

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 22<sup>nd</sup> December, 2021

### Special Sitting

*(Convened via Kenya Gazette Notice  
No. 13791 of 16<sup>th</sup> December, 2021)*

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

*[The Deputy Speaker (Sen. (Prof.) Kamar) in the Chair]*

### PRAYER

**The Deputy Speaker** (Sen. (Prof.) Kamar): Hon. Senators, I would like to rearrange the Order Paper. We will skip Order No.8 for now and proceed with the next Orders.

### MOTION

#### ADOPTION OF REPORT ON THE 2022 BPS AND THE MEDIUM TERM DEBT MANAGEMENT STRATEGY

THAT, the Senate adopts the Report of the Standing Committee on Finance and Budget on the 2022 Budget Policy Statement and the Medium Term Debt Management Strategy, laid on the Table of the Senate on Tuesday, 21st December, 2021, and pursuant to Section 25 (7) of the Public Finance Management Act and Standing Order 180 (7) of the Senate approves the 2022 Budget Policy Statement.

*(Motion deferred)*

**The Deputy Speaker** (Sen. (Prof.) Kamar): Next Order. I see a point of order from Sen. Omogeni.

**Sen. Omogeni:** On a point of order, Madam Deputy Speaker. There is an issue that I want to bring to your attention. It is appearing in today's Order Paper; Order No.16, The Lifestyle Audit Bill (Senate Bills No.36 of 2021). We have received public views on that Bill which is being considered by the Committee. We had drawn a calendar to retreat

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in January to prepare a report on this particular Bill but I have just seen it appearing today. That report is not ready. I am requesting that that particular Order be stood down.

*(The Clerk-at-the-Table consulted the Deputy Speaker)*

Madam Deputy Speaker, I was saying that the Committee is yet to finalize the report that takes into account the views received from the public. I actually do not know how it came to be listed as a special Order to be considered today. I am requesting that that particular Order be stood down so that the Committee is able to finalize the report before we can proceed to the Committee of the Whole.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Okay. I can only answer how it came to be on the Order Paper. We are trying to clean the backlog of the Bills and Motions that are ready and have been on the in-tray for a while. We have the Mover here. Let us also hear from her.

We are going to read the Orders from No.9 to No.18 when we go the Committee of the Whole we are going to go for all them. If there is any other issue on any of these Orders, let us receive your views now.

Proceed, Sen. Farhiya.

**Sen. Farhiya:** Thank you, Madam Deputy Speaker. I am not in the Senate Business Committee (SBC) either and I want to assure the Chairperson that I am not the one who put it there. If the Chairperson has some amendments that will enhance the Bill, I am okay with it being stood down.

However, I am also concerned that this Bill has taken too long from October, 2018 up to now. I would really beseech the Chair to fast-track it so that it is on the next business of the House.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you. Let us settle to defer Order No.16 until the Committee gives us their views.

## COMMITTEE OF THE WHOLE

THE LIFESTYLE AUDIT BILL  
(SENATE BILLS NO. 36 OF 2021)

*(Committee of the Whole deferred)*

Sen. Wambua, proceed.

**Sen. Wambua:** On a point of order Madam Deputy Speaker. Thank you for that direction. Now that you have spoken on it, I will not dwell on it. For the record, public participation on Bills is not an option that a Committee or anybody has when it comes to preparation of Bills. I actually wonder how then a Bill that has received public participation has not been considered to be listed for Debate or Third Reading.

Madam Deputy Speaker, you said we bring issues related to Bills listed here, but mine is not listed here. I want the Chair of the Committee on Justice, Legal Affairs and Human Rights to hear this because it has something to do with his Committee.

**The Deputy Speaker** (Sen. (Prof.) Kamar): The Chairperson of the Committee on Justice, Legal Affairs and Human Rights, you have another issue.

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**Sen. Wambua:** Thank you, Madam Deputy Speaker. I brought a Constitutional Amendment Bill, which went through the First Reading on the Floor. I am worried that public participation on that Bill has not taken place.

You know these Bills are timed and we could very easily overrun the time; the 90 days given for public participation on this issue. Just to request the Committee through the Deputy Speaker to consider the constitutional amendment Bill that went through First Reading of the Floor and fast track public participation so that it can come for Second Reading.

Madam Deputy Speaker, lastly, I would be the last person to question the wisdom of the Senate Business Committee (SBC) on the Bills listed today. I thought the reason that we would be called for a Special Sitting would be to handle really serious burning and timely issues. I was thinking the reason we are here was to deal with the Budget Policy Statement (BPS) and maybe the Elections Law. I said I will not question the wisdom of the SBC on the listing of the Bills that we are dealing with but I am not very sure that they really warrant a Special Sitting.

I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Sen Wambua you know very well that it takes a minimum of 15 Members for us to call a Special Sitting. The minimum of 15 Members can also dictate why they want that sitting to take place. In fact, this one, they were very specific that there are Bills that are pending and Motions that need to be cleared.

As you are aware, we know that by March next year, most people will not be here. It actually came from the request through the Senate Majority Leader and not even from SBC. Hon. Members have a right to send their appeal to the Senate Majority Leader and this takes place in consultation with the Speaker to be okayed. That is exactly what has taken place in this instance.

If you look at our in-tray, the number of Bills and Motions that are pending is really full. We must clean and make it lighter before we finish this term. So let us all work very hard to make sure Bills are---

I want to agree with Sen. Wambua that if there is any Chairperson who has not cleared the public participation, to please clear them so that we are able to clean our tray. We do not want the next Senate to have to deal with our backlog. In fact, they will not deal with them; they will have lapsed. If that happens, we will lose a lot and yet this Senate has been very hardworking. Let us make sure that we clean up and finish.

Sen. Farhiya, you have an intervention?

**Sen. Farhiya:** Madam Deputy Speaker, I want to draw the attention of the Chairperson of the Committee on Justice and Legal Affairs to the fact that I also have two other Bills: The Two Thirds Gender Bill as well as the EACC Amendment Bill that also has far reaching impact in terms of fighting corruption. If those two can also be fast-tracked in addition to the Lifestyle Audit Bill, I will really appreciate.

Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you. I want to assume that all the other Bills and Motions in the Order Paper have no issue.

Next Order. Clerk, please read all the Orders for the Committee of the Whole so that we prosecute all of them at the same time.

What is your intervention, Sen. Farhiya?

**Sen. Farhiya:** Madam Deputy Speaker, I happen to be a Member of the Committee on Tourism, Trade and Industrialization and there are some public views that have not been incorporated as well. We will request that it should be deferred. I think the Vice-Chairperson was supposed to be here to submit to that but I cannot see her. I am doing that on her behalf.

Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you, Sen. Farhiya. The Clerk-at-the-Table confirms that the Chairperson was supposed to come and ask for that deferment. Therefore, we defer it.

### COMMITTEE OF THE WHOLE

THE STREET VENDORS (PROTECTION OF LIVELIHOOD) BILL  
(SENATE BILLS NO. 7 OF 2021)

*(Committee of the Whole deferred)*

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you Senators. May I inform the Senators who are on virtual that we would be expecting them to show us their faces as we prosecute under the Committee Stage and that we will take all of them at the same time.

Thank you.

### COMMITTEE OF THE WHOLE

*(Order for the Committee read)*

*[The Deputy Speaker (Sen. (Prof.) Kamar) left the Chair]*

### IN THE COMMITTEE

*[The Chairperson (Sen. (Prof.) Kamar) in the Chair]*

THE HERITAGE AND MUSEUMS BILL  
(SENATE BILLS NO. 22 OF 2021)

**The Chairperson** Sen. (Prof.) Kamar): Hon. Senators, we are ready with The Heritage and Museums Bill (Senate Bills No.22 of 2021) sponsored by Sen. (Dr.) Milgo.

Hon. Senators, there are no amendments. So, we will do the procedural Committee Stage.

*Clauses 3-20*

*(Question that Clauses 3, 4, 5, 6, 7, 8, 9, 10, 11, 12,  
13, 14, 15, 16, 17, 18, 19 and 20  
be part of the Bill, proposed)*

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Division will be at the end.

*Clauses 21- 40*

*(Question, that Clauses 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37,38,39 and 40 be part of the Bill, proposed)*

Division will be at the end.

*Clauses 41-60*

*(Question, that Clauses 41 ,42, 43, 44, 45, 46, 47, 48 ,49, 50, 51, 52, 53, 54, 55,56,57,58,59 and 60 be part of the Bill, proposed)*

Division will be at the end.

*Clauses 61-80*

*(Question, that Clauses 61, 62, 63 ,64, 65, 66, 67, 68, 69, 70,71, 72, 73, 74, 75, 76, 77, 78, 79 and 80 be part of the Bill, proposed)*

Division will be at the end.

*Clauses 81 to 100*

*(Question, that clauses 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99 and 100 be part of the Bill, proposed)*

Division will be at the end.

*The First Schedule, Second Schedule and Third Schedule.*

*(Question, that the First Schedule, Second Schedule and Third Schedule be part of the Bill, proposed)*

Division will be at the end.

*Clause 2, the Title and Clause 1*

*(Question, that Clause 2 the Title and Clause 1 be part of the Bill, proposed)*

Division will be at the end.

**The Chairperson** (Sen. (Prof.) Kamar): Hon. Senators as I had said, we shall report everything together. Therefore, we will move to the next Bill under Order No.15; The County Governments (Amendment) Bill (Senate Bills No. 38 of 2021) by Sen. Kajwang’.

We are ready to start Sen. Kajwang. Sen. Malala, please give Sen. Kajwang’ space, so that he can start.

THE COUNTY GOVERNMENTS (AMENDMENT) BILL  
(SENATE BILLS NO. 38 OF 2021)

*Clauses 2 and 3*

*(Question, that clauses 2 and 3 be part  
of the Bill, proposed)*

Division will be at the end.

*Clause 4*

**Sen. M. Kajwang’:** Madam Chairperson, I beg to move-

THAT, Clause 4 of the Bill be amended-

- (a) in the proposed new Section 91A by deleting paragraph (h); and
- (b) in the proposed new Section 91B by deleting the word “determined” appearing at the beginning of the paragraph (a) and substituting thereof the words “consult on”.

Madam Chairperson, this amendment relates to the County Leader’s Forum (CAF), which we intend to establish. By removing the word “determine” and substituting with “consult on”, is to ensure that the CAF is a consultative forum for elected leaders from a county; the Governor, the Senator and Members of National Assembly. They will not be influencing the County Integrated Development Plan (CIDP), but will just be advising and consulting on issues of mutual interest.

Madam Chairperson, I beg to move.

*(Question of the amendment proposed)*

Division will be at the end.

*The Title and Clause 1*

*(Question, that the Title and Clause 1  
be part of the Bill, proposed)*

Division will be at the end.

**The Chairperson** (Sen. (Prof.) Kamar): Hon. Senators, I now call the Mover to report.

**Sen. M. Kajwang’:** Madam Chairperson, pursuant to Standing Order No.148, I beg to move that the Committee of the Whole do report to the House its consideration of

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The County Governments (Amendment) Bill (Senate Bills No. 38 of 2021) and seek leave to sit again tomorrow.

*(Question proposed)*

*(Question put and agreed to)*

**The Chairperson** (Sen.(Prof)Kamar): Hon. Members, for the sake of convenience, we will go to the next Bill being prosecuted by the same Chairperson. The Bill is listed under Order No.18.

THE INTERGOVERNMENTAL RELATIONS (AMENDMENT)  
BILL SENATE BILLS NO.37 OF 2021)

*Clause 2*

**Sen. M. Kajwang'**: Madam Chairperson, I beg to move-  
THAT Clause 2 of the Bill be amended by inserting the following new paragraph immediately after the proposed paragraph (n) –  
(na) conditions for the termination of the agreement.

Madam Chairperson, the reason for this amendment is to provide detailed procedures for transfer of functions between the national Government and county governments. This particular Clause 2 talks about the details that should go into the deed of transfer so that it is not left at the discretion of the Executive, but it goes through the county assemblies and Parliament before execution.

Madam Chairperson, I beg to move.

*(Question of the amendment proposed)*

**The Chairperson** (Sen. (Prof) Kamar): Division will be at the end.

*Clause 3*

**Sen. M. Kajwang'**: Madam Chairperson, I beg to move-  
THAT Clause 3 of the Bill be amended by inserting the following new section immediately after the proposed section 26F –

Role of Technical  
Committee in transfer or  
delegation of powers,  
functions and  
competencies .

26G. The Technical Committee shall, in undertaking duties under this Part –

- (a) witness the execution of a transfer or delegation of a power, function or competency;
- (b) provide administrative support to the parties to the transfer agreement during the transfer process; and
- (c) prepare and maintain an inventory of assets and liabilities of the transferred functions.

The rationale for this amendment is to provide a role for the Intergovernmental Relations Technical Committee (IRTC) in any transfer of functions arrangement. We are proposing that the custodian of the deed of transfer shall be the IRTC.

The custodian of inventory of assets and liabilities shall be the same committee and at the expiry of a transfer like in the example of the Nairobi Metropolitan Services (NMS) and the Nairobi City County Government, the IRTC shall be involved in auditing and handing over the inventory of assets to the party to which constitutional responsibility belongs.

Madam Chairperson, I beg to move.

*(Question of the amendment proposed)*

**The Chairperson** (Sen. (Prof) Kamar): Division will be at the end.

*The Title and Clause 1*

*(Question that the Title and Clause 1  
be part of the Bill proposed)*

**The Chairperson** (Sen. (Prof) Kamar): Division will be at the end.

**Sen. M. Kajwang'**: Madam Chairperson, pursuant to Standing Order No.148, I beg to move that the Committee of the Whole do report progress on its consideration of the Intergovernmental Relations (Amendment Bill, Senate Bills No. 37 of 2021) and seek leave to sit again tomorrow.

**Sen. Madzayo** seconded.

*(Question proposed)*

*(Question put and agreed to)*

THE COUNTY OVERSIGHT AND ACCOUNTABILITY  
BILL (SENATE BILLS NO.17 OF 2021)

*Clauses 3 and 4*

*(Question that Clauses 3 and 4 be part  
of the Bill, proposed)*

**The Chairperson** (Sen. (Prof) Kamar): Division will be at the end.

*Clauses 5*

**Sen. M. Kajwang'**: Madam Chairperson, I beg to move-  
THAT clause 5 of the Bill be amended –

(a) in subclause (1) by deleting the word “shall” appearing immediately after the words “each county government” and substituting therefor the word “may”;



(b) in subclause (2) by deleting the word “shall” appearing immediately after the words “A county government” and substituting therefor the word “may”;

Madam Chairperson, as you can see it appears to be a trivial amendment, but “may” and “shall” mean a lot of things. This was in relation to the proposal by the Mover that each county government shall establish infrastructure for public participation. In our public hearings, it was felt that different counties might have different approaches to public participation. There are those who go to churches, others under trees, but there are those in urban areas like Nairobi that require infrastructure to be established. This is just to take care of uniqueness and peculiarities across the 47 counties.

Madam Deputy Speaker, I beg to move.

*(Question of the amendment proposed)*

**The Chairperson** (Sen. (Prof) Kamar): Division will be at the end.

*Clauses 6 - 16*

*(Question, that Clauses 6, 7, 8, 9, 10, 11, 12, 13,  
14, 15 and 16 be part of the Bill, proposed)*

**The Chairperson** (Sen. (Prof.) Kamar): Division will be at the end.

*Clause 17*

**Sen. M. Kajwang’**: I beg to move –

THAT clause 17 of the Bill be amended by deleting subclause (1) and substituting therefor the following new subclause –

(1) A Senator may facilitate public participation through public awareness campaigns in the respective county.

I think the initial proposal was that the Senator shall carry out or conduct public participation in all the wards and we felt that that was restrictive. The Senator should then come up with a plan for public participation and public awareness in the county without necessarily saying that it shall be done in each ward.

The Members of County Assembly felt that that was usurping their role. I think when we frame it that way, it gives the Senator the opportunity to come up with a program that is more uniquely tailored to the role of the Senator.

*(Question of the amendment proposed)*

**The Chairperson** (Sen. (Prof.) Kamar): Division will be at the end.

*Clause 18*

*(Question, that Clause 18 be part of the Bill, proposed)*

**The Chairperson** (Sen. (Prof.) Kamar): Division will be at the end.

*Clause 19*

**The Chairperson** (Sen. (Prof.) Kamar): There is an amendment from the Chairperson Standing Committee on Devolution and Intergovernmental Relations.

**Sen. M. Kajwang'**: Hon. Chairperson, I beg to move –

THAT clause 19 of the Bill be amended in subclause (2) by deleting the words “County Assembly” appearing immediately after the words “The Clerk of the” and substituting therefor the word “Senate”.

The rationale for this amendment is that the Mover had proposed that, “the Clerk of the County Assembly shall facilitate the public participation and public awareness initiatives of the Senator.” The County Assembly forum felt that that was a function that needed to be facilitated by the Clerk of the Senate.

Also, to bring to the notice of the House that incidentally, this Bill had been processed by the House and it came back because of the concurrence process, but it has now given us an opportunity to tidy up certain things that the National Assembly could have picked or certain things that could have ended up in the courts of law as mitigation.

*(Question of the amendment proposed)*

**The Chairperson** (Sen. (Prof.) Kamar): Division will be at the end.

*Clause 20*

*(Question, that Clause 20 be part of the Bill, proposed)*

**The Chairperson** (Sen. (Prof.) Kamar): Division will be at the end.

*Clause 2, the title and Clause 1*

*(Question, that Clause 2, the Title and Clause 1 be part of the Bill, proposed)*

**The Chairperson** (Sen. (Prof.) Kamar): Division will be at the end.

May I now call on the Mover to report progress.

**Sen. Olekina**: Hon. Chairperson, pursuant to Standing Order 148 I beg to move

–

THAT the Committee on the Whole do report on the consideration of the County Oversight and Accountability Bill (Senate Bill No.17 of 2021) and seek leave to sit again tomorrow.

*(Question proposed)*

*(Question put and agreed to)*

Sen. (Dr.) Milgo, as the mover, please report progress on the Heritage and Museums Bill (Senate Bills No.22 of 2021).

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**Sen. (Dr.) Milgo:** Pursuant to Standing Order 148, I beg to move –

THAT the Committee of the Whole do report progress on its consideration of the Heritage and Museums Bill (Senate Bills No.22 of 2021) and seek leave to sit again tomorrow.

*(Question proposed)*

*(Question put and agreed to)*

*(The House Resumed)*

*[The Deputy Speaker (Sen. (Prof.) Kamar) in the Chair]*

**The Deputy Speaker** (Sen. (Prof.) Kamar): Hon. Senators, we shall now move to report to the House. Sen. Olekina is standing in for the Chairperson. Please start with the the Heritage and Museum Bill (Senate Bills No. 22 of 2021).

### PROGRESS REPORTED

#### THE HERITAGE AND MUSEUMS BILL (SENATE BILLS NO. 22 OF 2021)

**Sen. Olekina:** Madam Deputy Speaker, I beg to report that the Committee of the Whole has considered the Heritage and Museum Bill (Senate Bills No. 22 of 2021) and seeks leave to sit again tomorrow.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Can we hear from the Mover?

**Sen. (Dr.) Milgo:** Madam Deputy Speaker, I beg to move that the House do agree with the Committee on the said report.

**Sen. (Prof.) Onger** I second.

*(Question Proposed)*

*(Question put and agreed to)*

**The Deputy Speaker** (Sen. (Prof.) Kamar): The next Bill is the County Oversight and Accountability Bill (Senate Bills No.17 of 2021).

#### THE COUNTY OVERSIGHT AND ACCOUNTABILITY BILL (SENATE BILLS NO. 17 OF 2021)

**Sen. Olekina:** Madam Deputy Speaker, I beg to report that the Committee of the whole has considered the County Oversight and Accountability Bill (Senate Bill No.17 of 2021) and seeks leave to sit again tomorrow.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Can we hear from the Mover?

**Sen. Olekina:** Madam Deputy Speaker, I beg to move that the House do agree with the Committee on the said report. I request Sen. M. Kajwang' to second.

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**Sen. M. Kajwang:** Madam Deputy Speaker, I second.

*(Question Proposed)*

*(Question put and agreed to)*

**The Deputy Speaker** (Sen. (Prof.) Kamar): The next Bill is the County Governments (Amendment) Bill, (Senate Bills No. 38 of 2021)

THE COUNTY GOVERNMENTS (AMENDMENT) BILL,  
(SENATE BILLS NO. 38 OF 2021)

**Sen. Olekina:** Madam Deputy Speaker, I beg to report that the Committee of the Whole has considered the County Government (Amendment) Bill, (Senate Bill No.38 of 2021) and seeks leave to sit again tomorrow.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Can we hear from the Mover?

**Sen. M. Kajwang:** Madam Deputy Speaker, I beg to move that the House do agree with the Committee on the said report and request Sen. Farhiya to second.

**Sen. Farhiya:** Madam Deputy Speaker, I beg to second.

*(Question Proposed)*

*(Question put and agreed to)*

**The Deputy Speaker** (Sen. (Prof.) Kamar): The last Bill is the Intergovernmental Relations (Amendment) Bill, (Senate Bills No.37 of 2021).

THE INTERGOVERNMENTAL RELATIONS (AMENDMENT) BILL,  
(SENATE BILLS NO.37 OF 2021)

**Sen. Olekina:** Madam Deputy Speaker, I beg to report that the Committee of the Whole has considered the Intergovernmental Relations (amendment) Bill, (Senate Bill No. 37 of 2021) and seeks leave to sit again tomorrow.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Can we hear from the Mover?

**Sen. M. Kajwang:** Madam Deputy Speaker, I beg to move that the House do agree with the Committee on the said report and graciously request Sen. (Prof.) Ongeru to second.

**Sen. (Prof.) Ongeru:** I second, Madam Deputy Speaker.

*(Question Proposed)*

*(Question put and agreed to)*

*(The Clerk at the Table consulted the Deputy Speaker)*

**The Deputy Speaker** (Sen. (Prof.) Kamar): Hon. Senators, I had rearranged the Order of the business of the House. For the convenience of the House, we will come back to Order No.8.

Now, I want to further inform the House that for the convenience of the House, Order No.8 and Order No. 9 will be concluded this afternoon. I can see that the Member has arrived. We will start at 2.30 p.m.

## MOTION

### ADOPTION OF REPORT ON THE 2022 BPS AND THE MEDIUM TERM DEBT MANAGEMENT STRATEGY

THAT, the Senate adopts the Report of the Standing Committee on Finance and Budget on the 2022 Budget Policy Statement and the Medium Term Debt Management Strategy, laid on the Table of the Senate on Tuesday, 21st December, 2021, and pursuant to Section 25 (7) of the Public Finance Management Act and Standing Order 180 (7) of the Senate approves the 2022 Budget Policy Statement.

*(Motion Deferred)*

## COMMITTEE OF THE WHOLE

### THE KENYA SIGN LANGUAGE BILL (SENATE BILLS NO. 9 OF 2021)

*(Committee of the Whole Deferred)*

## ADJOURNMENT

**The Deputy Speaker** (Sen. (Prof.) Kamar): Hon. Senators, there being no other business, it is now time to adjourn the House. The Senate, therefore, stands adjourned until today, Wednesday, 22<sup>nd</sup> December, 2021, at 2.30 p.m.

The Senate rose at 10.59 a.m.