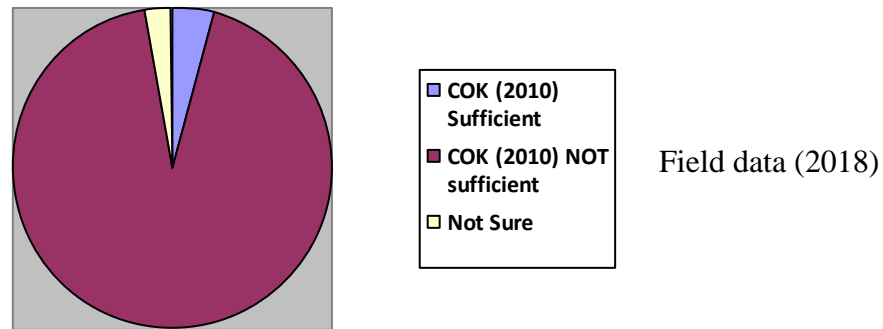
Statement	SA		A		NS		D		SD	
	F	%	F	%	F	%	F	%	F	%
The COK (2010) is sufficient to guide proper legislation by the Senate on devolution,	2	0.67	10	3.36	8	2.68	192	64.43	86	28.86
The Senate (2013-2017) enacted requisite legislations to operationalize and entrench devolution,	15	5.03	163	54.70	3	1.01	108	36.24	9	3.02

Field Data, (2018)

4.3.1 Determining whether the COK (2010) was sufficient to guide proper legislation by the Senate on devolution,

Chapter eleven of the COK (2010) provided for a devolved system of governance and clearly outlined its principles and objectives. The research therefore expected that the same constitution was clearly guiding the devolution process.

Figure 4.2.1: Response on the sufficiency of the COK (2010) to guide legislation by the Senate on devolution;



On trying to determine whether the COK (2010) was sufficient and effective to help the Senate further legislate to guide devolution, majority of the respondents (93.29%) expressed that the COK (2010) was not sufficient while 4.03% of the responds expressed that the COK (2010) was sufficient and 2.68% were not sure. Many respondents felt that the constitution did not give the Senate enough powers to legislate fully on the matters concerning counties. In the words of one respondent;

Whereas the 2010 Constitution brought about bicameralism in Kenyan Parliament, the functional arrangements of Parliament drifts it back to unicameralism by giving the National Assembly more powers to deal with matters not perceived to be touching on devolved units thereby creating impotent bicameralism (Respondent no. 8)

Majority of the respondents also pointed out that the COK (2010) is not clear with regard to the legislative mandate of the Senate. They expressed that the phrase “bills concerning counties” is not clear.

How is the Senate expected to determine bills concerning counties when virtually everything from mining, fishing, farming, manufacturing etc happens within some county? (Respondent 96)

Further literature on this matter has also pointed out to this issue. For instance, in the advisory Opinion no 2 of 2013, the National Assembly published the division of Revenue bill. A letter to the Senate speaker was written by the speaker of the National Assembly seeking concurrence that the said bill was a bill concerning the county Government. The speaker of the Senate concurred and the bill was debated in the National Assembly. The Bill was then referred to the Senate for debate. The Senate made amendments on the bill then sent back the same to the National Assembly. The National Assembly did not consider the amendments and instead of forming a mediation committee as provided for under Article 113 of the Constitution of Kenya, the bill was referred to the president for assent. The reasoning behind this unilateral act by the National Assembly was that the speaker and some MPs, argued that it was an error of judgment to involve the Senate in the legislative process of a bill not concerning county government. The National Assembly argued that the said bill did not address matters concerning counties. The Senate then sought an advisory opinion from the Supreme Court arguing that the said bill concerned the counties as the division of revenue would affect the efficiency and functionality of the counties. The National Assembly did not only reject the Senate's amendments and exclude it from the legislative process, but it also sent the initial bill as approved by the National Assembly to the president for assent (<http://kenyalaw.org>)

The court's interpretation of the Constitution of Kenya should be done in a way that permits development of law and promotion of national values. The interpretation of the phrase "matters concerning county government" in the Constitution of Kenya has been subject to court intervention as the two chambers engage in supremacy battles. The National Assembly has accused the Senate of encroaching its mandate in matters that do not concern counties. On the other hand, the Senate has accused the National Assembly of undermining the Senate in matters touching on counties. (<http://kenyalaw.org>).

Another respondent through an oral interview suggested that the COK (2010) was not explicit on what constitutes matters concerning counties. The respondent suggested that a better framework be developed by the speakers of the National Assembly and that of the senate to help determine matters that concern counties that Senate should legislate. (Respondent 26)

From the findings the Senate as constituted seems to be having a narrower legislative mandate compared to the National Assembly;

Senate's legislation mandate is so restrictive (to county matters alone) while the National Assembly legislates on all national issues (Respondent 85)

Unlike the 1963 Independence Constitution, which gave, the former Senate almost similar powers with the house of Representative in legislation, the COK (2010) caps the legislative authority of the Senate to matters concerning county governments only (Kirui and Murkomen, 2011). According to Kirui and Murkomen, the main justification for this was to demarcate the roles of the two

chambers and avoid conflict of roles. However, this has not been the case. In doing so, the Constitution of Kenya (2010) grants the National Assembly a wider scope in legislating on issues affecting both the counties and at a national level. Nevertheless, it limits the Senate's legislative role only to considering any bill that concern the county government or and not money bills.

Generally, majority of respondents felt that theoretically, the Constitution of Kenya 2010 adopts Bicameralism, but its design needs to be well enhanced to operationalize the better functioning of the senate.

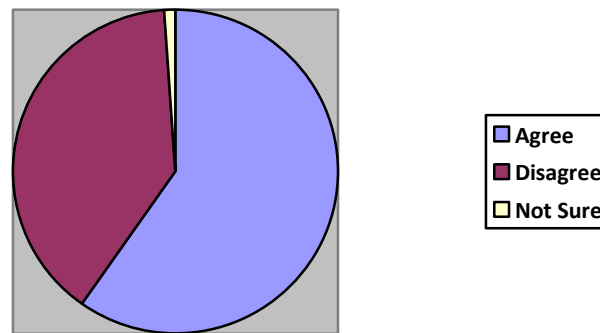
The constitution needs to be reviewed to enhance the functions of the senate to help devolution. (Respondent 9)

4.3.2 Determining whether the Senate of the republic of Kenya enacted requisite legislations to operationalize and entrench devolution from 2013-2017,

Article 96 (2) of the Constitution of Kenya (2010) clearly sets out the role of Senate as “participating in the law-making function of Parliament by considering, debating and approving Bills concerning counties, as provided in Articles 109 to 113”.

The study therefore undertook to establish the extent to which the senate of the republic of Kenya (2013- 2017) working within the provisions of the Constitution of Kenya (2010) had developed legislations to help entrench devolution and the response was as shown in the figure below:

Figure 4.2.2: Response on whether the Senate enacted requisite legislations for devolution from 2013-2017



Field data, (2018)

There was divided response on whether the Senate enacted requisite legislations on devolution from 2013-2017. A majority of the respondents (59.73%) pointed out the centrality of the Senate in coming up with legislations affecting the functioning and powers of the County Governments and those that affect the utilization of finances of County governments. A respondent stated;

Since inception, the Senate has ensured a steady flow of revenue from the National government to the counties through the annual division of revenue bills (Respondent 18)

In general, the following bills were mentioned by majority of the respondents as having a direct impact to the functioning of counties. They included: *The County Allocation of Revenue Bills 2013,2014,2015,2016 & 2017, The County Governments (Amendment) Bill 2016, The County Industrial Development Bill 2014, Division of Revenue Bills 2013,2014,2015,2016 & 2017, Intergovernmental*

Relations (Amendment) Bills 2016 & 2017, The County Retirement Scheme Bill 2018, The County Assemblies Services Bill 2014, The County Early Childhood Education Bill 2018, The Natural Resources (Benefit Sharing) Bill 2014, The Petition to County Assemblies (Procedure) Bill 2018, The Community Land Bill 2015, the office of the County Attorney Bill 2018, The County Governments Disaster Management Bill 2017 and the Impeachment Procedure Bill 2018.

However, a good number of the respondents (39.26%) indicated that the senate had not come up with legislations to guide and entrench devolution in Kenya. In the words of one respondent;

The senate has little or no legislative role as far as the election of members of County Assemblies and members of the Executive are concerned (Respondent 13)

Another respondent cited the County Assembly Powers and Privileges Bill (2014) as a bill enacted by the Senate that directly affects the functioning of the county assemblies but fails to determine how the county assembly members are elected.

The County assembly powers and privilege bill 2014 only controls the operations of the county assembly but doesn't determine who gets elected to the same assemblies! (Respondent 86)

Interestingly, a respondent observed that there is need for the Senate to enact a legislation that will provide a clear framework for the replacement of a Deputy Governor in case of a vacancy in the office of the Deputy Governor.

The Senate has failed to legislate on the replacement of Deputy Governors in Kenya, look at the case in Nairobi and Nyeri counties (Respondent 12)

4.4 Influence of the Senate’s oversight role on Counties

The second objective sought to determine whether the Senate’s oversight roles were clearly spelt out in the COK (2010) and also examine whether the Senate played it’s oversight role as required by law from 2013-2017. The findings were as shown in table 4.3 below:

Table 4.3: Response on the influence of the Senate’s oversight role on devolution;

Statement	SA		A		NS		D		SD	
	F	%	F	%	F	%	F	%	F	%
The Senate’s oversight role in COK (2010) is clear	35	11.74	145	48.66	0	0	71	23.83	47	15.77
The Senate (2013-2017) played its oversight role as required by law,	8	2.68	89	29.87	3	1.01	117	39.26	81	27.18

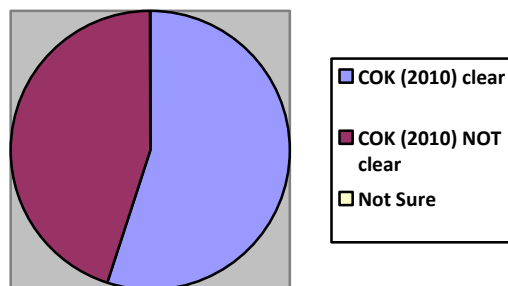
Field Data, (2018)

4.4.1 Determining whether the Senate’s oversight role was clearly spelt out in the COK (2010),

Article 96(3) grants the Senate the power of oversight over national revenue allocated to the county government. Article 217 further gives the Senate the power to determine and allocate revenues amongst the counties.

In determining the perceived clarity of the COK (2010) on oversight of Counties by the Senate, the response was as shown in figure 4.3.1 below:

Figure 4.3.1: Clarity of the COK (2010) on the Senate’s oversight role



Field data, (2018)

From the findings, majority of the respondents (60.40%) indicated that the oversight role of the Senate was clearly stated in the COK (2010) while a good number of respondents (49.60%) stated that the role was not clear in the COK (2010).

Respondents in favor of the statement cited the provisions of article 96 (3) and the Public Finance Management Act (2015) as the provisions that gives the senate

express powers to determine monies allocated to the counties and interrogate the county financial audit reports and summon governors in case of any financial misappropriations.

However, from the findings, there seemed to be a perceived conflict in discharge of oversight duties between the Senate and the County Assemblies. One respondent captured it as follows:

The oversight role of the Senate to some extent conflicts with that of the County Assembly especially with regard to checking the County Executive (Respondent 16)

Another respondent put it as follows:

The COK (2010) is not clear on the extent the Senate should exercise its oversight role on County Government without undermining the oversight role of the County Assembly (Respondent 62)

From the findings, the question that arose was, “Who between the Senate and County Assembly should summon and question Governors and County Executive Committee Members over County financial management?”

To many respondents, there seemed to be no jurisdictional divide between the oversight role of the Senate and that of the County Assembly and this therefore may make it hard for the County Assemblies and the Senate to work in harmony to execute oversight roles over County Governments.

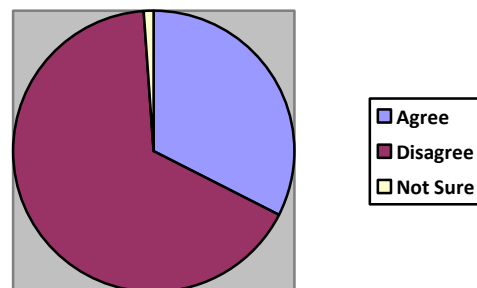
A further review on the perceived conflict of oversight duties revealed that article 185 (3) of the Constitution of Kenya (2010) provides that a County Assembly, while respecting the principle of separation of powers, may exercise oversight

over the County Executive Committee and any other County Executive organs, while on the other hand, article 229 of the Constitution of Kenya stipulates that the Auditor General shall submit audit reports of the counties to Parliament or relevant County Assembly, which shall within three months of receipt debate and consider the report. The COK (2010) therefore grants both the County Assembly and Senate oversight role over fiscal management at the counties. This, according to a respondent, creates an overlap of duties. The respondent argued that this is one of the major causes of conflict between the Senate, County Assemblies and County Governments. The argument was as follows:

The Auditor General's report is usually tabled at the same time in both oversight bodies and all can proceed to scrutinize the reports separately without informing the other that they are seized of the matter. This puts the oversight function of these two organs in limbo especially if the two bodies reach contradictory decisions on the same matter. (Oral interview)

4.4.2 Determining whether the Senate played its oversight role as required by law,

Figure 4.3.2: Response on how the Senate played its oversight role.



Field data, (2018)

In determining whether the senate played its oversight role as required by law, majority of respondents (66.44%) disagreed with the statement that the Senate had played its oversight role while 32.55% agreed with the same statement and 1.01% were not sure.

Majority of the respondents held a perception that the Senate failed to prosecute with finality cases where some County Governors were accused of having misappropriated county finances. One respondent pointed as follows:

The Senate failed to prosecute any single governor even after glaring evidence of rampant financial misappropriations within counties. Even the Embu Governor stayed in office full term after the Senate impeached him! (Respondent 16)

Such perceptions may however be misleading because on impeachment of Governors, the Senate's role ends with the debating and voting on the matter in the Senate but the Senate may not literally force the Governor out of the offices especially when the Governor moves to a higher court to seek redress and is granted.

From the findings, it can also be deduced that the Judiciary and other relevant bodies like the Ethics and Anti-Corruption Commission, the office of the Director of Public Prosecutions and the office of the Director of criminal investigations were cited as having not worked well with the Senate in the discharge of its oversight role. A respondent pointed as follows:

Many governors and county officials were colluding with the EACC and DPP to have their corruption cases dropped due to shoddy investigations making the senate toothless in oversight (Respondent 12)

Another respondent observed that the senate had not done much to protect the assets at the counties. The observations were as follows:

The senate should have initiated a motion or developed a legal framework to handle inventory of assets and liabilities, ensure enforcement of the preservation and improved record management of Public Assets and address the problem of pending bills in the Counties. This should form part of the audit to enable smooth hand over and continuation. (Respondent 71)

Another respondent informed the research that in as much as the constitution of Kenya (2010) and the public finance management act (2012) granted the Senate the mandate to scrutinize County audit reports through the senate's County Public Investments and Accounts Committee (CPIAC), the process had been deemed as too slow to make any meaningful recommendations to the audit reports for the expenditures in the following financial year. In the words of the respondent:

Senate has failed to make meaningful output from the audit reports, they are currently scrutinizing the audit reports for 2014/2015 financial year, in case of any issues with these reports, how helpful will the information be for County expenditure planning? (Respondent 56)

4.5 Effectiveness of the Senate's representation role

The third objective sought to examine whether the COK (2010) clearly stipulated the Senate's representation role and also determine how the Senate effectively performed its representation role from 2013-2017.

The constitutional role of the Senate is to provide an effective bridge between Counties and the National sphere contributing to the realization of the constitutional commitments and obligations. The Senate as contemplated in the

Constitution of Kenya (2010) article 96 (1) represents counties and serves to protect the interests of the counties and their governments.

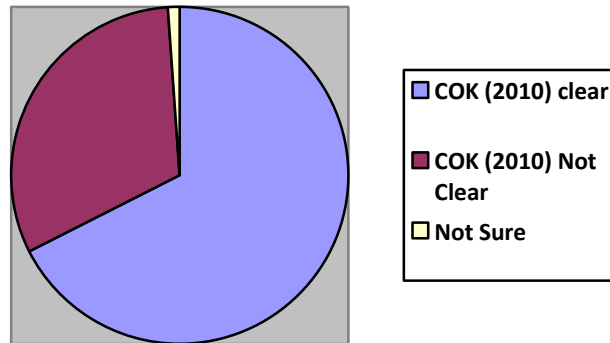
Table 4.4: Response on the effectiveness of the Senate’s representation role

Statement	SA		A		NS		D		SD	
	F	%	F	%	F	%	F	%	F	%
The COK, (2010) Clearly stipulates the Senate’s role of representation,	89	29.87	112	37.58	3	1.01	88	29.53	6	2.01
The senate effectively performed it’s representation role from 2013-2017	26	8.72	117	39.26	0	0	91	30.54	64	21.48

Field data, (2018)

4.5.1 Clarity of the COK (2010) on the Senate’s representation role,

Figure 4.4.1: Response on clarity of the COK (2010) on the Senate’s representation role



Field data, (2018)

Majority of the respondents (67.43%) agreed with the statement that the COK (2010) clearly stipulates the Senate’s role of representation while 31.54% disagreed with the same statement.

Senate represents counties at the national level and serves to protect their interests and those of their governments. This therefore means that there is no contestation as to what/who the senate represents. In the words of a respondent:

The senate has equal representation in that each county is represented by one elected senator (Respondent 15)

The senate’s role of representation has also been bolstered by the provisions of article 98 on the membership of the Senate which states thus: “the senate consists of forty-seven members each elected by the registered voters of the counties, each county constituting a single member constituency, sixteen women members

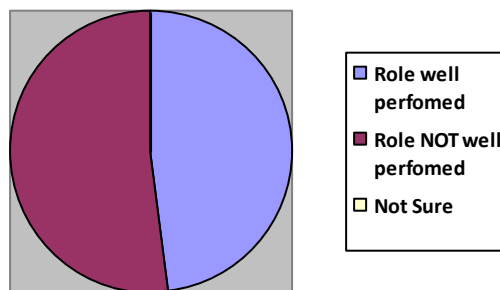
nominated by political parties according to their proportion of members of the Senate elected under clause (a) in accordance with Article 90, two members, being one man and one woman, representing the youth; two members, being one man and one woman, representing persons with disabilities; and the Speaker, who is an *ex officio* member” (COK, 2010)

The senate is well representative because it has all the special interest groups like the youth, women and persons with disabilities (Respondent 17)

4.5.2 Determining whether the Senate effectively performed its role of representation from 2013-2017

This question sought to find out how effective the Senate of the republic of Kenya had performed its role of representing Counties at the National level from 2013-2017.

Figure 4.4.2: Response on how the Senate performed its role of representation



Field data, (2018)

From the research findings, opinion was divided on whether the Senate effectively performed its representation role. 47.98% of the people interviewed agreed with the statement that the Senate effectively performed its role of representation from 2013-2017 while 52.02% disagreed with the same statement.

One respondent who agreed with the statement gave a reason as follows:

My senator is easily accessible and I always hear him on radio and watch him on TV articulating our issues. We visit his rural home and office frequently where our issues are listened to and addressed (Respondent 23)

Other respondents pointed out that the Senate as constituted is a well representation of the whole country including the major cross-cutting issues of gender, youth and persons with disability.

The Senate is the face of Kenya, it has representatives from all the 47 counties and nominees representing youth, women and persons with disability (Respondent 29)

while on the other side one of the respondents who disagreed with the statement wrote:

The framers of the COK (2010) hoped that there will be constant consultations between the senators and the counties they represent. That the senators will carry the aims and aspirations of the people from the counties they represent. But this has not been achieved (Respondent 37)

From the above responses and many others, the senate seemed not to have forged a proper working relationship with the county assemblies.

Article 118 of the COK (2010) requires that parliament conducts its business in an open and participatory manner to ensure that the people it represents takes part in the process of oversight and legislation. However, according to a respondent,

public participation in the oversight and legislation functions of the senate was at a very low rate. This means the public is not sure if the senate really represents their views.

There is very little the senate has done to enhance public participation in law making. They only invite memoranda through the media but they do not reach out to the people in rural areas (Respondent 56)

4.6 Working relationships between the Senate and the National Assembly, Council of Governors (COG), the National Executive, County Assemblies, the Judiciary and the Media

The fourth objective sought to establish the working relationship between the Senate and other key institutions such as the National Assembly, Council of Governors, the National Executive, the County Assemblies, the Judiciary and the Media. These institutions were viewed by the researcher as being central to the implementation of devolution in Kenya.

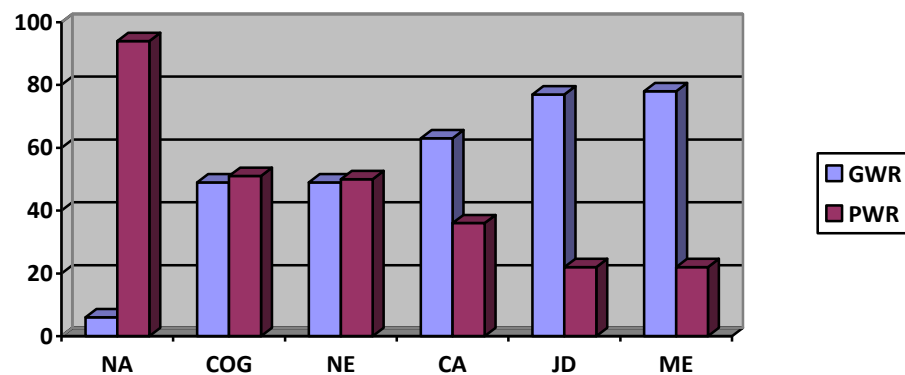
In line with Hebert Spencer's and Robert Merton's structural functionalism theory, the senate is expected to work within an already existing framework of institutions to enable it achieve its desired mandate. The research therefore went further to determine how the Senate has fostered a working relationship with key other devolution stakeholders in order for it to achieve its constitutional mandate. The findings were as shown in table 4.5 below;

Table 4.5: Relationship between the Senate and NA, COG, the NE, CAs, Judiciary and the Media

There exists a good working relationship between the Senate and:										
	SA		A		NS		D		SD	
	F	%	F	%	F	%	F	%	F	%
National Assembly	2	0.67	16	5.37	0	0	241	80.87	39	13.09
Council of Governors	23	7.79	124	41.61	1	0.33	131	43.96	19	6.38
The National Executive	47	15.77	98	32.89	5	1.68	102	34.23	46	15.44
County Assemblies	50	16.78	138	46.31	3	1.01	99	33.22	8	2.68
Judiciary	53	17.79	176	59.06	2	0.67	59	19.80	8	2.68
The Media	42	14.09	189	63.42	2	0.67	58	19.46	7	2.35

Field data, (2018)

Figure 4.5.1: Working relationship between the Senate and NA, COG, NE, CA, Judiciary & the media



Note: **GWR** Means Good working relationship while **PWR** means Poor working relationship.

4.6.1 Working relationship between the Senate and the National Assembly

Article 93 (1) established parliament of Kenya consisting of the National Assembly and the Senate which according to sub article 2 are supposed to perform their respective functions in accordance with the COK 2010. In general, parliament (National Assembly and the Senate) both have legislative, oversight and representation role.

From the findings, an overwhelming majority (93.96%) of the respondents disagreed with the statement that there existed a good functional working relationship between the Senate and the National Assembly. Many respondents cited the constant squabbles witnessed between the Senate and the National Assembly through the media. In the words of a respondent;

We see Senators and Members of the National Assembly disagreeing on issues that they can easily sort out. These disagreements end up derailing the work of Senators making the common man to suffer (Respondent 11)

The findings therefore pointed to an existing supremacy battle between the Senate and the National Assembly which according to one respondent affects the Senator's oversight role in the Counties. In the words of the respondent;

Due to the battles between the National Assembly and the Senate, the National Assembly charged with the responsibility of allocating National funds, has constantly denied Senator's the Monitoring and Evaluation fund that the Senators are supposed to utilize in monitoring development activities in their respective Counties. (Respondent 11)

There is also an overlapping of functions by either of the houses. However, articles 95 and 96 of the COK (2010) have determined the roles of the National Assembly and the Senate though there are overlapping functions with some sort of clarity on the extent of the functions as shown in the table below:

Table 4.6 A comparison of shared roles of the National Assembly and the Senate as stipulated in articles 95 and 96 of the COK (2010)

Role	National Assembly	Senate
Representation	Represents the people of the constituencies and special interests	Represents the counties , and serves to protect the interests of the counties and their governments.
Legislation	Enacts legislation in accordance with Part 4 of Chapter 8 of the COK (2010) on procedure for enacting legislation	Considers, debates and approves Bills concerning counties , as provided in Articles 109 to 113 of the COK (2010).

Revenue allocation	Determines the allocation of national revenue between the levels of government, as provided in Part 4 of Chapter 12 of the COK (2010)	Determines the allocation of national revenue among counties, as provided in article 217 of the COK (2010), and exercises oversight over national revenue allocated to the county governments
Oversight of resources	Exercises oversight over national revenue and its expenditure	Exercises oversight over national revenue allocated to the county governments
Oversight of state officers	Reviews the conduct in office of the President, the Deputy President and other State officers and initiates the process of removing them from office and exercises oversight of State organs	Participates in the oversight of State officers by considering and determining any resolution to remove the President or Deputy President from office in accordance with Art. 145

From the above comparison, one can easily deduce that the COK (2010) made an attempt of bringing out distinctions in the roles of the two houses; senate and the National Assembly. However, from the research findings, some respondents still argued that the provisions in the COK (2010) on the roles of the National Assembly and the Senate are subject to misinterpretation in order to suit either the National Assembly or the Senate;

There is conflict about representation between the National Assembly and the Senate. How does the National Assembly represent the people in the constituencies and yet the same constituencies are found in counties which are again represented in the Senate at the National level? (Respondent 81)

4.6.2 Working relationship between the Senate and the COG

The Council of Governors is a non-partisan organization established under section 19 of the Intergovernmental Relations Act, 2012. It comprises of all the governors of the 47 counties.

From the research findings, opinion was divided on whether there existed a good functional working relationship between the Senate and council of Governors. 49.40% agreed with the statement that there was a good working relationship between the senate and the council of governors while 50.34% of the respondents disagreed with the same statement.

Majority of those who agreed with the statement cited the fact that the senate and council of governors were both important players in the devolution agenda and were both keen on entrenching devolution.

I have heard both the senate and the council of governors push the national government to increase county allocations, so I think they work well together (Respondent 42)

Some respondents also indicated that the Senate is key in protecting counties and their interests.

The Senate protects counties when there are disagreements between the County Assembly and the County Executive that threaten the existence of Counties. An example is the case of Makeni county which was about to be dissolved but the Senate vetoed the decision to dissolve it. (Respondent 14)

Other respondents cited the close working relationship between the Senate and the Council of governors which has been brought out through joint conferences to discuss matters affecting devolution.

The Senate together with the Council of Governors organize for devolution conferences on an annual basis to ensure that devolution is on course” (Respondent 63)

However, the devolution conferences cited by the above respondent had been riddled with issues especially in the year 2016 where by the Senators boycotted the conference claiming that the Senate had not been taken as a serious stakeholder in matters devolution.

On the other hand, majority of those who disagreed with the statement cited perceived rivalry between the senators and governors as the reason why there existed a bad working relationship between the senators and the governors which according to the respondents was a threat to devolution;

Most senators were insincere about their oversight role in the specific counties, they just want to use that opportunity to gain mileage and get reelected either as senators or Governors (Respondent 12)

From the findings, the perceived battles between the Senate and Council of governors usually centers on to the extent the oversight role of the Senate over national revenue allocated to the counties entail.

Some governors refused to honor sermons by the senate public accounts and investment committee because they did not trust the work of the senators on oversight (Respondent 10)

4.6.3 Working relationship between the Senate and the National Executive

The research sought to examine the working relationship between the Senate and the National Executive. This relationship was important to the study because the researcher felt that it had a direct impact on the working of the Senate and devolution.

Chapter nine of the COK (2010) establishes the National Executive and outlines the principles of operation, authority bestowed upon it, functions, powers and the procedure of election and removal of the executive. As designed in the COK (2010), the executive though independent works with the legislature in ensuring proper legislation and policy implementation.

This therefore means that all bills passed by the senate on matters affecting counties including a resolution from a commission on inquiry ratified by senate to suspend a county government as outlined in article 192 (2), must also be assented to by the president for it to take effect.

From the research findings, opinion was closely divided on the functional relationship between the Senate and the Executive. 48.66% of the respondents

agreed with the statement that the Senate had a good working relationship with the Executive, while 49.67% of the respondents disagreed with the same statement.

Most respondents who agreed with the statement brought out the central role of treasury that ensures that the cash meant for counties as appropriated by the Senate is disbursed to enable counties function smoothly.

Treasury has ensured that monies allocated to counties by the Senate is disbursed accordingly to the Counties so that the operations of the Counties are not interrupted (Respondent 74)

However, a good number of respondents who disagreed with the statement also suggested that the Senate had not fully seized its powers to overhaul the governance and development from the old constitutional order which were being perpetuated by the National Executive. Some elements of the old order still persist and unfortunately, from the research findings, the National Assembly and the National Executive were cited as determined to perpetuate it;

The National Executive undermined devolution and the senate by appointing and financing County Commissioners who seem to be running parallel governments in counties (Respondent 29)

Furthermore, other respondents who disagreed with the statement cited the challenges experienced in the health sector (a devolved function); strikes due to late payment of workers occasioned by delayed disbursement of monies for salaries by the national treasury. A respondent cited that the Senate has spoken about this issue many times but the national treasury seemed not to have improved. In the words of the respondent;

The Senate has accused the executive of sabotaging devolution especially where there is a devolved function with inadequate funding from the treasury like in the health sector which has caused endless strikes of workers in the health sector at county levels (Respondent 29)

4.6.4 Working relationship between the Senate and County Assemblies

Article 176 (1) of the COK 2010 establishes County Assemblies while article 177 outlines the membership to the County Assemblies. County Assemblies as established are key to driving the devolution agenda for they are the ones vested with the responsibility of County level legislation. They are hence supposed to work together with the Senate in ensuring that the devolution objectives as enshrined in article 174 of the COK, 2010 are achieved.

Majority of the respondents (63.09%) agreed with the statement that the Senate had a good working relationship with the County Assemblies, while 35.90% of the respondents disagreed. Many of those who agreed cited the various avenues the Senate had established that ensured that they had regular consultations between the Senate and the County Assemblies.

The Senate has been organizing County Assembly forums, legislative summits and the speaker's roundtable meetings which have been bringing together major stakeholders including all Members of County Assemblies, County Assembly speakers and the Senate to speak together about devolution (Respondent 213)

Another respondent from the Nairobi County Assembly noted that the Speaker's round table discussions bringing together all the assemblies' speakers chaired by the speaker of the Senate is also an indicator that the senate and county assemblies worked well to achieve devolution.

The senate speaker meets all the county assemblies' speakers regularly to discuss legislative issues that affect devolution (Respondent 41)

A further review of the Hansard report of the Senate proceedings revealed that the Senate had held a speaker's roundtable meeting from 28th -30th July, 2016 and the resolutions communicated to the Senate through the Senate Speaker's communication dated 8th September, 2016.

According to another respondent, the senate was on the forefront of strengthening county assemblies financially and through capacity building to enable them perform their oversight functions well.

The Senate has backed financial autonomy of the County Assemblies to enable it access their finances directly from Central Bank and not through the County executives in order to strengthen their oversight, legislative and representation role at the Counties. County assembly staff are also being trained by the senate on legislative drafting (Respondent 12)

The respondent further alluded to the fact that there was a joint committee established between the Senate and county assemblies to look at the devolution of functions and the fiscal aspects of the devolved functions.

The Senate works well with county assemblies, right now, they are both looking at the functions that have so far been devolved, what ought to be devolved by now in accordance to the fourth Schedule of the Constitution and the finances devolved and agree on the way forward to ensure that the spirit and letter of the constitution and devolution is attained and the roles the Senators and Members of County assemblies ought to play to ensure this is attained(Respondent 12)

On the other side, majority of those who disagreed with the statement cited the perceived detachment of the Senate from the happenings in the County Assemblies.

Most senators have never even addressed their respective county assemblies so they are not aware of the issues affecting the assemblies (Respondent 256)

4.6.5 Working relationship between the Senate and Judiciary

The judiciary of the republic of Kenya is anchored on chapter ten of the COK, (2010) and as established works independently of other arms of Government. The researcher examined the relationship between the Senate and the Judiciary because the Judiciary is viewed as the law interpreter and arbitrator in cases of any disputes that arise in the process of driving devolution.

The judiciary seemed to have worked well with the Senate since 76.85% of the respondents agreed with the statement that there existed a good functional working relationship between the Senate and the judiciary while 22.48% of the respondents disagreed with the same statement.

Majority of those who agreed with the statement cited the incidences where the judiciary has ruled cases in favor of the senate on matters regarding legislative jurisdiction pitting the senate against the National Assembly. One respondent said:

The Judiciary has really been of help to the Senate especially when the National Assembly wanted to overlook it on enacting some laws that affected Counties, Judiciary refused and ruled the case in favor of the Senate (Respondent 13)

However, those who disagreed with the statement relied mostly on the cases between governors and the senate. Most respondents claimed that the Judiciary seemed to favor governors who had been summoned by the senate and had given them stay orders even those who the senate had procedurally impeached.

The Judiciary favored Embu County governor Martin Wambora when the Senate impeached him hence making the work of the Senate difficult (Respondent 28)

4.6.6 Working relationship between the Senate and the media

The media is a key player in the devolution agenda for it is the medium through which information is relayed from all the devolution players to the public and it also shapes most of the debates that revolve around the devolution agenda.

From the research findings, majority (77.51%) of the respondents agreed with the statement that there existed a good functional working relationship between the Senate and the media. Many respondents attributed the good relationship between the senate and the media to the fact that the media seemed involved in the activities of the senate.

The senate works well with the media by allowing live coverage of the Senate debates and committees' work hence the public is made aware of the proceedings of the Senate and its committees (Respondent 47)

Another respondent said:

The media is always available for Senators press conferences and meetings when called upon. They have even been given offices inside parliament buildings and the media personalities meet Senators regularly (Respondent 21)

Those who disagreed with the statement seemed to suggest that the media has been used by other institutions to portray the senate in a bad way;

The media sometimes gives weight to some stories from the National Assembly that undermines the work of the Senate instead of educating the public more on the importance of the Senate (Respondent 13)

4.7 Challenges encountered by the Senate

The last objective sought to examine the challenges faced by the Senate of the republic of Kenya from 2013-2017 in discharging its mandate. The researcher hoped that through establishing these challenges, recommendations would be made to make the Senate more efficient and better.

Legislating and conducting oversight can be described as the twin functions of any legislature. Oversight is the pro-active interaction initiated by the legislature with the executive and administration or other organs of state that encourages compliance with constitutional obligations.

In Senate's legislation role, the biggest challenge as brought out in the research findings was the lack of a clear framework to determine what matters concerns counties; to assist the two speakers make this determination. For instance, one respondent stated that:

The Senate has a problem in that the COK (2010) was not clear on what matters concerns counties, again how do you demarcate the issues when everything in this country happens in counties? Like the Mining Bill (2014) of the National Assembly, is it a matter concerning a County or not? (Respondent 17)

More literature on this issue also showed that many at times this misinterpretation of "matters concerning counties" had escalated into tough wars between the Senate and the National Assembly, where the Senate had accused the National Assembly of abuse of power and plotting to kill devolution. At the same time, the Senate had threatened to move to the Supreme Court to challenge the

constitutionality of over 30 laws passed by the National Assembly at the time without the input of the Senate (Daily Nation, July 26, 2018).

The Senate also faced a challenge in processing its legislations in that all their bills have to be taken to the National Assembly before they are fully passed into law.

There has been challenges in the way the Senate processed its bills. The slow processing of Senate bills is because the bills have to be taken to the National Assembly for further debate and passing before the president signs (Respondent 75).

The research findings also suggested that the oversight function of the senate was limiting; only to matters concerning counties. One respondent put it as follows:

The oversight role of the Senate is too limited in that it is restricted to matters concerning the County and its governance institutions as well as national government where the matter impacts on Counties only. This is too narrow a responsibility! (Respondent 45)

The research findings also suggested that the mode of picking the Senator also posed a challenge in the discharge of senatorial duties in line with their cardinal role of overseeing resources allocated to the counties by the national government. The respondents pointed out that one senator could not effectively represent the whole County just like a member of the National Assembly representing a small unit; sub-county with the same resources at their disposal.

The biggest challenge with the Senate is that there is only one senate representative in each County and this adds a twist to the relationship between Senators and Governors. The Senator may not oversight well the whole County (Respondent 42)

Another respondent pointed out the fact that both the Senator and the Governor are elected by an equal number of voters sharing the same electoral boundaries and hence this also elevates the supremacy battle between them.

Both the governor and senator are directly elected representative of the county. This inject an element of rivalry as the 'who is the big boss' syndrome take center stage while the senators have little resources, governors have more (Respondent 13).

Another challenge that respondents cited was the seeming Conflict of interest in designating the Senate as the promoter and protector of County interest and their Governments and at the same time requiring it to oversee financial management of County Governments. In the words of a respondent:

Senate has been made to look like the big brother to the County Governments and not partners at the same level; they even summon Governors who feel intimidated hence making their working relationship difficulty (Respondent 19)

From the above findings, one can deduce that the Kenyan model of governance creates a fertile ground for competitive rather than co-operative relations between the various levels of governance. This seems more acute if the governor and senator hailed from differing political affiliations. A contrast would be made with say, The Federal Republic of Nigeria whereby three senators in a State each represents a specific senatorial district, thus effectively dissolving an aspect of 'territorialism' and the ensuing supremacy rivalry. (Sihanya, 2011)

4.8 Emerging issues about the Senate and devolution in Kenya between 2013-2017

Devolution, according to the COK (2010) article 174 aims at promoting equitable distribution of resources across the country, especially to regions that have been marginalized for decades. It promotes management of governance and public service to the smallest units of the counties and enhances timely and efficient delivery of public services such as health care, education and infrastructure. Devolution also allows Kenyans to take charge of their development initiatives from the grassroots levels through prioritizing of their needs and defuse political tensions at the National level by devolving leadership to the countryside.

The Senate as the midwife of devolution in Kenya therefore has the arduous yet pivotal responsibility to undertake massive governance and development transformation of the country. It has a strategic and crucial role of driving State transformation equitably.

As the guardian angel of devolution, the senate seemed to face several challenges in executing this mandate. To start with, the constitutional battles either between the senate and members of the National Assembly and/or Governors only served to undermine the senate's efforts and constitutional mandate to midwife and entrench devolution. Henceforth, the senate needs to be more alert to those setbacks and work together with other institutions to ensure that the Senate and

County Assemblies get their legal and political space to function well with little of such disruptions and distractions.

Also, there still existed some level of mistrust between the National government and Counties, especially on revenue allocation. Senate wants more monies to be allocated to the counties while the National government seemed keen on retaining resources at the center. If this is not harmonized, the work of the senate in driving devolution may be hampered.

In some counties, Governors do not relate well with their Members of County Assemblies who, on their part too, have been accused to exhibit some ineffectiveness, especially in the haphazard and imprudent manner they have chosen to spend public funds.

As the institution charged with the oversight role, it ought to examine the counties' performance of their entitled duties and ensure they are performed within the principles of devolved governments in Kenya as captured in article 174 of the COK, 2010.

CHAPTER FIVE: SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This chapter presents the summary of findings, conclusions and recommendations in relation to the research objectives of the study. The chapter also gives suggestions for further studies.

5.2 Summary

Senate legislative role;

The study established that the supremacy battles between the National Assembly and the Senate centers on the scope, nature and extent of legislative power in the origin, consideration and enactment of all bills. The National Assembly has in the past laid claim on some bills originated from the senate while the Senate has accused the National Assembly of failing to involve them on some bills that concerned counties. The study found out that the definition of the term what constitutes “matters concerning counties” is vague and unclear. Although the courts in various advisory opinions had tried to define what the phrase “matters concerning counties” means, it remained not clear.

From the study it can be adduced that the courts seem to favor the definition that a bill concerning counties must have a significant impact on the functioning of the counties. However, in some cases both the national and county governments have

shared responsibility over certain functions. This leaves a thin line in determining what constitutes “matters concerning counties”.

It was further established that the interpretation of which bills or matters concern counties has curtailed the effectiveness of the senate to protect the interest of the counties and devolution in general. While the national assembly can participate in passing of bills concerning counties, the senate has no similar role on other bills which do not concern counties. It was thus noted that the senate is only limited to a shared role in bills concerning counties.

Senate oversight role;

The study confirmed that the Constitution of Kenya provides that the Senate determines the allocation of national revenue among counties through the origination, debating and passing the County allocation of revenue bill. The senate further exercises oversight over the revenue allocated to the counties. However, from the study, it can be established that the senate lacks effective oversight tools over the county governments and the judiciary has sometimes interfered with the senate’s oversight function by overturning some senate’s decisions. It also came out from the study that there lacked a clear demarcation of the Senate and County Assembly oversight role over fiscal management at the counties. Most respondents acknowledged that there is an overlap in oversight role of the senate and that of county assemblies and one further argued that a stalemate may arise in case an audit report of a county government is scrutinized

by both the senate and county assembly and they reach contradictory findings and verdicts over the same report. The Public Finance Management Act is not clear on who between the senate and the county assembly overrides the other on the report. This, it was argued that has further complicated the work of county executive; one respondent pointed out that most county executives are usually found in a dilemma concerning which organ between the senate and the county assembly to respond to in cases of audit queries.

In exercising its oversight role on revenue allocated to the counties, the Senate must be cognizant of the role of Members of County Assemblies under Article 185 of the Constitution of Kenya 2010 to avoid functional jurisdictional wars.

Oversight is the crucial role of legislature in monitoring and reviewing the actions of the executive organs of government both at the national and county levels. Through this process, the Legislature ensures that: the executive is carrying out its mandate, monitor the implementation of its legislative policy and draw on such experiences for future law-making. The senate is also required to oversee national revenue allocation to the county governments and participate in overseeing State officers.

It is in the interests of counties that county funds be expended prudently and that services be delivered effectively. Oversight, therefore, if appropriately conducted would be a way of securing county interests. However, the fact that the Senate, a body within the national government may summon governors to explain or justify

their financial management creates a hierarchical structure between the two offices, introducing power relation issues which have partly led to the conflicts witnessed it is in my opinion that the office of the auditor general could have been fully empowered to perform all the oversight functions, raise and sort out all the audit queries with the county executive and give recommendations to the senate for legislation and or other relevant bodies like the office of director of criminal investigations and that of public prosecution.

Senate representation role;

The Senate consists of forty-seven (47) members each elected by the registered voters of the counties. Each county constitutes a single member Constituency. Sixteen women members are also nominated by political parties on the basis of proportional representation by use of party lists. The Senate further consists of two members (one man and one woman) representing the youth. In addition, two other members (one man and one woman) are members of the Senate as representatives of persons with disabilities. The Speaker is an ex officio member of the senate. Similar to the nomination of the sixteen women members of the senate, the nominations of representatives of the youth and persons with disabilities are also done by political parties on the basis of proportional representation by use of party lists.

From the composition of the senate, one will deduce that the senate is an all rounded representative for it represents counties by way of the counties electing a

senate to represent them. It also represents crosscutting issues of gender, youth, persons with disability and political parties. However, one respondent pointed out that most senators had not done much in engaging on issue basis with the people they represented hence the respondent wondered how they represent the voter's views.

Generally, respondents pointed out that the senate had not done much in engaging the public to enable them participate in giving views on issues the senate debates.

Challenges encountered by the senate in discharge of its function;

Most respondents brought out a perception that the 2013-2017 Senate had not delivered the core mandate; which is to protect the interests of counties. In essence the respondents viewed the senate as weaker than the National Assembly. This has resulted into endless supremacy battles over functional jurisdiction between the Senate and National Assembly. A respondent argued that the Senate's legislative role has been curtailed by the interpretation of Article 110 of the Constitution that has been narrowed to reduce space for the Senate.

Another respondent pointed out that there has been challenges in the way the senate processed its bills. The respondent blamed the slow processing of senate bills to the fact that the bills have to be taken to the National Assembly for further debate.

5.3 Conclusion

Generally, the study has found out that Senate plays a central role in effectively rolling out devolution in Kenya. However, practical matters arising under the Constitution of Kenya, 2010 especially the effectiveness of representation and the challenges of the legislative and oversight roles of the Senate have not been fully catered for. In order to realize devolution, a presidential bicameral parliament was established comprising of the National Assembly and the Senate. Senate, the second legislative chamber, is intended to act as a territorial chamber, that is, a chamber of the counties by representing the counties and protecting the interests of the counties and their governments at the national level. The Senate therefore represents and protects the interests of the county governments through its legislation, representation and oversight functions.

5.4 Recommendations

The Senate is supposed to play the legislative function through legislating on the Bills touching on county governments. This is a shared function with the National Assembly. Therefore, the two Speakers need to establish a joint committee to expedite the process of determination of Bills that concern Counties as provided in article 110 (3). They further need to adopt an effective and innovative political approach of having all Bills originating from National Assembly which concern Counties being referred to the Senate. This will minimize the supremacy battles that parliament has witnessed in the past.

The Senate should identify and engage key stakeholders and allies in pursuit of appropriate interventions to entrench devolution. These allies could be the Council of Governors (COG) and the County Assemblies Forum (CAF) on specific issues and also intensify countrywide public outreach activities within Counties to engage stakeholders and educate them about the role and relevance of the Senate. The Media and Civil Society organizations should also be engaged more by the Senate for positive buy-in and public advocacy.

Furthermore, a proper engagement framework between Senators and their respective County Assemblies should also be adopted to enable the people at the counties whom the senators represent feel part of the senate's work.

From the foregoing, a constitutional review in Kenya should be considered in order to give citizens an opportunity to suggest ways of addressing the functional ambiguities in the constitution and further determine how best to constitutionally enable the Senate to perform its desired functions effectively and make devolution stronger and more entrenched.

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APPENDICES

APPENDIX 1: QUESTIONNAIRE

Part A: Background Information

Please note that all the information you give is confidential and will be used for research purposes only. Read each question carefully and give your honest response. Your responses will guide the researcher in **determining the influence of the Senate of republic of Kenya (2013-2017) on the devolution process and find out some of the challenges the Senate may have encountered in performance of its functions.**

Please **TICK** and **EXPLAIN** where appropriate.

PART B: Demographic Information

1. Name (Optional):

2. Gender Male Female

2. Organization:

3. Designation:

Part C: DETERMINING THE INFLUENCE OF THE SENATE OF REPUBLIC OF KENYA (2013-2017) ON THE DEVOLUTION PROCESS

1. INFLUENCE OF THE SENATE’S LEGISLATIVE AGENDA ON THE DEVOLUTION PROCESS

To what extent do you agree with the following statements:

- a) The Constitution of Kenya 2010 and other laws relating to devolution in Kenya are sufficient and effective to guide proper legislation by the senate on devolution;

Strongly Agree

Agree

Not Sure

Disagree

Strongly Disagree

Give reasons for your answer

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b) The Senate (2013-2017) has enacted requisite legislations to operationalize and entrench devolution in Kenya;

Strongly Agree

Agree

Not Sure

Disagree

Strongly Disagree

Give reasons and/or examples of the legislations you think have been enacted or have failed to be enacted to help in the devolution process.

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2. INFLUENCE OF THE SENATE’S OVERSIGHT ROLE ON THE DEVOLUTION PROCESS

To what extent do you agree with the following statements:

a) Senate’s oversight role is clearly spelt out in the constitution of Kenya 2010;

- Strongly Agree
- Agree
- Not Sure
- Disagree
- Strongly Disagree

Give reasons for your answer above

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b) The Senate (2013-2017) played its oversight role as required by law

- Strongly Agree
- Agree
- Not Sure
- Disagree
- Strongly Disagree

Give reasons for your answer above

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3. EFFECTIVENESS OF THE SENATE'S ROLE OF REPRESENTATION

To what extent do you agree with the following statements:

- a) The Constitution of Kenya 2010 clearly stipulates the senate's representation role;

Strongly Agree

Agree

Not Sure

Disagree

Strongly Disagree

Give reasons for your answer

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- b) The senate (2013-2017) effectively performed its representation role;

Strongly Agree

Agree

Not Sure

Disagree

Strongly Disagree

Give reasons for your answer

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**4. WORKING RELATIONSHIPS BETWEEN THE SENATE AND;
THE NATIONAL ASSEMBLY, COUNCIL OF GOVERNORS
(COG), THE NATIONAL EXECUTIVE, COUNTY ASSEMBLIES,
THE JUDICIARY AND THE MEDIA**

To what extent do you agree with the following statements:

There exists a good functional working relationship between the Senate
and;

a) National Assembly

Strongly Agree

Agree

Not Sure

Disagree

Strongly Disagree

Give reasons for your answer

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b) Council of Governors

Strongly Agree

Agree

Not Sure

Disagree

Strongly Disagree

Give reasons for your answer

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c) National Executive

Strongly Agree

Agree

Not Sure

Disagree

Strongly Disagree

Give reasons for your answer

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d) County Assembly

Strongly Agree

Agree

Not Sure

Disagree

Strongly Disagree

Give reasons for your answer

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e) Judiciary

Strongly Agree

Agree

Not Sure

Disagree

Strongly Disagree

Give reasons for your answer

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f) The Media

Strongly Agree

Agree

Not Sure

Disagree

Strongly Disagree

Give reasons for your answer

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APPENDIX 2: UNIVERSITY LETTER

APPENDIX 3: NACOSTI AUTHORIZATION LETTER

APPENDIX 4: NACOSTI RESEARCH PERMIT

APPENDIX 5: QUESTIONNAIRE INTRODUCTION LETTER

APPENDIX 6: LIST OF RESPONDENTS