

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 14th February, 2018

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

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

PRAYER

COMMUNICATIONS FROM THE CHAIR

NOMINATION OF ONE PERSON TO THE SRC BY THE SENATE

The Speaker (Hon. Lusaka): Hon. Senators, I have the following Communication to make:

The Salaries and Remuneration Commission (SRC) is a constitutional Commission established under Article 230(1) of the Constitution of Kenya. The functions of SRC are principally to:

- (a) Set and regularly review the remuneration and benefits of all state officers;
- (b) Advise the national and county governments on the remuneration and benefits of all other officers; and
- (c) Article 230(2) of the Constitution provides for the composition of the Commission and stipulates that such persons are to be appointed by the President.

(Several hon. Senators stood at the entrance of the Chamber)

I will pause to allow Senators to take their seats.

*(Hon. Senators entered the Chamber,
bowed to the Chair and took their seats)*

Hon. Senators, you will note that the Senate is required under Article 230(2)(b)(vii) to nominate one Commissioner on behalf of the county governments. The term of the immediate former Commission expired on 15th December, 2017.

Article 230 of the Constitution as read with Section 5 of the Salaries and Remuneration Act, 2011, provides for the qualifications of the Chairperson and Members

of the Commission. Section 7(1) of the Salaries and Remuneration Act, provides for the nomination procedure as follows:

“Within fourteen days of the commencement of this Act, or of the occurrence of a vacancy in the Commission relating to the members under Article 230(2)(b) and (c) of the Constitution, the relevant nominating body shall, by advertisement in at least two local daily newspapers of national circulation, invite applications from persons who qualify for nomination under the Constitution and this Act for nomination as a member of the Commission”.

In this regard, the Senate advertised for the position of “Nominee of the Senate on Behalf of the County Governments to the Salaries and Remuneration Commission” in the *Daily Nation* and *The Standard* newspapers of 11th January, 2018. Interested persons were invited to make their applications not later than 2nd February, 2018, at 5:00 p.m. A total of 81 applications for the position were received.

Under Section 7(2) of the Salaries and Remuneration Act, the relevant nominating body is required to:

- (i) Consider the applications received to determine their compliance with the provisions of the Constitution and the Act;
- (ii) Interview the applicants; and,
- (iii) Forward the names of two persons so qualified, who shall be of opposite gender, to the Cabinet Secretary (CS) for onward transmission to the President.

Hon. Senators, as you are aware, Mr. Jason Namasake was the Commissioner who was appointed to represent county governments in the first SRC. He was nominated by the National Assembly in the 10th Parliament as the Senate had not been operationalized. This will, therefore, be the first time the Senate is undertaking its mandate under Article 230(2)(b)(vii) of the Constitution.

Pursuant to Standing Order No.66(b) of the Senate Standing Orders, the Clerk shall upon the close of the application period, transmit the names and all documents received from interested persons to the relevant Committee. In this case, the Senate Standing Committee on Finance and Budget for short-listing and vetting.

(Several hon. Senators stood at the entrance of the Chamber)

I will allow the Hon. Members to take their seats.

*(Hon. Senators entered the Chamber,
bowed to the Chair and took their seats)*

The Committee on Finance and Budget shall specifically:

- (i) Consider the applications received so as to determine their compliance with the provisions of the Constitution and the Salaries and Remuneration Act;
- (ii) Interview the qualified applicants; and,
- (iii) Propose to this House, for consideration, the names of two persons so qualified, who shall be of opposite gender.

The Committee shall be expected to table its report in this House in accordance with Standing Order No.66(c)(iii) of the Senate Standing Orders.

In conclusion, I wish to draw the attention of this House and that of the Committee on Finance and Budget to Article 250(4) of the Constitution, which provides that:

“Appointments to commissions and independent offices shall take into account the national values referred to in Article 10 and the principle that the composition of the commissions and offices, taken as a whole, shall reflect the regional and ethnic diversity of the people of Kenya.”

I, therefore, urge the Committee to exercise utmost circumspection in the exercise and to uphold the relevant law and the spirit of the Constitution.

I thank you.

That is the first communication.

Let me allow Hon. Senators to come in.

PROCESSING OF THE BUDGET POLICY STATEMENT, 2018

Hon. Senators, this is the second communication.

Section 25 of the Public Finance Management Act requires the National Treasury to prepare and submit to Parliament the Budget Policy Statement by the 15th of February in each year. By a letter Ref. No. Conf. /MOF 83/02/TY. 2/(6) dated 9th of February, 2018, and received in the office of the Clerk of the Senate on 13th of February, 2018, the Principal Secretary for the National Treasury submitted the following documents for consideration and approval by Parliament-

- (a) The Budget Policy Statement, 2018;
- (b) The Draft Division of Revenue Bill, 2018;
- (c) The Draft County Allocation of Revenue Bill, 2018; and
- (d) The Medium Term Debt Management Strategy, 2018.

At Order No. 5 in today's Order Paper, I will allow the Senate Majority Leader to formally table these documents.

Hon. Senators, the Budget Policy Statement is an important document that sets out the broad strategic priorities and policy goals that guide the national Government and county governments in the preparation of their respective budgets, both for the coming financial year and over the medium term. It contains, among other things-

- (a) an assessment of the current state of the economy and the financial outlook over the medium term, including macro-economic forecasts;

(An hon. Senator entered the Chamber)

Let me allow the Member to take her sit.

(The hon. Senator took her seat)

- (b) the financial outlook with respect to Government revenues, expenditures and borrowing for the next financial year and over the medium term;
- (c) the proposed expenditure limits for the National Government and indicative transfers to county governments; and
- (d) the fiscal responsibility principles and financial objectives over the medium term including limits on total annual debts.

Hon. Senators, Section 25(7) of the Public Finance Management Act provides as follows:–

THAT, Parliament shall, not later than fourteen days after the Budget Policy Statement is submitted to Parliament, table and discuss a report containing its recommendations and pass a resolution to adopt it with or without amendments.

Further, Standing Order 174(4), (5) and (6) of the Senate states as follows, and I quote: –

“Upon being laid before the Senate, the Budget Policy Statement shall be committed to the Standing Committee on Finance and Budget to deliberate upon and table a report containing its recommendations on the Budget Policy Statement within twelve days.”

In considering the Budget Policy Statement, the Standing Committee on Finance and Budget shall consult the Cabinet Secretary responsible for Finance, the Commission for Revenue Allocation, the Council of Governors and the body for the time being representing county assemblies, among other stakeholders.

(Some Hon. Senators stood at the bar)

Let me allow the Honorable Senators to take their seats.

*(Hon. Senators walked into the Chamber
and took their seats)*

The report of the Standing Committee on Finance and Budget shall contain policy and financial recommendations on matters and functions related to counties and a proposal on the division of revenue between the national and county levels of government.

Based on the importance of the Budget Policy Statement in the National and County budget cycles and given the timelines contained in the Public Finance Management Act and our own Standing Orders, I direct that once tabled, the Budget Policy Statement be committed to the Standing Committee on Finance and Budget for its consideration and report to the Senate within twelve days; in this case, by 26th February, 2018.

All Standing Committees will be required to consider the Budget Policy Statement as it relates to their respective mandates and submit their reports with recommendations to the Standing Committee on Finance and Budget on or before

Thursday, 22nd February, 2018. After the report of the Standing Committee on Finance and Budget on the Budget Policy Statement is tabled, the Senate will then be expected to debate and approve the report of the Committee, pursuant to Standing Order 174(7) of the Senate Standing Orders, by 28th February, 2018.

Honourable Senators, pursuant to section 25(8) of the Public Finance Management Act, the Cabinet Secretary of the National Treasury is expected to take into account resolutions passed by Parliament in finalizing the budget for the relevant financial year. For the Senate, this means that any proposals that Senators have regarding the Division of Revenue Bill and the County Allocation of Revenue Bill, including funds for conditional allocations to the counties, should be canvassed and be factored in the report of the Senate on the Budget Policy Statement, failure to which, it will be difficult, for divergent views to be accommodated later, in the substantive consideration of the two Bills.

I, therefore, urge all Honourable Senators to prioritize the scrutiny of the Budget Policy Statement, taking into consideration our most important function of safeguarding devolution.

I thank you.

PETITIONS

USAGE OF THE WORD “HARAMBEE” IN THE COAT OF ARMS AND THE PUBLIC SEAL

Honourable Senators, pursuant to Standing Orders 220(1)(a), and 224(2)(b), I hereby report to the Senate that a petition has been submitted, through the Clerk, by Mr. Isaac Aluochier, regarding usage of the word ‘*Harambee*’ in the Coat of Arms and Public Seal of Kenya.

As you are aware, under Article 119(1) of the Constitution, and I quote:-

“Every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation.”

The salient issues raised in the said Petition are as follows:-

(a) THAT, both the Coat of Arms and Public Seal of Kenya, as set out at the Second Schedule of the Constitution, have the word ‘*Harambee*’ as an intrinsic part of their composition.

(b) THAT, according to the Petitioner, one of the meanings of the word ‘*Harambee*’ is ‘*praise Ambe*’ – *Ambe* being a goddess in the Hindu religion, considered as wife to the Hindu god Shiva; and,

(c) THAT, consequently, inclusion of the word ‘*Harambee*’ in the national symbols of Kenya, specifically the Coat of Arms and the Public Seal, offends the Constitutional provisions on separation of the State and religion.

The Petitioner, therefore, prays that the Senate investigates this matter with a view to amending the Constitution to replace the word ‘*Harambee*’ whenever it appears, with a more appropriate term. The suggested replacement in this case is the word ‘*Haki*’, derived from the words of the National Anthem, in which it states ‘*Haki iwe ngao na mlinzi*’.

(Some Hon. Senators stood at the bar)

I will allow the Honorable Senators to take their seats.

(Hon. Senators walked in and took their seats)

Hon. Senators, pursuant to Standing Order No. 226, I shall now allow comments, observations or clarifications in relation to the petition for not more than thirty minutes.

Sen. (Prof) Kamar: Thank you, Mr. Speaker, Sir. I want to thank the petitioner because this thing has been hanging around us for a while. This petition is giving us an opportunity to ventilate and understand. During the Bomas process, the same questions were raised but because we were very keen to see the Constitution through, we did not pay attention to some of those things that we thought were small. It is true that it has to do with an Indian goddess. I can say so because I and perhaps two other Members were in the seventieth celebrations of the Indian government since India was born, three weeks ago. That was mentioned as part of the celebrations. They said that within the influence of the Indian culture, *Harambee* is one of them.

So, if it has offended Kenyans I think it is right to investigate and see what to do with it. However, I do remember that during the Bomas constitutional review process, several religious organizations sent petitions which we did not interrogate. I would like to support that we interrogate this issue. It would be no offence to the Indian community. However, if it is an offence to others, because this is a god of one group, I think it will only be in order that we investigate and agree. If we will have to delete, we will do it, so that we do not have one god in one item. Three weeks ago we heard the same statement from the ambassador that this is true, but they believe it has no offence. I think it is right to investigate.

Sen. Cheruiyot: Thank you Mr. Speaker, Sir. You caught me a bit off-guard. I was looking at a Kshs1,000 note just to confirm that the word '*harambee*' is in the coat of arms. This has pricked my interest because there is a theory out there in the streets as to the reason why Kenyan citizens of the Indian descent show up with a knapsack bag at the Jomo Kenyatta International Airport (JKIA), completely poor from the state of Gujarat, but within two, three, four or five years they troop back to India as billionaires. The reason is *harambee*; that our money prays to their god.

It will be quite interesting if this House considers this petition, but that is our work anyway; to listen to the views. This is part of representation; if there are things that concern Kenyans then we should listen to them and perhaps change. There is only one change that I would propose to his petition. He has thought of '*haki*' as a suitable replacement, but I would propose a more national phrase, something more ideal like '*tuko pamoja*'.

(Laughter)

Thank you, Mr. Speaker, Sir.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, it is truly self-serving from the distinguished Senator for Kericho. This is a clearly misguided petition because it is borne out of a narrow-minded thinking that language does not grow. If you look at the *Kamusi ya Kiswahili 'harambee'* means '*kuvuta pamoja*' or 'pulling together.'

It may have come from India; all languages are now pedigree. 'Safari' is now in the English Dictionary, yet it is not an English word. If you are well schooled in Kiswahili like I am, you will find words like '*shule*,' which is a German word for school. '*Meza*' is a Portuguese word for 'table;' it is now part of our Swahili. '*Afande*' is a word we hear every policeman using. It is an honourable word for 'officer,' and is part of our Swahili.

Mr. Speaker, Sir, we cannot, therefore, start bisecting and dissecting language that has been generally accepted. I have been in this country as a leader for a long time. The only complaints Kenyans have about *harambee* is the way leaders have bastardised it as a means of enriching themselves through corruption. However, nobody has ever complained of the origin, meaning or the import of *harambee*.

I urge those who will look at this petition that we cannot start mutilating our Constitution on the basis of narrow-minded thinking by some people out there.

Thank you, Mr. Speaker, Sir.

Sen. Halake: Mr. Speaker, Sir, I was about to withdraw my request to speak because Sen. Wetangula actually did steal my ideas. However, I would like to say that in my language there are certain words that mean something totally different in other communities. Even though we live in the same country, we cannot purport to have one thing in common.

Therefore, I think the petition is misplaced. It is our work as Senators to listen and to investigate things. However, in the light of scarce resources and the need to focus on things that have a high impact, and the need to prioritise as a House, I think this is misplaced. Resources should, therefore, not be expended on this.

Thank you, Mr. Speaker, Sir.

Sen. Outa: Mr. Speaker, Sir, I really want to thank the petitioner because as a Kenyan he wanted to know this terminology that is used commonly. Since the word 'harambee' is mostly used when collecting money, he wanted to know whether it is appropriate to use it in our coat of arms.

I might not be as good or fluent in Kiswahili, but '*harambee*' is a word that united this country. When I was young, I used to hear the founding father of the nation, Jomo Kenyatta, pronouncing the word 'harambee' with a lot of vigour wherever he went. It has a meaning to Kenyans.

Whenever the second President, Daniel arap Moi said '*harambee*,' people would say, "*fuata nyayo*." That means that it has a lot of historical meaning to our country. Therefore, we can listen to the petitioner, but I think some of the words need to remain because of our historical background as Kenyans.

I learnt from one of the religious leaders that I respect so much in this country, the late Archbishop Okullu. Whether this word has a connotation from India to mean

something else, the Bishop told me one time that the church and state are inseparable. I would beg that the word 'harambee' remains because it reminds us where we came from.

Thank you, Mr. Speaker, Sir.

Sen. (Dr.) Musuruve: Thank you, Mr. Speaker, Sir, for giving me this opportunity to contribute my thoughts concerning this issue. I want to state clearly that my thinking is that no amount of money should even be put in this kind of petition because there is really no valid reason for any investigation to be done. These are issues of linguistics, which is the scientific study of language.

If in a given community a word differs in terms of semantics with another community it does not mean that we should investigate and make a change. The word 'harambee' should remain as it is because it has an origin.

There is a reason for the origin of the word harambee. It could be the word that has pulled Kenyans together. I am not from the Luo Community, but if I can give an example from them, the word "lot" has a meaning which is different from the same word in English language. Various dialects from Luhya Community attach different meaning to a word *murere*. For example, to some, it means greens while others, it would mean bringing him or her. Therefore, this kind of debate should not go very far. The Hindus should accept that issues of semantics in different languages gives us different meaning and they should accept our use of harambee in Kenyan version.

Mr. Speaker, Sir, thank you very much for allowing me to contribute to this debate.

Sen. Mutula Kilonzo Jnr: Mr. Speaker, Sir, it would be a tragedy for the Senate to amend the Constitution based on this ground. Although the petitioner has what would appear to be a query, it would appear to the public that if we were to propose amendment to the Constitution to remove the word "harambee," we would not look very serious because we have more serious issues to deal with.

Having said that, in the law of evidence, we have something called public notoriety; some things have acquired public notoriety. If you were to remove the word "harambee" not just from the Constitution, you possibly have to amend text books, dictionaries, including Oxford, and many other documents.

Mr. Speaker, Sir, although you have approved this petition, this is one of those petitions you should give 7 days and not 60 days. Give it to the Secretariat so that they can write the history of where the word "harambee" came from. In the County of Makueni where the Indian coolies were constructing the railway, we find a lot of things that were left behind by them and we do not complain. This petition should not take 60 days; let us deal with it quickly so that we can give a verdict of this word immediately. We cannot remove the word "harambee" either from the Constitution, text books or civics because that is what we have taught people from the past. We must learn to appreciate history.

I was reading the history of the Kenyan flag in a Motion that was moved by the late Tom Mboya before Independence. That material is available in the library. That sort of research ought to help the petitioner once we submit the reply to him. However, if you were to subject this to a referendum or a question, it would look terrible. Please, let us dispose of this as soon as possible so that we can move on to more urgent business.

Sen. (Rev.) Waqo: Mr. Speaker, Sir, I appreciate the petitioner. Without taking much time on the definition, suggest just as other hon. Members have suggested that the word “harambee” means a lot to us Kenyans. Many people have some special feeling towards it. This is the only word that can unite those in the city and those in the rural areas, so it is good to retain it. The meaning in Hindu is irrelevant to us. They can look at it and say this is what it means to them. As others have said, if I speak as a Christian we refer to Jesus Christ as our saviour. The Jewish people refer to him as Emmanuel although they are still waiting for their Emmanuel. For us, he is already born. We refer to him as Jesus Christ. The Muslims refer to him as Nabii Isa.

A word might have different meanings to many of us. It is important for us to retain this word because it is meaningful to all of us. It is the only word that unites Kenyans.

Sen. Wambua: Thank you, Mr. Speaker, Sir, for the opportunity to make a contribution. This House knows very well that “harambee” is a rallying call to unity of purposes of development in our country. If you were to go into the etymology of the word, its origin and the way it has changed over time, all of us will come to agree that language is not static. It grows. I have before me a sign of the Coat of Arms; I see two lions and a cock. My biggest worry if you were to go into discussions about the use of the word “harambee,” a zoologist may just wake up the following morning and say the use of the lions discriminates against the other big five members in the forest. We will have no end to this kind of debate. To me, the only thing this petition does is to give us an opportunity to affirm the use of the word “harambee” in our Coat of arms in Kenya.

Mr. Speaker, Sir, in my other life I was an editor of a newspaper. There were stories that landed on my table. For some of those stories, if they were not going to be published in the newspapers, there were various ways of killing them. One, they would die naturally. The other way was that they would “commit” suicide and die on their own and the editor would decide this story should just die.

It is the right of the petitioner to forward the petition to this House. However, in my opinion, we should not expend resources on a petition like this.

Sen. Kinyua: Asante sana, Bw. Spika, kwa kunipa fursa ya kuchangia Mswada huu. Ukweli wa mambo ni kwamba, neno harambee inajulikana vizuri. Maana yake ni tuvute pamoja. Kwa hivyo, hatuna haja ya kupoteza wakati kuhusu maana yake. Hata ukimuuliza mwanafunzi wa Kidato cha Pili, ana jua harambee inamaanisha tuvute pamoja.

Sisi katika kikao hiki tuketi kuzungumza juu ya neno harambee tutakuwa tunapoteza wakati wetu. Hata tukitenga pesa zozote ili tujue chanzo cha neno harambee, kwangu mimi naona ni kupoteza muda. Na itakuwa ni kosa au dhambi na laana kwa Wakenya wa nchi hii kuona tunajihusisha na mambo ambayo tuna jawabu kutokana na historia yetu.

Kwa hayo machache, ninapinga.

Sen. Faki: Asante sana, Bw. Spika. Ningechangia Mswada huu kama ifuatavyo. Neno harambee ni Kiswahili sanifu. “Halambee” si sawa na “harambee”. Harambee huamaanisha kuvuta pamoja. Wale ambao ni wanafunzi wa Kiswahili mkiangalia kamusi za mwanzo kabisa utaona kana neno lililoko ni halambee sio harambee. Harambee ilikuja

kwa sababu ya matamshi yanavyotoka kinywani mwa yule anayetamka. Kwa mfano, hayati Mzee Jomo Kenyatta alikuwa hawezi kutamka “halambe”. Alikuwa akiitamka “harambe” ndio ikaja ikawa harambe imekubalika.

(Laughter)

Kwa hivyo, Wakenya wengi wanajua maana ya harambe ni kuvuta pamoja. Matumizi yaliyotumika katika katiba pamoja na *coat of arms* ...

Sen. Kinyua: Hoja ya nidhamu Bw. Speaker.

The Speaker (Hon. Lusaka): What is your point of order Sen. Nderitu?

Sen. Kinyua: Ahsante Bw. Spika. Ni kweli asemavyo Sen. Faki na nakubaliana naye. Lakini unavyojua, mahali azaliwapo mtu huwa kuna shida ya maharaja na shida hii inakubalika. Kwa hivyo, ningependa kumkosoa kidogo kwa sababu shida ya maharaja hutokana na mahali anakotoka mtu, malezi yake na mwalimu aliyemfunza

Ahsante.

Sen. Faki: Ahsante Mhe. Nderitu. Kwa hakika hiyo si shida ya maharaja kwa sababu ni shida ambayo ilijitokeza na watu wakakubali kwamba badala ya kutumia neno “halambe” tulitumie neno “harambe” kwa sababu linakubalika zaidi kwa watu kuliko halambe ambayo ilikuwa inakubalika kwa jamii ya waswahili peke yake. Kwa hivyo, hapo sina ugomvi wowote na Mhe. Nderitu.

Bw. Spika, kwa wakati tulio nao sasa na shughuli za Bunge hili la sasa, kama walivyotangulia wenzangu kusema, itakuwa ni kuharibu wakati tukijadili maswala kama haya. Harambe iliyotumika hapa ni ya Kenya na si ya India. Tunajua harambe ya India ni tofauti na ya Kenya. Hivyo basi, tutoe kama siku saba ili aitwe mlalamishi na apewe fursa ya kujieleza mbele ya kamati husika, halafu maamuzi yatolewe.

Lugha inakua kama alivyo sema mwenzangu mwengine na kila lugha ikuapo huomba sehemu tofauti tofauti. Kwa mfano, kwa Kiswahili nikisema “Sen. Kwamboka, makende” inatoa maana nyengine tofauti na kijaluo ambayo maana yake ni mpenzi wangu.

Ahsante.

(laughter)

Sen. M. Kajwang: On a point of order Mr. Speaker Sir.

The Speaker (Hon. Lusaka): What is your point of order Sen. Kajwang?

Sen. M. Kajwang: Mr. Speaker Sir, the Senator for Mombasa County cannot claim to be an authority in Luo language more than the Senator for Homa Bay County. In the use of the word that he has used, it sounds bad when it is pronounced the way he has pronounced it. In Luo, it is pronounced as “*mae kende*.” When you pronounce it that way, it means “the only one; my only love” which is very appropriate on a Valentine’s Day like today. Therefore, the Senator is out of order to pronounce that word the way he has pronounced it and purport that it is a Luo word. He needs to apologise.

The Speaker (Hon. Lusaka): Point noted, Sen. Kajwang. Let us have Sen. Imana Malachy.

Sen. (Prof.) Ekal: Thank you Mr. Speaker, Sir. This is getting interesting. The debate has gone to different directions and we are all having a good time of Laughter. On a serious note, I thought that being one of the senior Members of this House, I should be one of the top ones to be given the opportunity to speak in keeping with the African tradition of older ones getting the first share. The reason is that when I get to speak, like now, other Members will have already stolen my ideas and spoken well.

It is turning out that this was a coincidence. The word “halambe” became “Harambe” which is somehow connected with some Hindu word that means “praise Ambe”. So, we do not have to spend a lot of time debating it anymore because the hon. Senator of Mombasa has made that clear. It is true as the hon. Member said that words can have the same spelling without having the same meaning. While my last name is Imana which means little garden in Turkana language, in a language spoken in Rwanda, it means god. Therefore, we cannot spend time arguing whether Imana - god - is sitting here or in Rwanda. We have to go for the meaning that is specific for us, in this case, if we want to correct harambe, we can do so in our usage then use the word halambe which cannot be confused with what the Hindu use.

It could be interesting if we investigated how this word got into our vocabulary in the first place. Was there some Hindu influence into us using that word? The way the Hon. Member of Mombasa County has explained, it was some kind of mispronunciation, the word “halambe” was pronounced as “harambe”. We do not have to spend a lot of time on this because we are not referring to the Hindu meaning but to the Swahili meaning.

Thank you.

The Speaker (Hon. Lusaka): Sen. Masitsa Naomi.

Sen. Shiyonga: Thank you Mr. Speaker, Sir. I appreciate the Petition. However, I beg to differ with the prayers of the petitioner because if you look at the coat of arms as it is, for us as Kenyans, it is history. We need to respect our fore leaders and all those who designed how the coat of arms would look like with all its colours. This was work of art that was borne at the back of somebody’s mind. It is great people who came up with the design for the Kenyan coat of arms. So, let us value history and the design work that was put towards the coat of arms by not mutilating it. Looking at the coat of arms, there is much more to appreciate about it. If we are to mutilate it, we need to look at the *jogoo* which is part of its design. To some people, the *jogoo* has a lot of meaning, in fact, in some political arenas, it has a lot of power. So, as a Senate, much of our time and resources should not be put to this Petition.

Thank you.

The Speaker (Hon. Lusaka): Hon. Senators, the time allocated for debate on this petition is over, Therefore, pursuant to Standing Order No...

Sen. Wako: On a point of order Mr. Speaker Sir.

The Speaker (Hon. Lusaka): What is your point of order, Sen. Wako?

(Technical hitch)

Sen. Wako: ... the problem that was there is that I do not have this card...

The Speaker (Hon. Lusaka): You are out of order, hon. Senator. You will have an opportunity to contribute at a later date. For now, we have to make progress.

Pursuant to Standing Order No. 226(1), the Petition stands committed to the relevant standing committee for its consideration. In this case, I, therefore, direct that this Petition be committed to the standing Committee on Justice, Legal Affairs and Human Rights. In terms of Standing Order No. 226(2), the Committee is required in not more than sixty days from the time of reading the prayer to respond to the petitioner by way of a Report addressed to the Petitioner and laid on the table of the Senate. The period of sixty days will start running from the date of the constitution of the Committee.

Thank you.

PAPERS LAID

REPORT ON EIGHTH ORDINARY SESSION OF FP-ICGLR

The Speaker (Hon. Lusaka): Hon. Poghisio is not there. The Order is therefore deferred to another day.

(Deferred)

REPORT OF THE SENATE DELEGATION TO THE WOMEN POLITICAL LEADERS ANNUAL GLOBAL SUMMIT

Sen. (Dr.) Milgo: Thank you, Mr. Speaker, Sir. I beg to lay the following Paper on the table of the Senate today, Wednesday, 14th February, 2018.

This is a Report of the Senate delegation to the women political leaders meeting. It is an Annual Global Summit that was held in Reyjavik, Iceland from 28th November 2017 to 30th November 2017.

(Sen. (Dr.) Milgo laid the document on the Table)

The Speaker (Hon. Lusaka): The Chairperson Standing Committee on Justice, Legal Affairs and Human Rights.

ANNUAL REPORT ON THE STATE OF THE JUDICIARY

Sen. Linturi: Thank you, Mr. Speaker Sir. I beg to lay the following Paper on the Table of the Senate today, Wednesday 14th February, 2018.

The annual report on the state of the Judiciary and Administration of Justice Report 2016/2017.

(Sen. Linturi laid the document on the Table)

The Speaker (Hon. Lusaka): Chairperson Standing Committee on Finance and Budget.

ANNUAL REPORTS OF VARIOUS CONSTITUTIONAL
COMMISSIONS

THE FINANCIAL YEAR 2017/2018 FIRST QUARTER
NATIONAL GOVERNMENT BUDGET IMPLEMENTATION
REVIEW REPORT

Sen. (Eng.) Mahamud: Thank you, Mr. Speaker, Sir. I beg to lay the following papers on the table of the Senate today, Wednesday, 14th February 2018:

(a) Annual Report of the Public Service Commission for the Financial Year 2016/2017;

(b) Annual Report and Financial Statements of the Commission of Revenue allocation for the Financial Year 2015/2016;

(c) The End of Term Report 2011/2017 of the Salaries and Remuneration Commission; and

(d) The Financial Year 2017/2018 First Quarter National Government Budget Implementation Review Report.

(Sen. (Eng.) Mohamud laid the documents on the Table)

The Speaker (Hon. Lusaka): The Senate Leader of Majority.

THE 2018 BUDGET POLICY STATEMENT

THE DRAFT COUNTY ALLOCATION OF REVENUE BILL 2018

THE DRAFT DIVISION OF REVENUE BILL 2018

MEDIUM TERM DEBT MANAGEMENT STRATEGY
FOR THE FY 2018/2019 TO FY 2020/2021

Sen. Dullo: Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Wednesday, 14th February 2018:

1. The 2018 Budget Policy Statement; and
2. The Draft County Allocation of Revenue Bill 2018;
3. The Draft Division of Revenue Bill 2018; and
4. Medium Term Debt Management Strategy for the FY 2018/2019 to FY 2020/2021.

(Sen Dullo laid the documents on the Table)

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NOTICES OF MOTIONS**APPROVAL OF SENATORS TO SERVE IN THE PROCEDURE
AND RULES COMMITTEE**

Sen. Dullo: Thank you, Mr. Speaker, Sir. I wish to give Notice of the following Motion:-

THAT, pursuant to Standing Order No. 179 (2) (d), the Senate approves the following senators nominated to serve in the Procedure and Rules Committee in addition to Senators specified in Standing Order No. 179 (2) (a), (b) and (c) -

1. Sen. (Dr.) Christopher Langat, MP
2. Sen. Beth Mugo, EGH, MP
3. Sen. (Dr.) Agnes Zani, MP

APPROVAL OF SENATORS TO SERVE IN SELECT COMMITTEES

Sen. Dullo: I wish to give notice of the following Motion:-

THAT, pursuant to Standing Orders No. 183, 212 and 213, the Senate approves the following Senators, nominated to serve in the Select Committees of the Senate as follows -

(A) The Committee on National Cohesion, Equal Opportunity and Regional Integration

Sen. Fredrick Outa, MP to replace Sen. Beatrice Kwamboka, MP

(B) The Committee on County Public Accounts and Investments

1. Sen. Fatuma Dullo, CBS, MP
2. Sen. Kimani Wamatangi, MP
3. Sen. Mithika Linturi, MP
4. Sen. Kibiru Charles Reubenson, MP
5. Sen. Omanga Millicent, MP
6. Sen. Mohamed Faki, MP
7. Sen. Ledama Olekina, MP
8. Sen. Moses Kajwang', MP
9. Sen. (Prof.) Sam Ongeru, EGH, MP

(C) The Committee On Delegated Legislation

1. Sen. Kang'ata Irungu, MP
2. Sen. Prengei Victor, MP
3. Sen. Haji Farhiya Ali, MP
4. Sen. Poghio Samuel Losuron, EGH, MP
5. Sen. Omanga Millicent, MP
6. Sen. Judith Pareno, MP
7. Sen. Mutinda Kabaka, MP

8. Sen. Okong'o Omogeni, MP
9. Sen. Mohamed Faki, MP

APPROVAL OF SENATORS TO SERVE IN THE
COMMITTEE ON POWERS AND PRIVILEGES

Mr. Speaker, Sir, I wish to give notice of the following Motion:-

THAT, Pursuant to section 15 (1) (b) (ii), of the Parliamentary Powers and Privileges Act, and Standing Order 183, the Senate approves the following Senators nominated to serve in the Committee on Powers and Privileges, in addition to the Speaker of the Senate, who, pursuant to Section 15 (1) (b) (i) of the Parliamentary Powers and Privileges Act, shall be the Chairperson of the Committee.

1. Sen. Falhada Iman, MP
2. Sen. Kimani Wamatangi, MP
3. Sen. Millicent Omanga, MP
4. Sen. Kang'ata Irungu, MP
5. Sen. Rose Nyamunga, MP
6. Sen. Sylvia Kasanga, MP

ESTABLISHMENT OF OFFICES OF THE CAJ
AT THE COUNTY LEVEL

Sen. Were: Thank you, Mr. Speaker, Sir. I beg to give notice of the following Motion:-

WHEREAS Article 59 of the Constitution establishes the Kenya National Human Rights and Equality Commission to among other functions investigate complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct;

AND WHEREAS Parliament enacted the Commission on Administrative Justice Act (No.23 of 2011) to restructure the Kenya National Human Rights and Equality Commission and to establish the Commission on Administrative Justice (CAJ) pursuant to Article 59(4) of the Constitution to provide for the membership, powers and functions of the Commission on Administrative Justice and for connected purposes;

AWARE that the function of the Commission on Administrative Justice among others is to investigate any conduct in state affairs, or any act or omission in public administration by any State organ, State or public officer in National and County Governments that is alleged or suspected to be prejudicial or improper or is likely to result in any impropriety or prejudice; including investigating complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct within the public sector;

FURTHER AWARE that the Commission is expected to carry out its mandate in accordance with the values and principles set out in the Constitution and other laws of Kenya;

COGNIZANT that the right to access public service and fair administrative action is critical to delivery of services to the people both at the National and the county levels of government and in other related public institutions;

CONCERNED that the Commission has its headquarters in Nairobi with satellite offices in the counties of Mombasa, Kisumu, Isiolo and Uasin Gishu;

FURTHER CONCERNED that the absence of the Commission offices in the rest of the Counties has made it difficult for members of the public to report allegations of maladministration, delay, administrative injustice, discourtesy, incompetence, misbehavior, inefficiency or ineptitude within the public service;

NOW THEREFORE, the Senate calls upon the Commission on Administrative Justice to urgently establish satellite offices in all other remaining counties to decentralize its services to facilitate members of the public to interact with the Commission and report allegations of maladministration in the public service with ease.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Next Order.

STATEMENTS

The Senate Minority Leader (Sen. Wetangula): Thank you Mr. Speaker, Sir, for indulging me to request the following three short Statements.

ARREST AND DEPORTATION OF MR. MIGUNA MIGUNA

I rise, pursuant to Standing Order No. 46(2)(b), to seek a Statement from the Chairperson of the Committee on National Security and Foreign Relations concerning the raiding of Mr. Miguna Miguna's home in Runda by the police; abducting and confining him in various police cells and later deporting him to Canada. In the response, the Chairperson should address the following:-

1. Give reasons as to why, on the night of 2nd February, 2018, Mr. Miguna Miguna's Runda home was violently raided, ransacked and property destroyed by hooded and heavily armed police officers who later captured him and went away with him.

2. Why did the police confine and transfer Mr. Miguna Miguna to various police cells outside his district of arrest, namely Nairobi? He was taken to Kiambu Police Station, Githunguri Police Station, Lari Police Station, the Kenya Ports Authority Inland Depot Police Station and, eventually, Jomo Kenyatta International Airport Police Station.

He was held there for five days without producing him to Milimani Law Courts and allowing him access to his family or lawyers as required by law.

3. Give the circumstances and reasons that led to the extradition of Mr. Miguna Miguna from Kenya to Canada on the night of Tuesday, 6th February, 2018.

Mr. Speaker, Sir, I do not know if there are Members who would like to complement that before I move to the next Statement; I have three. You can either allow me to read all the three Statements then Members who want to---

The Speaker (Hon. Lusaka): You can read all of them.

HARASSMENT OF OPPOSITION LEADERS

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I rise under Standing Order No. 46(2)(b) to seek a Statement from the Chairperson of the Committee on National Security and Foreign Relations concerning the recent harassment of opposition leaders. In the response, the Chairperson should address the following:-

1. Whether he is aware that the Government has withdrawn both residential security and bodyguards attached to opposition leaders; revoked the leaders' firearm licenses and confiscated official cars assigned to some of the leaders by the Parliamentary Service Commission.

2. Explain the reason as to why the Government has resorted to unjustifiable arrests of some opposition leaders citing their role in the 30th January, 2018, opposition event at Uhuru Park when the Constitution of Kenya guarantees freedom of speech and association.

3. The legal provisions the Government based on in sanctioning the above actions.

The third and last Statement is a request for a Statement from the Chairperson of the Committee on Information, Communication and Technology concerning the Government's decision to shut down three privately owned---

Sen. Dullo: On a point of order Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): What is your point of order, Sen. Dullo?

Sen. Dullo: Mr. Speaker, Sir, it is important for us to dispense with the first two Statements because the third Statement is for a different Committee.

The Senate Minority Leader (Sen. Wetangula): I agree with her. I can stop at the one on Mr. Miguna Miguna and the security of the opposition leaders then come back to the one of shutting down television stations.

The Speaker (Hon. Lusaka): I see Sen. Kajwang' wants to say something.

Sen. M. Kajwang': Thank you Mr. Speaker, Sir. Allow me to ride on that request. I request that we should look at this matter broadly once it is committed to the relevant Committee.

On the issue of Mr. Miguna Miguna, it is a fact which does not require parliamentary enquiry. Mr. Miguna Miguna is the son of Miguna, the son of Mr. Jomune, who comes from Magina village; he was born on the banks of River Nyando and the schools that he went to are very well known. It becomes very scary if someone would decide today that because he does not like Speaker Lusaka, to send you back to Uganda, Congo, Chad or wherever it is that your forefathers came from. I do hope that when the

relevant Committee deals with this matter, it will also put a stop to such tendencies. It should be a lesson to any other persons who might think of using or misusing the law to deny a Kenyan the right of citizenship.

Sen. (Eng.) Mahamud: On a point of order Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): What is your point of order, Sen. (Eng.) Mahamud?

Sen. (Eng.) Mahamud: Mr. Speaker, Sir, I thought that this matter was in court. Is it in order for us to discuss a matter that is before court?

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, the only limitation to this House is in relation to petitions. Nobody can bring a petition to this House relating to a matter that is active and pending before a court of law. In terms of the request on the whereabouts and harassment of Mr. Miguna Miguna – who has already been bundled out of the jurisdiction of our country, contrary to the provisions of Article 16 of the Constitution and other relevant laws – there is nothing in court that would limit this House from making an inquiry.

In any event, what is active in court is the order to produce Mr. Miguna Miguna before a judge and an order for the Inspector General to appear before the court to say the reason as to why he did not do so. It has absolutely nothing to do with the brutal raid on his house, the journey through six police stations and the bundling of Mr. Miguna Miguna on a plane to Canada.

The Speaker (Hon. Lusaka): There is another point of order by Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, it is not a point of order. My gadget is not working very well.

This matter raised by the Senate Minority Leader is very serious, particularly on the provisions of the Constitution. I have some experience in this matter. I have represented three members on this matter; two members from Garissa County and one from Wajir County who ended up being elected. They were deported during election time.

Sen. Dullo: On a point of order, Mr. Speaker, Sir. Is it in order for Members to debate this matter, yet it is just a request by the Senate Minority Leader? The debate will come once the answer is given.

The Speaker (Hon. Lusaka): Order!

Yes, Sen. Kajwang.

Sen. M. Kajwang': On a point of order, Mr. Speaker, Sir. I do not know whether Sen. Mutula Kilonzo Jnr. is raising a point of order on my contribution because I was on the Floor when a point of order was raised? We need to clarify that.

Can I proceed?

The Speaker (Hon. Lusaka): Proceed, Sen. Kajwang.

Sen. M. Kajwang': Thank you, Mr. Speaker, Sir. I just want to add that when we are investigating this matter, let us expand it and also report to this House the circumstances under which hon. T.J. Kajwang was arrested at Milimani Law Courts, taken to the Provincial Criminal Investigations Office, moved to the Criminal Investigations Department (CID) Headquarters, taken to Kiambu Police Station where he was held overnight incommunicado, without contact with his lawyers and family and

without food; how he was brought back to Milimani Law Courts and eventually taken to Ngong Law Courts for charging.

Mr. Speaker, these Gestapo-type tactics that the police are using on Kenyans at the behest of political players must be opened up and dissected by this House. It is my humble request that we go beyond Miguna Miguna and also have an inquiry on the manner in which hon. T. J. Kajwang was mishandled by the State.

The Speaker (Hon. Lusaka): Hon. Senators, let me give direction. I will refer you to Standing Order No. 92, which will inform us on whether or not matters are *sub judice*.

It says:-

- (1) Subject to Paragraph 5, no Senator shall refer to any particular matter which is *sub judice* or which by the operation of any written law, is secret.
- (2) A matter shall be considered to be *sub judice* when it refers to active criminal or civil proceedings and discussions of such matter is likely to prejudice its fair determination.
- (3) In determining whether a criminal or civil proceeding is active, the following shall apply:-
 - (a) Criminal proceedings shall be deemed to be active when a charge has been made or a summons to appear has been issued;
 - (b) Criminal proceedings shall be deemed to have ceased to be active when they are concluded by verdict and sentence or discontinuance;
 - (c) Civil proceedings shall be deemed to be active when arrangements for hearing, such as setting down a case for trial have been made, until the proceedings are ended by judgement or by discontinuance;
 - (d) Appellate proceedings whether criminal or civil shall be deemed to be active from the time when they are commenced by application for leave to appeal or by notice of appeal until the proceedings are ended by judgement or discontinuance.

Therefore, I want to refer Sen. (Eng.) Mahamud to Standing Order 92 (4) which says that:-

“A Senator alleging that a matter is *sub judice* shall provide evidence to show that paragraphs (2) and (3) are applicable.”

I would like you to do that.

Sen. (Eng.) Mahamud: Mr. Speaker, Sir, since I do not have any evidence, I will withdraw.

The Speaker (Hon. Lusaka): I now want us to proceed. Let me call upon the Chairman of the Committee on National Security to give us an undertaking.

Sen. Sakaja: Mr. Speaker, Sir, indeed, both statements that have been requested by the Senate Minority Leader are matters that are well within the public domain. These are matters of a serious nature and we need not just relay this to the relevant Ministry or departments that look at these issues, but need to sit down with them, go over them and respond.

Mr. Speaker, Sir, given the fact that you have, by way of omission for lack of a better word, ruled that the first matter is not *sub judice*, because you have put the burden of proof to the Senator pursuant to the Standing Orders, and the fact that you have then

relayed this matter to the Committee, we shall operate in a manner as if it is not *sub judice* and not active. What I would have suggested on the first petition is that the matters or elements of that petition that are actively before the court should not be brought forward to the Committee, so that we can discuss the rest of it.

Having said that---

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. So that we do not belabour under confusion, there is nothing *sub judice* in this matter. What was before the court for Miguna Miguna was an application for anticipatory bail; period! It is no longer within jurisdiction; there is no active matter before the court other than questions on the police as to why they did not produce Muguna Miguna when they were asked to produce him. There is nothing more than that. Therefore, I want the Chairman, who is a fairly good young man, not to engage in polemics that we used to witness here in the last Parliament, but to sit as a Committee and bring cogent answers to this House.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Sen. Wetangula, next time address him as the hon. Senator and not a young man.

Proceed, Chair.

Sen. Sakaja: Mr. Speaker, Sir, no matter how the good Senator addresses me, I am still the 'super' Senator of Nairobi; that has nothing to do with how old or young I am.

I am aware that through Lawyer John Khaminwa, there is a matter in court where deportation is being challenged by Miguna Miguna. But by virtue of the fact that you have relayed this matter to the Committee, we shall assume that it is not *sub judice* until another Senator, pursuant to Standing Order 92, alleges that it is *sub judice* and then brings the relevant documentation. Therefore, because of that - and I am glad that the Senate Minority Leader is also a member of this Committee - and I want to undertake that within 14 days we will be able to come back with the statement.

The Speaker (Hon. Lusaka): Yes, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, the good Committee led by 'super' Sen. Sakaja, Sen. Dullo and others has a serious issue under Article 16 of the Constitution which does not necessarily touch on Miguna Miguna. Parliament must pronounce itself on what the drafters of this Constitution meant when they said "a citizen by birth does not lose citizenship by virtue of acquiring citizenship of another country."

It is important that we guide the country because there are many Kenyans of Somali and Asian origin who acquired citizenship before 2010 and were born in Kenya. To require them to apply for citizenship is a contradiction, because your evidence of contradiction will be your certificate of birth in Nairobi Hospital or some other hospital somewhere in Kenya. Parliament must pronounce itself on that issue.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Since there is already an undertaking by the Chairman, I want to ask the Senate Minority Leader whether he is okay with the 14 days' timeline given. If it is okay, let us proceed to the next business.

Sen. Sakaja: Mr. Speaker, Sir, since a different element has been introduced by Sen. Mutula Kilonzo Jnr., that is a matter that we need to look at, probably, even together with the Justice and Legal Affairs Committee. In as much as Article 16 provides that citizenship is not something that is conferred upon you - it is just confirmed by the Government - we have the Immigration Act that gives life to this provision of the Constitution that says that if you got citizenship of another country before 2010, you are deemed to have revoked your Kenyan citizenship and you are supposed to apply again for the citizenship.

That process of application is provided in a prescribed form in the Act. So, we need to look at whether there is a contradiction and to what extent it exists as we look at this matter.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, my third request is a request for a Statement from the Chairperson of the Committee on Education, Information---

(Sen. Dullo consulted loudly)

Sen. Fatuma, do you want me to give you time to finish your cross-talks?

Sen. Dullo: Proceed.

SHUT DOWN OF THREE PRIVATELY OWNED TELEVISION STATIONS

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, pursuant to Standing Order No.46(2)(b), I rise to seek a Statement from the Committee on Education, Information, Communication and Technology regarding the Government decision to shut down three privately owned television stations for seven days and attempting to arrest three Nation Media Group (NTV) journalists. In the response, the Chairperson should address the following:-

(1) Give reasons that led the Government decision to shut down the three privately owned television stations namely; NTV, Kenya Television Network (KTN) and Citizen Television for seven days from 30th January to 5th February, 2018.

(2) Whether he is aware that the action of shutting down those television stations led to business losses to the affected companies and decreased investor confidence in our country.

(3) Whether he is aware that the shutdown was a violation of constitutional provisions, particularly Articles 34 and 35 that relate to the freedom of the media and the citizen rights to access to information which the television stations disseminate.

(4) Will the Government compensated the said television stations for the loss of business arising from these unilateral, unreasonable and unlawful acts?

(5) Why on Wednesday, 31st January, 2018, the Government tried to arrest three NTV journalists namely, Mr. Linus Kaikai, Mr. Larry Madowo and Mr. Ken Mijungu? Stating clearly what offences they had committed and why they were not requested to report to the law enforcement agencies instead of resorting to primitive methods of

barricading their places of work and making them spent the night in newsrooms and away from their families.

The Speaker (Hon. Lusaka): Chairperson, Committee on Education, Information, Communication and Technology?

Sen. Halake: Mr. Speaker, Sir, I undertake to respond within 15 days. However, by way of accountability to this House, the Committee on Education, Information, Communication and Technology has already summoned the relevant Cabinet Secretaries to discuss this with us tomorrow morning. The request is timely and we will put these questions to them as well.

The Committee on Education, Information, Communication and Technology has already provided a number of press releases asking the Government to give the answers to the questions that you have already asked and so a lot of work is already underway. Within 14 days, we shall finish this.

This was not an arrest; it was an attempted arrest, but we shall provide whatever information that we will find.

That said, a lot of work has gone into this. The reason why we are giving 14 days to provide the answer is because we will talk to the Cabinet Secretaries from tomorrow onwards. We undertake to respond within 14 days.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, for avoidance of doubt, the distinguished “Senator lady” should know that in law, we have ‘arrest’ and ‘constructive arrest’. We have ‘imprisonment’ and ‘constructive imprisonment’ or ‘false imprisonment’. Given the fact that the police were picketing outside Nation Centre and these journalists could not leave their place of work and go home to their families, they were actually under constructive arrest.

Sen. Seneta: On a point of order, Mr. Speaker, Sir. Is it in order for the Senate Minority Leader to refer to the hon. Senator as the Senator lady?

(Laughter)

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, it looks like we do not have serious work in this House. The Standing Orders require that when you refer to a fellow Senator, you start by calling them ‘Senator’. In fact, when I called her the distinguished Senator lady, she smiled more broadly than she is doing now. She did not complain. What is important is that I start, for example, by saying ‘the distinguished Sen. Ali, the doctor from Wajir’. That cannot be offensive.

The Speaker (Hon. Lusaka): Proceed, Sen. Naomi Shiyonga.

RAMPANT ROAD ACCIDENTS ON THE NAKURU-ELDOROT HIGHWAY

Sen. Shiyonga: Mr. Speaker, Sir, I rise pursuant to Standing Order No.46 (2)(b) to seek a Statement from the Chairperson of the Standing Committee on Energy, Roads and Transportation regarding the rampant road accidents on the Nakuru-Eldoret Highway. In the Statement, the Chairperson should:-

(1) Table a report indicating:-

(a) The number of road accidents that have occurred on the Nakuru-Eldoret Highway, specifically in Salgaa and Sachangwan areas in the last 10 years.

(b) The number of casualties, indicating the persons that have died, those that survived the accidents and those with injuries.

(2) Explain why there are so many accidents happening in this particular area.

(3) Explain measures the Government has taken to curb accidents in the area and other parts of the country.

(4) Outline the Government agencies that are charged with prevention of road accidents and their specific mandates.

(5) Explain any permanent solution that the Government intends to implement to ensure that the area is free from accidents following many accidents that have occurred in the area and in particular during Christmas festive season.

The Speaker (Hon. Lusaka): I notice that the Chair and Vice Chair of the Committee on Energy, Roads and Transportation are not here. Deputy Senate Majority Leader, can you make an undertaking?

Sen. Dullo: Mr. Speaker, Sir, on behalf of the Committee, I undertake to give a response in two weeks. I will relay the same to the Chair.

The Speaker (Hon. Lusaka): Sen. Shiyonga, is that okay?

Sen. Shiyonga: Mr. Speaker, Sir, two weeks might be long regarding this Statement because lives have been lost and more are being lost. Also, this is a rampant situation in this particular spot. So, two weeks might be long considering that the Senate has a Committee that can work on the same.

The Speaker (Hon. Lusaka): Senate Deputy Majority Leader, could you respond?

Sen. Dullo: Mr. Speaker, Sir, on behalf of the Committee, I believe the Senator really requires a comprehensive answer to this particular Statement. Looking at the accidents that always occur on that particular road, it is good if we are given two weeks to respond to the Statement so that we give the House a comprehensive answer.

The Speaker (Hon. Lusaka): It is so directed. The Statement should be ready in the next two weeks.

Nominated Senator, Sen. Mercy Chebeni, you may take the Floor.

STATUS OF THE KENYA NATIONAL EMPLOYMENT AUTHORITY

Sen. Chebeni: Mr. Speaker Sir, I rise pursuant to Standing Order No.46(2)(b) to seek a Statement from the Chairperson of the Standing Committee on Labour and Social Welfare, regarding the Kenya National Employment Authority (KNEA).

In the Statement, the Chairperson should:

(1) Table in the Senate the register of job seekers kept by the Authority and of those who have gained employment through the Authority;

(2) State measures the Authority has undertaken to create awareness of its existence and mandate among the youth;

(3) Explain whether the authority has developed strategies to mainstream issues of gender, youth, the marginalised and Persons with Disabilities into employment programmes;

(4) State the number of private employment agencies registered in Kenya;

(5) Explain the mechanisms of accreditation of private employment bureaus and agencies and the legal framework that they operate in;

(6) Explain the process of verification of the authenticity of the foreign employment agencies;

(7) Explain whether there is data of all Kenyan labour migrants and what programmes are available to ensure that all Kenyan migrants in distress are assisted;

(8) Explain whether there are programmes to ensure the returning Kenyan migrants are integrated in society; and

(9) State whether the Authority has offices locally and abroad, indicating where they are located.

The Speaker (Hon. Lusaka): Chairperson of the Standing Committee on Labour and Social Welfare, Sen. Sakaja.

Sen. Sakaja: Thank you, Mr. Speaker, Sir. I thank Sen. Chebeni for this Statement. This is one Authority that I consider my baby because it was created pursuant to the National Employment Authority Act that I brought in the last Parliament.

The questions raised by the Senator are questions that we have already embarked on as a Committee. In fact, the first meeting of the Committee on Labour and Social Welfare a few weeks ago, dealt solely with this matter. So, I suggest to the Senator that she joins us – we will invite her – for this interaction with the Ministry of Labour, Social Security and Services together with KNEA as well as the Public Service Commission (PSC). This interaction will include participating in the Committee's induction on 22nd March, 2018. This is because the questions that you are asking are very comprehensive to the entire workings of this Authority. After that, we should be able to give a comprehensive response on 28th March, 2018.

The Speaker (Hon. Lusaka): Senator, are you okay with those timelines?

Sen. Chebeni: Mr. Speaker, Sir, no. I prefer two weeks.

Sen. Sakaja: Mr. Speaker, Sir, I will not have an answer in two weeks. It is impossible. These are matters that are ongoing in the Committee, unless you want an answer for the sake of an answer. If you want a comprehensive answer, it has to go through the process. As I have explained to the Senator, this is a matter that is very important to us as well. Kindly, indulge us and join us to get to the root bottom of these issues. So, please, let us do it those five weeks.

The Speaker (Hon. Lusaka): Sen. Kajwang, what do you have to say?

Sen. M. Kajwang: Mr. Speaker, Sir, when a Senator requests for a statement, the statement basically ceases to be personal and becomes a property of this House. Many and all of us here represent young people and we would like to get accountability on KNEA. So, it is not only enough for the Committee to request the distinguished Senator to join them but it is essential that the Committee reports back to this House.

Sen. Sakaja: Mr. Speaker, Sir, we have said we will report back to the House in five weeks. However, we are requesting, just to enrich the interaction with the Senator

who is seeking the Statement to also join us. You can join the Committee as a friend of the Committee because the matter seems to be very close to her heart. However, clearly, since there are many more Senators who are interested, we shall give notice to everyone when we are discussing matters of KNEA, for you to all join us.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. The practice in this House is that statements are given a gestation period of two weeks to be delivered on the Floor. If the two weeks are over, and the distinguished chairman is unable to bring the answer, then he seeks the indulgence of the House for an extension.

For us to start asking for five weeks away is actually abdicating duty and taking this House for a ride. The distinguished Senator who requested for the statement has already expressed displeasure at the suggestion of five weeks. I urge that the House sticks to the usual two-week limit knowing that there can be limitation that can lead to some extension that may be relevant under the time it has been requested for.

The Speaker (Hon. Lusaka): Sen. Sakaja, have your say before I give a ruling.

Sen. Sakaja: Mr. Speaker, Sir, apart from the fact that there is no limit on the Standing Orders for when a Statement should be responded to – maybe it has been the practice in the past – the challenge of all honesty is that I know for sure that I will not have a comprehensive answer in two weeks. I am saying in five weeks, we should be able to give an answer that will satisfy the Senator and the millions of young people who are waiting for KNEA including the author of the Bill when it was a Bill, in five weeks.

The Speaker (Hon. Lusaka): I direct that, Hon. Senator, you provide an answer in three weeks.

Sen. Chebeni, you may take the Floor again.

MERGER OF SIX FINANCIAL AGENCIES TO FORM A MEGA DEVELOPMENT BANK

Sen. Chebeni: Mr. Speaker Sir, I rise pursuant to Standing Order No.46(2)(b), to seek a Statement from the Chairperson of the Standing Committee on Finance and Budget regarding the move by the State to merge six Government financial agencies to form a mega development bank.

In the Statement, the Chairperson should:

(1) Explain the rationale behind the impending plan to merge the Kenya Industrial Estates (KIE), Development Bank of Kenya (DBK), Industrial Development Bank of Kenya (IDBK), Uwezo Fund, Youth Enterprise Development Fund and Women Enterprise Development Fund into a single financial institution;

(2) Explain the regulatory and institutional frameworks involved in the process of the merger;

(3) Explain how provision of services offered by the six financial agencies will continue during the transition period; and,

(4) State whether Uwezo Fund, Youth Enterprise Development Fund and Women Enterprise Development Fund will still be accessible to the beneficiaries under the merger.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, allow me to ride on that very important Statement sought. These institutions are public and independent with Boards of Directors. The Chairman must also bring to this House board resolutions, when the board sat, the minutes of the meetings and the decisions they arrived at in collapsing their institutions into a mega institution so that we get to know whether this is a unilateral and reasonable act or it is a procedural matter that has been followed up within the law.

Thirdly, the Chairman should bring the Cabinet resolution. The Constitution requires that such resolutions must be in writing, signed and sealed; the resolutions that made the decisions that such a merger is going to take place.

Sen. (Eng.) Mahamud: Mr. Speaker, Sir, we will be able to bring the answer to this question in three weeks' time. As you are aware, we are dealing with the budget from next week. It will be a very tight program for us. Thank you.

DELAYED COMPENSATION FOR PERSONS DISPLACED
BY CONSTRUCTION OF MLIMA DAM

Sen. Mutula Kilonzo Jnr: Thank you, Mr. Speaker, Sir. I rise to seek a Statement from the Chairperson Land, Environment and Natural Resources on the delayed compensation for displaced persons during the construction of Mlima Dam in Mbooni Constituency. The Chairperson should in the Statement state the following:

- a) the number of people whose land was acquired to pave way for the project;
- b) indicate the number of persons compensated so far, if any;
- c) explain the reasons for the delayed compensation; and,
- d) state whether the Ministry of Lands can allocate the affected persons land in different settlement schemes in Nguu Ranch.

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

[The Temporary Speaker (Sen. Nyamunga) in the Chair]

Sen. Mwangi: Madam Temporary Speaker, I undertake to give the appropriate answer in two weeks' time so that I consult with the Ministry of Lands, Housing and Urban Development.

The Temporary Speaker (Sen. Nyamunga): Is two weeks enough for you?

Sen. Mutula Kilonzo Jnr: No objection, Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): That is okay. Sen. Mutula Kilonzo Jnr.

COMPENSATION FOR PERSONS AFFECTED BY OIL
SPILLAGE AT THANGE RIVER

Sen. Mutula Kilonzo Jnr: Madam Temporary Speaker, I rise pursuant to Standing Order 46 (2) (b) to seek a Statement from the Chairperson of Standing

Committee on Lands and Natural Resources on the oil spillage at Thange, Kibwezi East, Makueni County in the year 2015. The Chairperson should in the Statement:

- (a) provide a list of all the persons affected by the oil spillage;
- (b) state the number of people who have been compensated and payments thereof;
- (c) state the number of people below the three kilometer spillage point who have been considered for compensation;
- (d) indicate when the pending payment to the affected persons will be done;
- (e) explain whether there is a special funds/insurance under the law to cater for the compensation during such disasters; and,
- (f) explain the short and long-term health measures that have been put in place to deal with persons affected by the oil spillage.

Sen. Mwangi: Madam Temporary Speaker, Sir, once again I give an undertaking that I will give an answer in two weeks after consultation with the relevant Ministry.

Sen. Mutula Kilonzo Jnr: No objection, Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): Still, Sen. Mutula Kilonzo Jnr.

COMPENSATION FOR PERSONS AFFECTED BY
KETRACO HIGH VOLTAGE POWER LINE PROJECT

Sen. Mutula Kilonzo Jnr: Madam Temporary Speaker, I rise pursuant to Standing Order 46 (2) (b) to seek a Statement from the Chairperson of Standing Committee on Energy, Roads and Transportation on the Kenya Electricity Transmission Company (KETRACO) (Sultan Hamud-Mwingi) High Voltage Power-line Project. The Chairperson should in the Statement state the following:

- (a) provide a list of all the people affected by the said project in Makueni County, their property reference numbers and valuations thereof;
- (b) state the number who have been compensated and the payments thereof;
- (c) state the reasons why the residents of Sultan Hamud, Masuo Matiko Mulala Welfare have not been compensated;
- (d) indicate when the outstanding payments to the affected persons will be done;
- (e) state the measures put in place to ensure that the persons living within the sixty metres of the power line evacuate the said premises as per the Environmental Impact Assessment Report;
- (f) indicate when the said report was published as required by the Environmental Management Act;
- (g) state whether there is any government policy on the erection of pylons on private property;
- (h) state whether the government is planning to review the 30 percent policy of compensation for way leaves; and,
- (i) table the above mentioned policy if any.

Sen. (Eng.) Maina: Thank you, Madam Temporary Speaker. I undertake that in two weeks' time, after consultation with the Ministry of Energy and Petroleum, I will provide the Hon. Senator with the appropriate answer.

The Temporary Speaker (Sen. Nyamunga): Is two weeks appropriate? Sen. Mutula Kilonzo Jnr., you are still on.

DUMPING OF ASBESTOS AT NGULU KIKUMBULYU WARD
IN MAKUENI COUNTY

Sen. Mutula Kilonzo Jnr: Thank you, Madam Speaker. I rise pursuant to Standing Order No. 46 (2) (b) to seek a Statement from the Chairperson, Lands Environment and Natural Resources on the dumping of asbestos at Ngulu Kikumbulyu Ward in Makueni County.

The Chairperson should in the Statement answer the following:

(a) whether the National Environment Management Authority (NEMA) is aware of the dumping of asbestos in Makueni County by West Africa Kenya Ltd.;

(b) whether NEMA has approved the dumping of the substance at the said site;

(c) whether an Environmental Impact Assessment Report on the matter has been submitted and published as required by Sections 58 (1), 58 (2) and 59 of the Environment Management and Coordination Act;

(d) whether the necessary safety regulations have been complied with in accordance with the Act;

(e) whether any immediate measures have been taken to inform the community living in the areas of the hazards of the dumping of asbestos;

(f) whether there are any adverse effects of asbestos to the general public; and

(g) explain if there are mitigation measures the company has put in place to safeguard the community against the effects.

Sen. Mwangi: Madam Temporary Speaker, once again I will give an answer in fourteen days.

(An Hon. Senator spoke off record)

Is he on a point of order?

Sen. Linturi: Madam Temporary Speaker, with your indulgence and the permission from my good friend, Sen. Mutula Kilonzo Jnr., I seek your indulgence to ride on the Statement being sought by Sen. Mutula Kilonzo Jnr. with regard to the dumping of asbestos.

I want to be understood clearly why I have to do this. Where I come from in Meru County, one of the best performing schools is a public school called Amwamba Primary School. The school is asbestos made. Asbestos contain properties that are carcinogenic. These are cancer-causing.

If you go to Kenyatta National Hospital, 70 per cent of the cancer patients found there come from a place called Akachiu in Auki Sub Location, Igembe Sub-County. Akachiu area is near Amwamba Primary School. The National Environment Management Authority (NEMA) did a report and condemned this school back in November last year. The leaders and people of that particular school wrote to the Ministry of Education seeking its assistance. NEMA was requested to take interventions

to ensure that the children in that particular school and the surrounding areas do not continually expose themselves to this cancer-causing asbestos.

I am, therefore, kindly requesting the Chairman of the Committee on Lands, Environment and Natural Resources to kindly go further and get answers that will also address the issues that affect the people of Auki in Meru County. It would also be of great benefit to liaise with the Committee on Health because we all know the effects of cancer. We are burying very many people in Meru County, especially in Auki area due to cancer related deaths. The statistics at Kenyatta National Hospital are really glaring.

Madam Temporary Speaker, I therefore request you to find it necessary to ask the Chairman to avail a more comprehensive Statement touching on all the necessary areas so that we can answer certain questions that we are normally asked when we go to our counties.

Thank you Madam Speaker.

Sen. Mwangi: Madam Temporary Speaker, we will act on what Hon. Linturi has said. I also want to undertake to give an answer in two weeks after consultation with both the Ministry of Environment and Natural Resources and the---

Sen. Sakaja: Madam Temporary Speaker, in addition to the specific areas that have been mentioned – that is Ngulu-Kikumbulyu Ward and Meru County - I think that this House will benefit if we get the policy position on eradication of Asbestos in many of our learning institutions and any other institutions from both the Ministry of Environment and Natural Resources as well as the Ministry of Health. I am sure that in my County and across the country, there are very many schools that still have those asbestos roofs. Once we get the policy position and what actions the Ministries are taking to eradicate Asbestos completely across the country especially in public buildings, then we shall be heading somewhere. Sen. Mutula Kilonzo Jnr.'s Petition was about dumping of asbestos; but on top of that, we should remember that our children are in schools which are roofed by Asbestos.

In fact, you will be shocked that in Nairobi County, there are even hospitals whose roofs are made of Asbestos. Note that these hospitals are where people are treated for cancer without knowing that different types of cancer are being caused by the roofs under which these people lie. Let us therefore have a comprehensive answer that looks at the policy direction and the action points by the respective ministries.

Sen. (Eng.) Maina: Thank you Madam Temporary Speaker. I want to add my voice to this matter. This is not a matter to be limited to one or two ministries; this should be about Government policy. It has been known for a long time that Asbestos causes cancer. I sympathize with the people of Meru, but besides Meru, one of the biggest causes of many deaths in Kenya today is cancer. I am reliably informed that cancer causes more deaths than those caused by HIV/AIDs. I do not know the exact figures, but that is the reality.

I therefore think that this House should make proper regulations to our counties so that the monies remitted to the counties can be used to remove Asbestos in the Counties. That is the kind of proactive action that we need to take because when there is an animal that wants to kill you, you take the first opportunity to get rid of it.

Thank you very much.

The Temporary Speaker (Sen. Nyamunga): Can we allow two more comments? Sen. Sylvia, did you have something to add? Is there anybody else who wants to speak on this matter? If not, let us now have the Chair responding.

Sen. Mwangi: Madam Temporary Speaker, I have noted the concerns of hon. Members regarding this issue of Asbestos. I undertake to give a comprehensive answer, obviously after consultations with the relevant Ministries and professionals so that we can eradicate this menace.

Madam Temporary Speaker, I commit myself and undertake to give this Statement. I therefore request to be given about three weeks to give a good answer regarding this matter. This is because we have to invite the Ministries concerned so that they can give us appropriate answers. I hope that is acceptable.

The Temporary Speaker (Sen. Nyamunga): Sen. Mutula Kilonzo Jnr.?

Sen. Mutula Kilonzo Jnr.: Madam Temporary Speaker, because of the interest expressed and because of the documents and policies which we have sought, not limited to Makueni County, because this is a matter concerning the whole country, I have no objection to it. This is subject to the Chairman complying with the requests made by my colleagues regarding this disturbing issue that continues to bedevil the public.

Thank you.

The Temporary Speaker (Sen. Nyamunga): Yes, I direct that all the Ministries concerned should be consulted and a comprehensive report be brought to the House within three weeks.

Sen. Mwangi: Three weeks will be adequate for this purpose.

(Sen. M. Kajwang' stood in his place)

The Temporary Speaker (Sen. Nyamunga): What is your point of order?

Sen. M. Kajwang': Madam Temporary Speaker, I have a Statement request that has been approved by the Speaker although it was not listed on the Order Paper. I beg your indulgence to make the request.

The Temporary Speaker (Sen. Nyamunga): Go ahead.

IMPLEMENTATION STATUS OF THE FISHERIES DEVELOPMENT AND MANAGEMENT ACT

Sen. M. Kajwang: Thank you Madam Temporary Speaker, I wish to request a Statement from the Chairman of the Senate Committee on Agriculture, livestock and Fisheries on the implementation status of the Fisheries Development and Management Act that this House passed in 2016. It was accented to by the President in 2016. In particular, the Chair should respond to the following issues, one---

Sen. Dullo: Madam Temporary Speaker, the procedure of this House is that any Statement requested on the floor of the House should be approved by the Speaker. I think that in this case, it did not go through.

The Temporary Speaker (Sen. Nyamunga): It is already approved.

Sen. M. Kajwang’: It is already approved by the Speaker; it was just not listed on the Order Paper. Please, allow me to continue.

The Chair should respond to the following issues:-

(1) Explain the progress made towards the establishment of the Kenya Fisheries Advisory Council; list the names of the members of the council and highlight key initiatives undertaken since formation.

Explain the progress made towards the establishment of the Kenya Fisheries Service; list the names of the Director-General and members of the Board and highlight the key initiatives undertaken since formation.

(2) Explain the progress made towards establishment of the Fish Marketing Authority; list the names of the Chief Executive Officer, members of the Board and highlight key initiatives undertaken since formation.

(3) Explain why Kenya continues to import unprocessed fish; list the volumes of unprocessed fish imported in the last two years, indicate the value of these imports in Kenya Shillings and the countries of origin.

(4) Explain measures that the Government has put in place to protect Kenyan fishermen against cheap imports, especially from China, and measures taken to improve productivity of fish farmers in Kenya.

Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): Is the Chairman of the Committee on Agriculture, Livestock and Fisheries in the House?

Sen. Dullo: Madam Temporary Speaker, I would request the Senator to give the Committee two weeks to respond to this particular Statement.

The Temporary Speaker (Sen. Nyamunga): Two weeks are appropriate.
Next Order!

PROCEDURAL MOTIONS

LIMITATION OF DEBATE ON MOTIONS

Sen. Dullo: Madam Temporary Speaker, I beg to move the following Procedural Motion:-

THAT, Pursuant to Standing Order 100 (1), the Senate resolves that debate on a Motion not sponsored by the Majority or Minority Party or a Committee shall be limited in the following manner:-

A maximum of three hours with not more than twenty minutes for the Mover, twenty minutes for the Majority Party Official Responder, twenty minutes for the Minority Party Official Responder and fifteen minutes for each other Senator speaking and that fifteen minutes before the time expires, the Mover shall be called upon to reply.

Madam Temporary Speaker, I believe this is a fairly straight forward Motion that may not require debate.

I beg to move and call upon Sen. Were to second the Motion.

Sen. Were: Madam Temporary Speaker, I rise to second the Motion.

(Question proposed)

(Question put and agreed to)

LIMITATION OF DEBATE ON ADJOURNMENT MOTION

Sen. Dullo: Thank you Madam Temporary Speaker, I beg to move the following Procedural Motion:-

THAT, notwithstanding the provisions of Standing Order 100 (4), the debate on any Motion for the adjournment of the Senate to a day other than the next normal sitting day in accordance with the calendar of the Senate shall be limited to a maximum of two hours, with not more than fifteen minutes for each Senator speaking, after which the Senate shall adjourn without question put;

Provided that when the period of recess proposed by any such Motion does not exceed nine calendar days, the debate shall be limited to a maximum of thirty (30) minutes, and shall be confined to the question of adjournment.

I beg to move and call upon Sen. Were to second this Motion.

Sen. Were: Madam Temporary Speaker, I beg to second.

(Question proposed)

The Temporary Speaker (Sen. Nyamunga): Does any Member wish to make comments?

Noting that this matter does not concern the counties, I will now put the Question.

(Question put and agreed to)

LIMITATION OF DEBATE ON MOTION ON
THE ADDRESS BY THE PRESIDENT

Sen. Dullo: Thank you, Madam Temporary Speaker. I beg to move the following Procedural Motion:-

THAT, pursuant to Standing Order 100(1), the Senate resolves that the debate on the Motion on the Presidential Address shall be limited to a maximum of three sitting days with not more than fifteen minutes for each Senator speaking, excluding the Mover in moving and replying who shall be limited to thirty minutes in either case and that the Senate Majority Leader and the Senate Minority Leader shall be limited to thirty minutes each.

Sen. Were: Thank you, Madam Temporary Speaker. I rise to second the procedural Motion on the limitation of debate on Motion on the address by the President.

(Question proposed)

(Question put and agreed to)

MOTIONS

APPROVAL OF SENATORS TO SERVE IN THE PROCEDURE AND RULES COMMITTEE

Sen. Dullo: Thank you, Madam Temporary Speaker. I beg to move the following Motion:-

THAT, pursuant to Standing Order No.179(2)(d), the Senate approves the following Senators nominated to serve in the Procedure and Rules Committee, in addition to Senators specified in Standing Order 179(2)(a), (b) and (c)-

1. Sen. (Dr.) Christopher Langat, MP
2. Sen. Beth Mugo, EGH, MP
3. Sen. (Dr) Agnes Zani, MP

If I may refer Members to Standing Order No.179(2) on the composition of this Committee, it says the Speaker shall be the Chairperson, the Deputy Speaker will be the Vice-Chairperson and the other Members will be members of the Speaker's Panel. So, this is a straight forward matter.

Standing Order No.179(3) says:-

“The Procedure and Rules Committee shall consider and report on all matters relating to the Standing Orders.”

(4) The Procedure and Rules Committee may propose amendments to these Standing Orders and any such amendments shall, upon approval by the Senate, take effect at the time appointed by the Senate.”

I believe this is a technical committee that will look at the Standing Orders in totality. The proposed hon. Senators are up to the task and I hope the House will approve this Motion.

I request Sen. Were to second this Motion.

Sen. Were: Thank you, Madam Temporary Speaker. I rise to second this Motion that the proposed Senators serve in the Procedure and Rules Committee.

(Question proposed)

Sen. Olekina: Thank you, Madam Temporary Speaker. I rise to support this Motion and make the following observations. One, I request that this Committee relooks at the Standing Orders, particularly on the composition of Chairpersons of Committees. As a House of union, it is not only the majority party that has a say in this country. It is important for us recognise the fact that we represent the interests of all the people in this country. Therefore, we need to consider issues here in a bipartisan approach.

I understand in the Eleventh Parliament, there was a Committee tasked with looking at various amendments to our Standing Orders. However, I believe it missed an opportunity of ensuring leadership of each Senate Committee was well represented. For example, if a committee is headed by the majority party, then it should be deputized by the minority party. This would have helped us to perform.

I have looked at the leadership of all the committees of the Senate and they leave a lot to be desired. Apart from one committee whose leadership is reserved for the minority party, the rest are headed and deputized by members from the majority party. This in itself is not right. As representatives of the people, it is good for us to share these leadership positions.

I will request that this Committee looks at the Standing Orders clearly and ensures that certain things that are contained in the Standing Orders are there for the benefit of this country.

There are many things we should look at in a bipartisan manner. For example, when a Member proposes a Bill, at times, it is subjected to a committee for pre-publication scrutiny. I do not believe that he should be forced to adopt things that he does not want to include in his Bill.

I have no problem with the membership of this Committee. I know the distinguished Senator for Bomet County, Christopher Lang'at, Sen. Zani and Sen. Beth Mugo. They will be able to take their time to look at the Standing Orders and, at times, deviate from the normal practice of amending the standing Orders at the end of a parliamentary session. If the standing Orders are not working for us, then it is good for us to work on them to ensure that every person benefits from them.

Thank you.

Sen. Wako: Thank you, Madam Temporary Speaker, for giving me this opportunity to speak on the constitution of this important Committee. I apologise as I have been having a problem with my card. I had wanted to speak earlier on but knew in due course I would speak. The Procedure and Rules Committee is one of the most important committees of this Senate. I want them to consider two issues in addition to what has been mentioned by my fellow Senator, Sen. Olekina.

The first one is the constitution of the Committee on the County Public Accounts and Investments Committee. I made this point last time but I will keep on repeating it until the relevant Standing Order is made in relation to this Committee. It is true that all the Sessional committees have nine Members and this particular committee, initially when it started in the first term, also had nine Members. The work of this Committee is central to the work of the Senate since our major role here is to oversight and make recommendations, among others.

Therefore, its membership should be more than the nine members particularly this time because when they have to consider the audited accounts for 2013/2014, 2014/2015 and 2016/2017 which are all in arrears. In the last Parliament there were many challenges which were encountered by this Committee brought about by governors who took us to court saying that we did not have the competence to summon them for audit queries. So, we took a lot of time on those issues in court to the extent where it

interfered with our own work of reporting to the House. Therefore, they have a lot of work to do

Madam Temporary Speaker, you will agree with me that it is not possible to audit the public accounts of 47 county governments by a committee of nine Members. Therefore, I recommend 13 Members so that at some stage, they can be divided into sub-committees of four Members and carry out the audit simultaneously and finish the work that needs to be done. In the last Session, they were increased and I do not understand why now when work is needed, they should be reduced to nine. So, I would urge the Procedure and Rules Committee to look into that number particularly in the County Public Accounts and Investments Committee.

Secondly, there is a request that I made during the last term for another Committee. The National Assembly has a Committee on East African Community and Regional Integration which we do not have here. Here at the Senate, this mandate is carried out by the Committee on National Security and Foreign Relations. As you know, National Security and Foreign Relations is a tall order. In fact, most of the questions that come to this House relate to national security. So, this committee is inundated with a lot of work to the extent where the work of the East African Community and Regional Integration is forgotten. I know many Bills are passed by the East African Legislative Assembly which touch on the mandate of county governments. Sometimes these Bills come to the National Assembly and they are passed or approved without reference to the Senate.

Madam Temporary Speaker, therefore, I would urge this Committee when it embarks on its work to consider seriously having a Committee on East African Community and Regional Integration. After all, we are in East Africa and it is the intention of the East African Cooperation to move towards political federation and therefore the activities of the Community should engage us much more and hence the need to develop expertise within the Senate purely on those issues.

I am a Senator of a border county, and I know, Madam Temporary Speaker, you border Uganda and my friend there also borders Somalia. Therefore, regional integration in East Africa is important and we need to attach much more focus on it. I am glad that when President Uhuru Kenyatta formed his Cabinet, he created a special Ministry to focus on East African Community Regional Integration because, before that, East African Community matters were being dealt with by the Ministry of Labour, Trade and East Africa. However, if President Uhuru Kenyatta has seen it fit that this requires focus, we, as the Senate, should also see it fit to form a committee to deal specifically with these issues of the East African Community.

Therefore, as I endorse this membership of people with great experience, I would urge them to look at those two issues together with the issues raised by Sen. Olekina.

Thank you.

(Question put and agreed to)

APPROVAL OF SENATORS TO SERVE IN SELECT COMMITTEES

Sen. Dullo: Madam Temporary Speaker, I beg to move the following Motion:-

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THAT, pursuant to Standing Orders No. 183, 212, 213, the Senate approves the following Senators, nominated to serve in the Select Committees of the Senate as follows-

(A) The Committee on National Cohesion, Equal Opportunity and Regional Integration

Sen. Fredrick Outa, MP to replace Sen. Beatrice Kwamboka, MP. This change was fairly discussed at the party level.

(B) The Committee on County Public Accounts and Investments

- 1.Sen. Fatuma Dullo, CBS, MP
- 2.Sen. Kimani Wamatangi, MP
- 3.Sen. Mithika Linturi, MP
- 4.Sen. Kibiru Charles Reubenson, MP
- 5.Sen. Omanga Millicent, MP
- 6.Sen. Mohamed Faki, MP
- 7.Sen. Ledama Olekina, MP
- 8.Sen. Moses Kajwang', MP
- 9.Sen. (Prof.) Sam Onger, EGH, MP

(C) Committee on Delegated Legislation

- 1.Sen. Kang'ata Irungu, MP
- 2.Sen. Prengei Victor, MP
- 3.Sen. Haji Farhiya Ali, MP
- 4.Sen. Poghisio Samuel Losuron, EGH, MP
- 5.Sen. Omanga Millicent, MP
- 6.Sen. Judith Pareno, MP
- 7.Sen. Mutinda Kabaka, MP
- 8.Sen. Okong'o Omogeni, MP
- 9.Sen. Mohamed Faki, MP

Thank you, Madam Temporary Speaker. I request Sen. Were to second.

Sen. Were: Thank you, Madam Temporary Speaker and the Senate Deputy Majority Leader. I rise to second the Motion on the Approval of Senators to serve in various Select Committees.

(Question proposed)

The Temporary Speaker (Sen. Nyamunga): Do we have any reaction?

Sen. (Dr.) Langat: Thank you Madam Temporary Speaker. I should have contributed first but my comments were overtaken by Sen. Olekina and Sen. Wako. However, I would like to say that Sen. Wetangula had mentioned to the clerks the need to clearly put our titles and attachments. I always find my name lacking the title, "Dr.", yet I earned my PhD eight years down the line. I have mentioned it several times. I do not know why they do not include it.

Sen. M. Kajwang: Thank you Madam Temporary Speaker. Allow me to make some very brief comments in support of this Motion. I wish to associate myself fully with the comments and contributions that have been put forth by Sen. Wako who we respect a

lot. I am told that he is still the Attorney-General of the People's Republic of Kenya. He proposes that---

The Temporary Speaker (Sen. Nyamunga): What is your point of order?

Sen. (Dr.) Langat: Madam Temporary Speaker, it is not in order for Sen. Kajwang to refer to Sen. Wako as the Attorney-General of the People's Republic of Kenya when we have one legally appointed Attorney-General.

Sen. Wako: Madam Speaker, as much as I appreciate the statements of my learned colleague here, I am not the Attorney-General of the People's Republic of Kenya or the people's Attorney-General. I am Attorney-General Emeritus of the Republic of Kenya.

Secondly, you cannot have a shadow Attorney-General. Under our current Constitution, I doubt if it is permissible for anybody to appoint any cabinet. It was possible under the old Constitution. There is only one cabinet which is now in the process of being formed. I can, therefore, not exist in a non-existent cabinet. Again, I have not seen my name being announced as the Attorney-General of the People's Republic of Kenya.

The Temporary Speaker (Sen. Nyamunga): We appreciate that.

Sen. Mwangi: On a point of order Madam Temporary Speaker, it is wrong for a Senator in this House to quote another organization other than the Government that we have as having political powers yet this is a Senator that is so much respected. We only have one Government in Kenya that is led by President Uhuru Kenyatta. The others who went to swear themselves in are people who were just making fun.

The Temporary Speaker (Sen. Nyamunga): Continue Sen. Kajwang.

Sen. M. Kajwang: Madam Temporary Speaker, following the contribution by Sen. Wako, I have nothing more to add on to that debate. However, I want to specifically talk of the Sessional Committees to which we are nominating Members.

I want to make some very brief comments on the County Public Accounts and Investments Committee (CPAIC). I had the privilege to Chair the first Sessional Committee on County Public Accounts and Investments but just like Simon Makonde, we were appointed in January and we died in February. We had less than a month---

The Temporary Speaker (Sen. Nyamunga): One moment Sen. Kajwang. There is an intervention from Sen. Mwaura.

Sen. Mwaura: Sorry, Madam Speaker.

The Temporary Speaker (Sen. Nyamunga): I can see an intervention on my screen.

Sen. Mwaura: Madam Speaker, from my end, I am on the queue to speak.

The Temporary Speaker (Sen. Nyamunga): Okay. Proceed Sen. Kajwang.

Sen. M. Kajwang: Thank you Madam Speaker. The first Sessional Committee lasted for about one month. That was not sufficient time to carry out our induction. It was the time when members of staff were on leave. We were not able to achieve anything besides electing the Chairperson and the Vice-Chairperson. We also had some brief joint committee meetings with the Committee on Finance, Commerce and Budget.

I do not intend to lay the blame anywhere because we all understand the interesting circumstances within which we operated in the first Session of this House. I

wish to thank the leadership of this House for retaining the same Members to this Committee. There is wisdom in having that continuity. The nine men and women that are listed to sit on the County Public Accounts and Investments Committee are dedicated and have no other desire but to ensure that there is value for money for the people who live in the counties.

The new County Public Accounts and Investments Committee which I have been proposed to be a member, will have to deal with certain challenges. The issue of backlog is perhaps much more serious than we thought it was.

For the 2013/2014 Financial Year, this House or plenary has only received 11 reports from the County Public Accounts and Investment Committee. Of the 11 reports, none has been adopted by the House. Basically, this House has not carried out its oversight mandate as required by the Constitution.

In the 2014/2015 Financial Year of audit, the Auditor-General has submitted 47 county governments' reports and 47 county assemblies' reports. Of these reports, none has been tabled before this House. They are all at various stages of processing, but it is not done until a report is brought to this House and adopted by the House. What we are saying is that this House, since its formation, has not adopted and, therefore, it has not given its advice or view on the reports of the Auditor-General.

Madam Temporary Speaker, this Sessional Committee which has just one year to prove itself, will have to make sure that this House is seized of the reports of the 2013/2014, 2014/2015, 2015/2016 Financial Years. Right now, we should be considering the 2016/2017 Financial Year Report because the Constitution requires that this be brought within six months of the closure of a financial year.

It could be because of these challenges that the Committee on Rules and Procedures in the last Senate decided to hive off consideration of Controller of Budget reports to the Finance, Commerce and Budget Committee. This used to be within the mandate of the County Public Accounts and Investment Committee, but it has now been moved to the Sen. (Eng.) Mahamud's led Committee on Finance and Budget. I will not want to start a fight that we need to claw back this until we, as a Committee, are able and we can demonstrate to the House that we can deal with the backlog and the many issues that are before us.

But, Madam Temporary Speaker, there are also other current issues that I would like to bring to the attention of the House and to the Members who have been nominated to this Committee. Pending bills now stand at Kshs92.2 billion. We sat as the Finance and Budget Committee; and County Public Accounts and Investment Committee with the Controller of Budget and the Auditor-General and we realised that pending bills have increased by more than 100 per cent in an election year. Several counties have taken measures to deal with this matter.

For example, in Nairobi County, I saw the governor set up a committee comprising of the Auditor-General, Controller of Budget and various other stakeholders and I thought that was the right direction. But this House must also pronounce itself that there are certain counties where the governor is appointing his own cronies or people who report to him to give verification of pending bills. The same people who created the problem cannot be the same people we rely on to solve the problem.

Again, the verification of pending bills is only happening in counties where they have had new governors. But there are ten or so counties where the incumbents were re-elected into office. What is happening in those counties? So, I believe that the Senate, these committees we are proposing and the Finance and Budget Committee will have to give certain guidelines and directions so that we have a verification exercise that is not done by the same culprits and which is also time bound. Certain counties have said they are not paying bills until audits are done. But in there, there is a woman who probably delivered goods worth Kshs100,000; and that is all she needs to be paid to take her children to school; yet they are being told that Kshs92 billion of pending bills has to be audited. I call upon the Senate to consider that matter and provide appropriate guidance to county governments to ensure that the suffering of our people is reduced.

Madam Temporary Speaker, in terms of looking at the future, the monitoring and evaluation framework that we have talked about is an idea that we must make sure it is implemented in this Second Session of the Second Senate. Otherwise, we will be what we have said we should not be; which is to be morticians; we will be coming in after the fact. Your office of the Speaker holds the key to resolving this matter.

We have said it before, that the challenge is neither technical nor legal; the challenge is political. We will be relying on the office of the Speaker to help us break this stalemate because the regulations are ready. We set up a special task force that was chaired by Sen. Dullo, which has done an excellent job. I will not talk about or pre-empt what the committee has done, but I believe that the committee has put in a lot of effort to make sure that we guide this House accordingly on monitoring and evaluation.

Madam Temporary Speaker, this Sessional Committee on County Public Accounts and Investment should also go to *mashinani*. We now need to see the Senate *mashinani*. We need to see the County Public Accounts and Investment Committee verifying, auditing, getting views and feedback from the respondents at the county level, not just in Nairobi. As a proposed member of the Committee, that is one thing that we will be looking at.

Finally, Madam Temporary Speaker, we must build the capacity of the County Public Accounts and Investment Committees in the counties. We have 47 counties and 47 County Public Accounts and Investment Committees. We must ask them what they have done in the last four or five years and their plans for the next four or five years. We will be proposing a conference of County Public Accounts and Investment Committee chairpersons.

At some point, we hope that just the way the Devolution Conference and the Legislative Conference are on the Calendar of the Senate, we can have an accountability conference that brings together stakeholders who will be talking nothing but accountability, monitoring, evaluation and value for money for the monies that are sent down to the counties.

Madam Temporary Speaker, I beg support.

The Temporary Speaker (Sen. Nyamunga): Very well.

Proceed, Sen. Mwaura.

Sen. Mwaura: Thank you, Madam Temporary Speaker. First, I want to congratulate you because this is the first time I am speaking under your jurisdiction as a

Temporary Speaker as I rise to give my opinion on this list. First and foremost, I want to agree with Sen. (Dr.) Langat that it is important to ensure that Members are properly addressed with the titles because they do not just come like that. I mean, these titles are not just some addendums or otherwise, names that would just be found within a collegiate of a people. It is out of resilience and determination to serve the public that we acquire such entitlements.

Madam Temporary Speaker, yes, indeed, these committees are important. I was privileged to serve in the Rules and Procedure Committee of the National Assembly in the Eleventh Parliament and I want to implore upon Members who have been selected to serve. This Committee has a challenge because sometimes people do not actually meet, because your work is basically to look at the Standing Orders, and it is not a lot of work. This is a Committee that may be very dormant, but we may want to find creative ways of ensuring, in the spirit of bipartisanship and a bicameral House, to look at some of the Standing Orders for review that we passed in haste sometime at the end of the last Parliament. We would then be informed by the need to ensure the smooth running of business from either of the Houses.

One of the few things that I have in mind is how people can co-sponsor bills. Why do I say so? This is because if you are a Senator of a certain county or representing a certain interest, you may have the same interest with people who are from the same county or representing the same interest in the other House. Therefore, it will be important to create a mechanism where the Members co-sponsor bills. This will also help the Senate with regard to the issue of money bills, because this House does not generate money bills. The issue of money bills is a big contestation because, for instance, what is a money bill in terms of the wording in the proposed legislation? So it is something that you may want to look at, over and above the other challenges that we face. This includes even what has been alluded to before, about membership of certain committees that have a lot of backlog of activities, such as the County Public Accounts and Investments Committee.

Madam Temporary Speaker, coming to the County Public Accounts and Investments Committee, we have a lot of work to do because just today in the Finance and Budget Committee, of which I am privileged to serve as the vice chairman, we could clearly see that there are serious issues of basic auditing with regard to even people having the right imprests and proper documentation. On one hand, it could just be a case of carelessness, for example, not having a proper paper trail; which means that Kenyans are losing money and value for money in that regard. But it could also just be a question of capacity, because you could imagine how we have just, all of a sudden, expanded from one government to 48 governments. This is something that we need to look at.

Why am I saying so? It is because the world is not now concerned with this basic financial statement audits. People have moved to what we call performance evaluation, where they look at problematic aspects. Are Kenyans getting value for money? Are projects being implemented or are they just being documented for the sake of supporting certain expenditure? That is the case. If you travel around the country you will see that the amount of money that was spent on projects is not commensurate with what is on the ground. Those are some of the issues. The developed countries - a term that I find a bit

controversial- may be ahead of us and that is where we need to go. We need to have proper performance evaluation. I believe that Sen. M. Kajwang - who I hope will also come back as the Chair in this new session - agrees that this is the way to go. As Senators we would want to find a lot of relevance in terms of how we do performance evaluation.

Madam Temporary Speaker, another key issue that comes out in the County Public Accounts and Investments Committee, (CPAIC) is the need to ensure that we look at conditional grants to the counties. We have the ordinary sharable revenue that comes from our taxes, but there are also conditional grants that the World Bank, for example, is giving this country under the assistance development programme of about Kshs600 billion. This money is shared between national projects and those happening in the counties, based on devolved functions. But, are we able to monitor these and isolate them?

The minimum requirement is only 15 per cent of the ordinary sharable revenue. Over and above that, the monies that are being devolved are over Kshs300 billion. There should be full disclosure with regard to monies that are being given by bilateral and multilateral development partners. That is agreeable because it impinges on our national or sovereign debts. What is it that we are borrowing for? Are people getting value for money at the counties or people are enriching themselves? We need to have that direction in terms of those who will be privileged to serve in the CPAIC.

Madam Temporary Speaker, as I wind up, I want also to comment on the issue of delegated legislation. It is important to know that Parliament has been in a rather awkward situation because we make laws, but when we delegate power of legislation to whatever body; whether an independent office, a constitutional commission or a statutory body, sometimes we have seen situations where those regulations and gazette notices seem to work against the spirit of the very law that we pass in this august House. Therefore, it is incumbent upon the new Members who will serve - and I congratulate them- to make sure that in exercising the powers to legislate that we delegate, they should adhere to the goal that was set out in the mother law.

Today, we are still in court with the Salaries and Remuneration Commission (SRC) because of a gazette notice. The SRC has powers to make certain regulations or circulars based on legislations that we have originated. We need to look at that and mechanisms through which Parliament must hold accountable those whom it has delegated power to legislate; that they still become accountable to the oversight authority of Parliament.

Madam Temporary Speaker, I do not want to speak much. I congratulate those that will serve in the Committees. I hope that in this new Session we shall see a more robust Senate, full of agenda that is geared towards empowering people in the counties.

I support.

The Temporary Speaker (Sen. Nyamunga): Since this Motion does not concern the counties, I will now put the Question.

(Question put and agreed to)

APPROVAL OF SENATORS TO SERVE IN THE
COMMITTEE ON POWERS AND PRIVILEGES

Sen. Dullo: Madam Temporary Speaker, I beg to move the following Motion:-

THAT, pursuant to Section 15 (1) (b) (ii), of the Parliamentary Powers and Privileges Act, and Standing Order No.183, the Senate approves the following Senators nominated to serve in the Committee on Powers and Privileges, in addition to the Speaker of the Senate, who, pursuant to Section 15 (1) (b) (i) of the Parliamentary Powers and Privileges Act, shall be the Chairperson of the Committee.

1. Sen. Falhada Iman, MP
2. Sen. Kimani Wamatangi, MP
3. Sen. Millicent Omanga, MP
4. Sen. Kang'ata Irungu, MP
5. Sen. Rose Nyamunga, MP
6. Sen. Sylvia Kasanga, MP

I believe that this is a straightforward Motion.

I beg to move and request Sen. Were to second.

Sen. Were: Madam Temporary Speaker, I rise to second the Motion on the approval of Senators to serve in the Committee on Powers and Privileges. These are names that have been approved by the various parties and so, there should be no much debate on them.

I beg to second.

(Question Proposed)

The Temporary Speaker (Sen. Nyamunga): Since this Motion does not concern the counties, I will now put the Question.

(Question put and agreed to)

BILLS

Second Readings

THE URBAN AREAS AND CITIES (AMENDMENT)
BILL (SENATE BILLS NO.4 OF 2017)

THE IRRIGATION BILL (SENATE BILLS NO.5 OF 2017)

(Bills deferred)

ADJOURNMENT

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, it is now time to adjourn. The Senate stands adjourned until tomorrow, Thursday, 15th February, 2018 at 2.30 p.m.

The Senate rose at 5.35 p.m.