

**PARLIAMENT OF KENYA****THE SENATE****THE HANSARD****Wednesday, 14<sup>th</sup> June, 2017**

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

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

**PRAYER****PAPERS LAID**

**Sen. Kagwe:** Mr. Speaker, Sir, I beg to lay the following reports on the Table of the Senate today, Wednesday 14<sup>th</sup> June, 2017:

**REPORTS ON FINANCIAL STATEMENTS OF TAVEVO  
AND KWALE WATER & SEWERAGE COMPANIES  
FOR FY 2015/2016**

Report of the Auditor-General on the Financial Statements of TAVEVO Water and Sewerage Company for the Year Ended 30<sup>th</sup> June, 2016.

Report of the Auditor-General on the Financial Statements of Kwale Water and Sewerage Company Ltd for the Year Ended 30<sup>th</sup> June, 2016.

**THE NATIONAL GOVERNMENT BUDGET IMPLEMENTATION  
HALF YEAR REVIEW REPORT FOR FY 2016/17**

The National Government Budget Implementation Half Year Review Report for the Financial Year 2016/17 by the Controller of Budget.

**AUDITOR-GENERAL'S REPORT ON EMBU  
COUNTY ASSEMBLY MORTGAGE SCHEME FUND  
FOR THE PERIOD 2013- 2016**

Report of the Auditor-General on the Embu County Assembly Mortgage Scheme Fund for the three year period ended 30<sup>th</sup> June, 2016.

THE COUNTY GOVERNMENT BUDGET IMPLEMENTATION  
REPORT FOR FY 2016/2017

The County Government Budget Implementation Half Year Review Report for the Financial Year 2016/2017 by the Controller of Budget.

REPORT OF THE ICT COMMITTEE ON THE WORLD  
E-PARLIAMENT CONFERENCE IN CHILE

Report of the Standing Committee on Information and Technology on the World E-Parliament Conference at the Chamber of Deputies in Valparaiso, Chile.

REPORT OF THE ICT COMMITTEE ON A STUDY VISIT TO JAPAN

Report of the Standing Committee on Information and Technology on a study visit to Japan.

REPORT OF THE ICT COMMITTEE ON THE END OF TERM  
OF THE 11<sup>TH</sup> PARLIAMENT

Report of the Standing Committee on Information and Technology on the end of the 11<sup>th</sup> Term of Parliament Committee Report.

*(Sen. Kagwe laid the documents on the Table)*

**The Speaker** (Hon. Ethuro): Sen. Karaba, proceed.

**Sen. Karaba:** Mr. Speaker, Sir, I beg to lay the following Report on the Table of the Senate today, Wednesday 14<sup>th</sup> June, 2017:

PERFORMANCE REPORT OF THE IPOA  
FOR JULY TO DECEMBER, 2016

Performance Report of the IPOA for July to December, 2016.

*(Sen. Karaba laid the document on the Table)*

**STATEMENTS**

**The Speaker** (Hon. Ethuro): I do not see any request. Let us go by the Order Paper.

Proceed, Sen. Khaniri.

LOUD MUSIC IN LIONS EYE HOSPITAL AND CONSTRUCTION  
OF TEMPLE AND AUDITORIUM IN LORESHO

**Sen. Khaniri:** Mr. Speaker, Sir, this Statement was requested by the Senator for Murang'a County, the Deputy Speaker, if I am not wrong. The Statement had six questions.

We received a response from the Cabinet Secretary (CS) in charge of the Ministry of Environment and Natural Resources, Prof. Judy Wakhungu, in which part (1) and (2) of the Statement - which I thought was very critical - was not answered.

*(The Speaker (Hon. Ethuro) consulted with the Clerk-at-the-Table)*

Mr. Speaker, Sir, I will need your guidance. On the issue of noise pollution, the Cabinet Secretary said that was not under her jurisdiction and that we can get answers from the Nairobi City County Government. However, she answered Part (3), (4), (5) and (6). With your permission, I can read the response.

**The Speaker** (Hon. Ethuro): So, what happens to the first two parts?

**Sen. Khaniri:** Mr. Speaker, Sir, may be if I read the reply, then the House can be informed of the response that came from the CS. Basically in Part (1) and (2), she says that the issue of noise pollution is a devolved function and can only be responded to by the Nairobi City County Government.

**The Speaker** (Hon. Ethuro): Go ahead.

**Sen. Khaniri:** Mr. Speaker, Sir, I beg to give the following response:

The first question was: Whether the Lions Eye Hospital is licensed to play loud music in the Hospital up to and including at night to the detriment of the patients and residents of Loresho surrounding the hospital.

The control of air and noise pollution and other public nuisances and outdoor advertising were devolved to the county governments. This is in line with the provisions of the Constitution of Kenya 2010, Article 3 as read with Articles 185(2), 186(1) and 187(2) which set out the devolved functions.

The Environment Management and Co-ordination that is, Noise and Excessive Vibration Pollution Control Regulations 2009 contained in the Legal Notice No.61 of 2009 which were gazetted under Section 147 of the Environment Management and Co-ordination Act (EMCA), protects residents from intolerable noise pollution. In view of the foregoing, I wish to inform you that these regulations are currently being enforced by the respective county governments, including the Nairobi City County Government in this case since it is a devolved function.

The second question was: What is the Government doing to stop this health hazard that is a threat and an inconvenience to the patients at the hospital and residents of Loresho?

Mr. Speaker, Sir, since this is a devolved function, the response to this question is adequately covered in question (1). As I said, she had referred this to the Nairobi City County Government.

The third question was: What is the Government doing to compensate patients previously affected by noise pollution while admitted at the Hospital?

Section 3(1) of the Environment Management and Co-ordination Act Cap.387 states that:

- “(1) Every person in Kenya is entitled to a clean and healthy environment.
- (2) Has the duty to safeguard and enhance the environment
- (3) If a person alleges that the entitlement conferred under sub-section (1) has been, is being or is likely to be contravened in relation to him, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress and the High Court may make such orders, issue such writs or give such direction as it may deem appropriate to provide compensation for any victim of pollution and the cost of beneficial uses lost as a result of an act of pollution and other losses that are connected with or incidental to the foregoing.”

The Authority is, therefore, not obligated to make any compensation for any alleged pollution, since this can only be effected on the strength of a court order.

The fourth question was: What is the religious identity that intends to construct a temple and auditorium in the residential area?

Mr. Speaker, Sir, the development of a temple and auditorium is being undertaken by the Shree Nairobi Sthanakvasi Jain Mandal Registered Trustees, a religious group of Jains with approximately 350 members. The community worships at a premise on Forest Road, Nairobi and bought the plot in Loresho four years ago to put up a community centre.

The fifth question was: Whether the Chairman can source from the Ministry and table all documents that authorized and licensed the construction of the temple and auditorium?

Mr. Speaker, Sir, the proponent submitted an Environment Impact Assessment (EIA) Report to the National Environment Management Authority (NEMA) on 21<sup>st</sup> September, 2016. This is reference number NEMA/NRB/ PR/5/1/9866 and after due EIA licensing process, an EIA licence number 0038324 was issued with conditions. (Attached as Annex 1)

The last question was whether the Government is aware that the new facilities of the intended construction include a parking space for 450 vehicles. In addition, whether the necessary expansion of the sewerage system and other common amenities in Loresho to cater for the huge population that will use the temple and auditorium once completed have been done?

Mr. Speaker, Sir, according to the information contained in the project proposal EIA report and which components have been issued with an EIA licenses involves the development of a temple and auxiliary facilities whose characteristics are as follows:

(a) A basement consisting of 193 parking bays, underground water tank, fire fighting hydrant and a pump room.

(b) A ground floor that will comprise of an auditorium having a lounge, library, exhibition area, booking office, control room, two changing rooms, two service rooms and a VIP room, prayer hall, reception hall, kitchen, furniture store, office and store rooms and 49 parking bays.

(c) A mezzanine floor that will include auditorium with board room, reception, work stations, cabin stores.

(d) First floor that will include auditorium with a service room, projector room, canteen, kitchenette, lobby area, caretaker area having two bedrooms, living room, kitchen and utility room.

Mr. Speaker, Sir, other salient features will include: washrooms, driveway, wash areas, generator room, transformer room, refuse room, gas cylinder store, perimeter fence, staircases, lift shafts, guard houses, storm water drainage and landscaped green spaces.

Mr. Speaker, Sir, the NEMA sought comments from the relevant lead agency; the Nairobi City County Government on the aspect of sewerage management. During review of the proposed project, EIA report, the authority established that the building plans were approved by the relevant lead agency and, therefore, were satisfied that adequate mitigation measures were provided for any potential adverse impacts. Further, the EIA license has provided specific conditions to which the project proponent must adhere to and implement during the entire project cycle.

Mr. Speaker, Sir, on 15<sup>th</sup>, November, 2016, the NEMA received an inquiry from the Kenya Alliance of Residents Association (KARA) as to the approval status of the project. From the information attached in the inquiry, a site inspection was made on 23<sup>rd</sup> November, 2016 and the proponent was asked to stop the development and hold a public meeting with the residential association.

From the meeting with the stakeholders, it was resolved that the construction could proceed on condition that construction activities are in compliance with the EIA license No.0038324 conditions and any other improvement orders that NEMA may serve on any emerging environmental issues. Consequently, NEMA allowed the development to proceed.

It is noted that:-

- (i) The issues raised were adequately addressed during the meeting;
- (ii) The public meeting addressed the concern from the residents that they had not been consulted as they raised their concerns with the development; and,
- (iii) The project is compatible with the surrounding land uses with another temple right opposite the construction site.

**The Speaker** (Hon. Ethuro): Are there any Members interested in supplementary questions?

**Sen. Kagwe:** Mr. Speaker, Sir, I applaud the answer given by the Chairman. However, the most important aspect that has been raised and that applies to the rest of the counties in Kenya and, indeed, many towns, is the issue of noise pollution. It is very clear that a lot of us are suffering. If you recall, there was a period when in the Eastlands part of the city, bars and social amenities were opened next to schools. These days, children have a problem doing their homework at night because of the level of noise that is present in many places. A civilized nation must begin to think about the social behaviour and environment in which we live. The quality of life must include a certain modicum of behaviour where a person expects to be safe in his or her house and not to be exposed to unnecessary noise by people who are around and do not care.

The noise does not only come from bars; it also comes from religious associations especially on Sunday morning. Religious organisations, both Christians and Muslim, are now being located right in the middle of residential areas where people are persistently disturbed by the beating of drums.

I am as a good Christian as any other person. I am sure that Sen. Billow Kerrow is as good a Muslim. However, enough is enough.

**Sen. Billow:** On a point of order, Mr. Speaker, Sir. You heard the hon. Member expressing concern that religious institutions such as mosques and churches are put up in residential areas. Is he in order to suggest that Kenyans should not pray in a church or a mosque? Certainly, does he expect churches and mosques to be put up in industrial areas? Is he in order to suggest that we cannot worship when in our living rooms and homes?

**Sen. Kagwe:** Mr. Speaker, Sir, I have no wish of sending religious institutions to the industrial area. However, there is nothing wrong with them being in the industrial area as well because there are people who work there who also need to pray. My point is that the noise that our people are being subjected to has reached an unacceptable level. Every nation in the world is now contemplating this issue. There is nothing wrong with our churches and mosques operating at a reasonable level of noise, especially those religious institutions that are praying even at midnight.

**The Speaker** (Hon. Ethuro): Order, Sen. Mutahi Kagwe. It is supposed to be clarification time.

**Sen. Kagwe:** Mr. Speaker, Sir, let me seek clarification.

**The Speaker** (Hon. Ethuro): Proceed.

**Sen. Kagwe:** Mr. Speaker, Sir, my clarification is: Since this is a devolved function, this House should consider, through the Chair, legislation to affect the level of noise that our people are subjected to, especially by those religious organisations that allow their followers to pray at midnight, *kitu wana ita keshu*; beating drums the whole night. I emphasise that this matter should be taken more seriously.

**Sen. (Dr.) Machage:** On a point of order, Mr. Speaker, Sir. I listened to the Vice Chairman very carefully. Apparently, he did not have an answer for question (1) and (2) which were the fulcrum of the statement sought, on what the Government is doing to stop the noise pollution that is negatively affecting the hospital and the residents of Loresho. That answer is missing. Am I in order to request that the Vice Chairman brings an adequate answer tomorrow?

**The Speaker** (Hon. Ethuro): Sen. Khaniri, I was also wondering whether hospitals are allowed to play music. I thought that there is a law that a person is not allowed to hoot when they are in the hospital compound, leave alone playing music, whether in low or loud tones.

Sen. Karaba.

**Sen. Karaba:** Mr. Speaker, Sir, I would also like to hear from the Vice Chairman more on the issue of where some bars are erected next to the doorsteps of the entrance to schools. Will he consider that, in light of the Loresho case? There are many cases arising these days where students, teachers and parents are complaining about the location of pubs and clubs next to the school entrances.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, I was listening to this debate in the car as I was coming and one thing strikes me. Is it possible to deal with this issue if county governments do not put in place village councils? In the County Governments Act, the basis of devolution is the village councils. If we had village councils who take care of community interest, I am quite sure that things like churches making noise at night in a particular village would be a community affair because village councils represent the first level of self governance and devolution. The mistake that counties have

made is not to respect the Constitution and the County Governments Act and put in place village councils which are an extremely important aspect of self governance and devolution.

**Sen. Ndiema:** Mr. Speaker, Sir, in the answer to the Statement read, it is indicated that there are some areas that the Ministry could not respond to yet these are matters that concern the environment which is the mandate of the Ministry.

Is it in order for the Ministry to shy away from its responsibility? Cabinet Secretaries are in charge of policy. Certainly, it has the powers and mandate to coordinate with the county governments on issues like this one. Is it in order for the Ministry to run away from its responsibility on policy issues that concern environment, even if the function is devolved?

**Sen. (Eng.) Muriuki:** Thank you, Mr. Speaker, Sir. Is the Chairman in order to go round and round and avoid the real answer to this question? Which is that we Kenyans have worked very hard to convert our nation into a money society such that; the rules are there, regulations are there, the Government has done very much what can be done but because we have converted ourselves into a money society, someone will go and open a bar next to a school as Sen. Karaba has said. However, because that individual is able to use money and go and influence the ones who are supposed to enforce those rules, that is why this situation goes on and it will not stop.

Mr. Speaker, my suggested solution, for whatever it is worth, is that we have a big job to do so that we can bring ethics to our conduct in our society. Otherwise, as it is now, bars will be there next to the school, next to the hospital until we change from a money society.

Thank you.

**Sen. Khaniri:** Mr. Speaker, Sir, as I said at the beginning, it is unfortunate. I regret that part one and two of the question were not adequately responded to by the Cabinet Secretary and for the reasons that I already gave.

Of course, if we had time--- I have an obligation to this House to provide answers. If we had time, I would have gone further to seek for these answers from the County Government of Nairobi or compel the Cabinet Secretary to get the answers from the County Government of Nairobi and provide this House with answers. We will still do that because the question is the property of the House. We will still insist on part one and two being answered adequately to the satisfaction of this House.

Mr. Speaker, Sir, having said that, there is no justification. I agree with you. What explanation would a hospital give - playing music in hospital. There is no justification whatsoever. I do not think playing music is a therapy in hospitals. I have dealt with part one and two of most of the questions that have been raised by Members on noise pollution.

In my opinion, we have adequate legislation in the National Environment Management Authority (NEMA) Act and other legislation for this noise pollution control but it is just a matter of enforcement. Moving forward, since the Cabinet Secretary says it is a devolved function, this Senate should rise to the occasion and ensure that these particular laws and regulations are fully adhered to, and if there is any lacuna in the law, then it will be the responsibility of this to come up with legislation and regulations that will ensure that Kenyans live in a noise free environment.

Otherwise, I am not satisfied that this question has been adequately answered. We have not done justice to this statement. I still want to promise the House that my Committee will write to the Cabinet Secretary and express the sentiments of this House that we are not satisfied with the answer and that she must ensure that she provides written replies to this House.

### COMMUNICATION FROM THE CHAIR

#### VISITING DELEGATIONS FROM BARINGO AND GARISSA COUNTY ASSEMBLIES

**The Speaker** (Hon. Ethuro): Order, hon. Senators. Before we move to the next item, I would like to acknowledge the presence in the Speaker's Gallery, of visiting Members of the County Assembly (MCAs) of Baringo and staff from Garissa County Assembly. I request each Member of the delegation to stand up when called out so that he or she may be acknowledged in the usual Senate tradition.

Hon. Risper Kimaiywa

Hon. Susan Wacuka

Mr. Lopoiyo L. Jonathan

Mr. Hassan Mohammed Madi

Mr. Ali Noor Hassan

Mr. Abdi Noor Duale

On behalf of the Senate and on my own behalf, I welcome you to the Senate. I wish you well for the remainder of your day.

I thank you.

Hon. Senators, do we have any other statement? Let us move to the next order.

### MOTION

#### APPROVAL OF REPORT OF THE PRC ON THE PERIODIC REVIEW OF THE SENATE STANDING ORDERS

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, pursuant to Standing Orders 249 and 250, the Senate approves the Report of the Procedure and Rules Committee on Periodic Review of the Senate Standing Orders laid on the Table of the Senate on Tuesday, 13th June, 2017 and that the amended Standing Orders take effect at the commencement of the 12th Parliament.

Mr. Speaker, Sir, this report that was laid on the Table is outlined in five sections. Part I gives the background to the review of the Senate Standing Orders. Part II establishes and gives the mandate of the Procedure and Rules Committee (PRC). Part III discusses the period review of the Senate Standing Orders. Part IV gives an overview of the proposed amendments to the Senate Standing Orders. The last Part gives the recommendations.

We also have six Annexes to this report. Annex I is an outline of the proposed amendments. Annex II two is the text of the Standing Orders as amended. Annex III is



communication issued by the Speaker on 15<sup>th</sup> November, 2016. Annex IV provides copies of the public advert issued on 18<sup>th</sup> November, 2016 and submissions received in response thereto. Annex V gives the copies of submissions received from various directorates and departments of the Senate. The last Annex gives the minutes of the PRC during which the report was adopted.

Mr. Speaker, Sir, allow me to thank the following Members who were in this Committee, and spent a lot of their time to collect and collate the information that has hitherto been included in this report:-

Sen. David Ekwee Ethuro - Senate Speaker and Chairperson of the Committee.

Sen. Kembi-Gitura - Deputy Speaker of the Senate, Member.

Mr. Speaker, Sir, Article 124 of the Constitution mandates each House of Parliament to establish Committees and make Standing Orders for the orderly conduct of the proceedings of the House, including the proceedings of the Committees.

The current Standing Orders were adopted by the National Assembly on 9<sup>th</sup> January, 2013 pursuant to Article 262, Section 7 of the Sixth Schedule of the Constitution. The Standing Orders have subsequently been amended by this Senate on the following various dates; 27<sup>th</sup> February 2014, 25<sup>th</sup> November 2014, and 16<sup>th</sup> June 2016. This was pursuant to Standing Order Nos. 247 and 246.

Standing Order No.249 requires that periodic review of the Standing Orders be carried out at least once in every term of Parliament and not later than six months which we intend to amend with this Report that I am moving; that this period is reduced to three months. This function is performed by the Procedure and Rules Committee (PRC) which is expected to make a report to the Senate recommending the Standing Orders, if any. to be amended.

A Lot of reports were collected from the Membership of this House and I thank every Member that took time to rethink about the inefficiencies of some sections of our Standing Orders. I do not intend to labor to go through every part of the Standing Orders that we have so reviewed, but I will make a few comments.

The main role carried out by the Committee may be classified under the main categories which are; editorial clean ups, for instance, to replace references to Rules and Business Committee with the Senate Business Committee, amendments relating to structure of the Standing Orders such as rearrangement of parts, merging, splitting, editing, and renaming of various provisions and so on in order to give the standing orders better flow and clarity. Included, is also clarification of the existing procedures and practice in the Senate, for example, by providing that a Senator who has spoken to a Motion may not move a Motion to closure of debate on the same Motion. This is for a very simple reason; you cannot really block others from expressing their views once you have expressed yours.

There is also the aligning of provisions of the standings orders to the Constitution and relevant statutes; for instance, the procedure for consideration of certain instruments and, lastly; substantive amendments relating to the procedure for consideration of disposal of business before the Senate including Motions, Bills, Statements and Petitions.

Mr. Speaker, Sir, among the areas where amendments have been proposed are the concurrence procedure on Bills, application of rules on privilege of Members, consideration of Presidential Memoranda on Bills, financial procedures and considerations of Petitions, amongst others. The topics I have mentioned are so relevant

that they will actually tilt the direction and the substance of the coming Standing Orders book.

I, therefore, request this House to keenly consider the amendments that have been proposed in this Report and, if possible, pass those recommendations without any amendments. In so doing, we will not only have saved time for this House, but we will have captured the real thought of the Committee and Members who took time to consider this Report.

I beg to move and call upon Sen. Kagwe to second.

**Sen. Kagwe:** Thank you, Mr. Speaker, Sir. I rise to second the Motion and to thank the Chairman and all those who participated in this exercise. Clearly, a lot of work went into it and yet a lot more work still needs to go into it. The introduction of a bicameral Parliament in this Republic also had implications on the Standing Orders. I think with the wisdom of hindsight, there are now certain aspects of the Standing Orders that we must seriously look at, even as we finish the exercise.

I want to particularly bring to the Members' attention, my intention to change Standing Order No. 146 as spelt out in Standing Order No. 63 of this particular proposed procedure of amendment. In Standing Order No. 146, the change that has been proposed in the Standing Orders relates to the aspect of Bills that are being considered. In other words, a Bill which is interrupted at the end of a session with leave of the Speaker. That has been addressed and, therefore, a Bill that has been interrupted at the end of a session shall resume.

However, the biggest challenge in these Standing Orders in view of the bicameral Parliament is actually Standing Order No. 146(3). This is because in Standing Order No. 146(3), consideration of a Bill which has not been concluded at the end of a term of Parliament shall lapse. I realise that this comes out of practice of parliaments particularly in the Commonwealth.

Mr. Speaker, Sir, time has come, at least, in this country where we must address this issue. My proposed amendment on that will be that it should read the same way it reads in Standing Order No. 146 (2) that it shall resume. The reason for this is that if you look at our Order Paper today, there are 24 Bills. Some are our own Bills while others are Bills that have been referred to us by the National Assembly. The question that arises is what is going to happen to those 24 Bills?

Those 24 Bills and the other ones that are still pending in the National Assembly amount to all the work that has been done by the Eleventh Parliament. The implication of this is that this Parliament would have wasted so much money in human and financial resources travelling overseas and benchmarking in other nations. For example, I have just tabled the Report of a visit of the ICT Committee to Japan and Thailand. Those visits were benchmarking on the Cyber Security Bill. It means, therefore, that a new Committee would have to start all over again to spend a couple of millions of shillings going to Thailand, Japan or other countries that they want to benchmark.

If you look at the Standing Orders of today, and you see the 24 Bills and there is no likelihood, the way I look at it, of those Bills being passed tomorrow, what does that mean? Does it mean that all the work we have done over the last four and a half years goes into waste in that legislative effort?

Are we saying that unless Standing Order 146(3) is changed, all Bills that have been passed by the Senate and referred to the National Assembly, but have not been

concluded, will lapse once we adjourn *sine die*? This is a fairly serious issue. Looking at the Standing Orders, it would be inefficient and wasteful of us if we were to say all that work will not be considered again.

If you look at the Executive which is part of the Government, its work continues even if there is change of regime. In other words, work that has been going on with the previous Government continues. The incoming Government continues carrying out obligations of the previous regime which are both national and international in nature. This should be the case with the legislature because we are running a country and not a Parliament. Therefore, we should be thinking of how to continue and save money.

Madam Temporary Speaker, the issue of Brexit in the United Kingdom was started by the former Prime Minister, David Cameron and he left office before he concluded it. Currently, it is the Prime Minister, Theresa May who is carrying on with it. Probably tomorrow she will not be in office and somebody else will continue running the affairs of the United Kingdom. There may be changes or amendments on an issue that was initiated by the previous Government, but the subject matter continues. We should take advantage of what has been started by others and avoid being wasteful in the management of our country's affairs.

Madam Temporary Speaker, I agree with the number of the Committees that have been proposed in this amendment. This is because one of the mistakes that we made in this Senate was to create many Committees which subjected the 67 Senators here to impossible tasks. We ended up in a situation where one Senator became a member of three or four Committees because we wanted each committee to have enough membership. Worse still, was the financial burden that was borne by the various committees. Each committee got so little resources that it was unable to effectively perform its functions.

Madam Temporary Speaker, one of the amendments that we should propose in our Standing Orders when creating committees is to have consultations between the two Houses of Parliament. For example, the Standing Committee in the National Assembly that deals with Information Communication and Technology (ICT) matters deals also with energy. If you look at the proposals here, the Senate one will deal with ICT and education matters. Therefore, it means without consultation of both Houses, you will find that you are dealing with two committees at the same time. Consequently, this may result in cross-referencing and cross-purposes, thus making the whole relationship inefficient. It would well be worth our while as Parliament to discuss this matter jointly; to have the committees created in such a manner that they can relate directly rather than have a large membership.

Madam Temporary Speaker, the other aspect is with regard to the petitions under Standing Order 227. A new method is required to deal with petitions. As much as we want to practice democracy to its fullest extent, the fact remains that the sheer number of petitions being presented to this House is such that there would be need to have a committee that will deal with petitions. In other words, these petitions should not be referred to the sessional or departmental Committees. For example, there are so many pending petitions before the Committee on Finance, Commerce and Budget which we will not deal with before we adjourn.

There should be a minimum threshold for what constitutes a petition. This is because some petitions are frivolous, but we are duty bound to look at them, anyway. If

people have got political wars in the counties and one person is fighting the other person and it is clear that it is all a political battle, should we then be part of that battlefield by dealing with the petition that has got no substance? These are the issues that arise. In further amendments to the Standing Orders, we should create a minimum threshold for what constitutes a petition.

Madam Temporary Speaker, with those few words I hope that the Committee in its further discussion on this issue will address that matter, particularly Standing Order 146 (3). I hope that in the Twelfth Parliament this matter will be addressed.

As I finalize, allow me to take this opportunity, not only to thank these people, but thank you Madam Speaker, the Speaker's Panel, particularly Hon. Ethuro and the Deputy Speaker, Sen. Kembi-Gitura; for the work that they have continued to do for this Senate. Those of us, and I include myself, who are not going to be in the Twelfth Parliament wish to also thank our colleagues. I want to take this opportunity to thank my colleagues for the hard work that they put in Motions, Petitions, Bills and generally, their commitment to the work of this House.

As the first Senate, we have done a tremendous amount of work amid a lot of issues and problems; being dismissed outrightly by the National Assembly and by the Executive, sometimes. However, we have persistently continued to uphold our function of supporting and defending devolution in this country.

I wish those who will be elected and those who will be re-elected well. I wish those who will be running for other seats well, Madam Temporary Speaker. I hope you succeed so that those of us who will be back in business would at least have a credible number of parliamentarians to deal with the business of this House.

I wish all Members success in their endeavours. God bless this Senate and Kenya.

*(Applause)*

*(Question Proposed)*

**Sen. (Eng.) Muriuki:** Thank you, Madam Temporary Speaker. My full name is Muriuki Karue Muriuki. Before I say whether I support this Motion or not, let me say a few things.

Let me start off by congratulating this Committee. They have really done the work we gave them to do. Therefore, whether we agree with one particular amendment or all of them in general, that is neither here nor there. The point is they have done their work of delving into various aspects of the Standing Orders, the rules and so on. However, there is nothing really drastic which we can say has changed from where we are coming from to what now has been proposed.

Some of the sentiments which have been expressed by various Members--- I also have the same concerns on the way the legislative function of the Senate has been conducted or the success of it. It is not to do with the Standing Orders, but something emanating from the Constitution itself. Previously, when we had a single or the Unicameral Parliament, things were orderly because we had only one Government with no devolved government and we had one committee here. However, the current

Constitution came with a lot of good advantages to the *wananchi*, we established the Senate.

However, we seem to have sort of established the Senate in a hurry. For example, we have been labouring in this House to call it an "Upper House". However, you can obviously see there is no substance to it because the Constitution has structured the Senate in such a way that Bills will take almost forever before they are passed here because of the requirement of a very high threshold. In comparison, the threshold to pass a Bill in the National Assembly is 50 Members out of 349 Members.

To that extent I would like to cite that to pass a Bill in the National Assembly, the quorum to discuss or even vote is 50 Members out of the 349. So, for a Bill that comes from either here or the National Assembly is very easy to process because you need only 26 Members out of 50 to pass a Bill and that is it. Here, you need half of the Members or half of the delegations. We have that complication. Whether it is a good thing or not; that the counties have equal votes and we need that high threshold and so on, it is one aspect which has grounded us. This is because for us to be able to vote and effect any legislation, we need such a high threshold that personally, I do not think it is achieving anything.

If you look in Order Paper today - and I do not think all the Bills which we have are all included in this Order Paper--- We are about to close the Senate having achieved literally nothing or very little because most of the major Bills--- If you look at Order No. 10 - The County Pension Scheme Bill (Senate Bill No.20 of 2016) - it is probably the one single legislation which this House was going to bequeath the people of this country and the workers in the county governments, so that they can have a pension; something to look forward to when they retire.

The fact that we are not able to do that is a failure of this House. But if you look at it, it is a failure emanating from the way this House is constituted from the Constitution. As I have said, the National Assembly legally requires only 26 Members out of the 349 Members to pass legislation. This House needs more than half of the Members. As a result, I would like to urge the incoming Senate--- and maybe I should take this opportunity to say that I am a retiring Senator. I am neither defending my sit nor going for any other sit. At some stage I did harbour the idea that I could probably stand for governorship in my county - Nyandarua County - and the voice there was quite loud saying: "We told you to be Governor in 2013 and you refused; now we are electing somebody else." I respected that and we are going on. So, I am retiring. I will not be here and I am not going to be in any political forum.

I would like to urge the incoming Senate to look seriously into causing a referendum to happen, so that we revisit the Constitution and make this House truly an Upper House or do away with it. As we are now, this House is not achieving the purpose which we thought it would do. All over the world, the Senate is an Upper House. An Upper House means a senior House. It can originate legislation, but its main work is to moderate, so that things which are done in the Lower House can come here and be moderated. I am quite sincere that if we do not change the Constitution and make this House truly an Upper House, then there is no point having it.

Last but not least, when we talk about the Bills which have not been passed because of the handicaps I mentioned and the other Bills which have gone to the National Assembly and they lie there, I think they are 15 or thereabout--- They have been passed

there and as per Standing Order 146, they will die. I agree with the Member who just spoke before me that that Standing Order 146 should be revisited both in the Senate and the National Assembly.

It is not right that all the work, like I know there are about two Bills to my credit; The Potato Produce and Marketing Bill and the County Industrial Development Bill--- They were passed here after about two years. Now if they die, which is what is going to happen, all the work which has been done by this House, including through the Committees, public hearing and all that will go to waste; it is not fair.

The real elephant in the room is the reports of this House pertaining to the oversight function. I am a Member of the County Public and Investment Committee and we have done all the accounts for 2013/2014, but they have not been adopted by the House, which means they are worth nothing as far as the rules are concerned. We have looked at 2014/2015 and I think we have finished like 10 of them. Because of this rule that what has been done by the other House sort of dies, it is very unfortunate because it will either mean that the accounts of each of the 47 counties have to be repeated or governors will get away with 'murder' as it were.

Therefore, presuming that the House is not bound by that because we have adopted these Standing Orders, that is not the end of it, it can be revisited midstream. On that basis, I wish to support the Motion on that basis and take this opportunity to wish everyone well. As I said, I am retiring and not defending my sit. So, definitely I will not be in the Senate. I wish everyone success in the positions they are seeking. We would like to have continuity and hope that we are going to get enough Members, who are sitting Members of this Senate, continuing into the new Senate, so that at least there is continuity and some of the sentiments which we expressed will continue.

Before I sit down, let me cite, on the same premise of the handicap we have as a Senate. We have an argument between us and the National Assembly with regard to the Division of Revenue Bill. When you look at the way the Constitution is structured, it is such that the National Assembly goes via Article 221, which gives them power to do an Appropriation Bill and give money to the National Government, but not to the county government. Logically, they should not because they should wait for the Division of Revenue Bill, so that they know how much is for the national Government and be able to do the budget for it and continue. But because the Article is silent, it means they will hide behind that and go ahead, which I think they have already done, to do appropriation for the national Government and it continues, while the county governments lie without money.

As far I am concerned, the biggest score which Kenyans did with the new Constitution was devolution. So, if you do not fund devolution, it means the whole agenda of the new Constitution comes to zero, because for the next so many months, there will be no money going to the county governments, while the National Government proceeds. This is not fair. The national Government funds the Parliamentary Service Commission (PSC) and other commissions. From a budget point of view, they are part of the national Government. This means that Parliament and other institutions and commissions will be funded, but not the county governments.

I think the incoming Senate has a duty to cause a referendum to happen in order to revisit the Senate and make it an upper House, the way it is in other countries.

Madam Temporary Speaker, with those few words, I wish to support.

**The Temporary Speaker** (Sen. Ongoro): Thank you very much Senator. The Senator for Homa Bay.

**Sen. M. Kajwang:** Thank you, Madam Temporary Speaker for giving me this opportunity to contribute to this particular matter. This House has an obligation to review the Standing Orders on a regular basis and make sure that they are fit for purpose, and ensure that this House fulfils its obligation as the House of reason and, as expected, the Upper House in the constitutional dispensation of Kenya.

I wish to congratulate and thank the Members of the Committee. I notice that you are also a Member of the Committee. I do hope they will give you an opportunity to append your signature to the Report. I noticed that your signature was among the few that were missing, but I do believe that you agree with the proposals in this Report.

A number of the amendments here are really procedural. Some of them are typos and some just a re-grouping and re-classification of the Standing Orders. I want to talk on just a few of the areas where the Committee has done a good job. Sen. (Eng.) Karue, who has declared that he is not coming back to this House, came up with a Bill on impeachment which is still sitting somewhere. One of the areas where there was a deficiency in the Standing Orders was clarity and detail on the impeachment of county governors.

We have always found ourselves in a situation where we set up a Committee to investigate charges against a governor and the Committee comes back with a ruling that ties the hands of this Senate. I am glad that in the proposals in these Standing Orders, we have provided greater clarity on the procedure for dealing with governors who have been brought here on impeachment charges. At one point, we attempted to listen to the charges against a governor in Plenary. You do recall that there was a grey area because that had not happened before, and we were almost moving along blindly. However, now I have seen that the proposed Standing Orders have provided some clarity.

Madam Temporary Speaker, that does not mean that the Bill that was so diligently brought to this House by Sen. (Eng.) Muriuki should be allowed to go to the dustbin. I want to assure him that even if he will not be coming to this House, we shall maintain contact and ensure that the energy, effort and intellect that he put in that Bill must see the light of day. We shall bring it to this House and make sure there is a clear procedure for impeachment of county governors and other officials. This is because, as we speak, we have a situation where out there in the counties; the County Executive Committee members (CEC) have become unimpeachable as a result of a court ruling that was delivered somewhere in Bungoma.

The CEC members are engaging in very unscrupulous and corrupt activities and there is no way the county assemblies can hold them accountable because they are protected and shielded by a court order. We need an Impeachment Bill to give further clarity and add more flesh to these Standing Orders so that any public or State officer who is subject to impeachment knows the kind of treatment they should expect from this House; and Members of this House also know how they are to conduct themselves when looking at such a critical matter. For that reason, I congratulate the team and I believe that when we come up with a proper Impeachment Bill, the issues of impeachment and any gaps that could have been left in the Standing Orders will be addressed.

Madam, Temporary Speaker, I also want to comment on the issue of Petitions. We have always complained about them, including the duration that this House is given

to discuss the reports of Committees that have been considering Petitions. The current practice before adoption of the amendments has been that within 60 days a Committee is supposed to respond to the petitioner. When that response to the petitioner is brought to this House, debate on it is extremely limited and in many cases, it is at the pleasure of the Speaker. We must open up this issue because some Petitions tend to be extremely weighty in nature.

I recall we were talking about the issue of compensation for former councillors. It is an issue that has been outstanding. We have got a thousand men and women who have laid the foundation of devolution that the governors and people out there enjoy today. However, they live in a state of squalor and great poverty. When that Petition came to this House, it was duly considered by the relevant Committee and it was unfortunate that those of us and almost all of us who had an interest in canvassing some of the issues that had been raised by the petitioners or those highlighted by the Committee were unable to do that.

Therefore, our Standing Orders must allow us adequate time to look into Petitions, particularly those that are weighty in nature. The Constitution has given everybody an opportunity to petition this House. It will take quite some balancing for us to attempt to define what Petition is important or not. This is because when the rain falls on you, you feel it and believe that it is wet everywhere. People sometimes are touched by things such as inadequacies of State officers or even things that touch on civil relationships between them and other relevant State organs.

We have always allowed anyone to bring a Petition to this House, but how I wish we could do pre-publication scrutiny for Petitions the way we do for Bills. That might be called censorship in a way, but it might also enable this Senate to process only those that have got a huge bearing on devolution and only those Petitions that we know if well treated, would make a difference in the lives of the people.

We have seen in the past matters that come to this House which we thought should have been pursued in a court of law. There are cases where an individual company has not been paid for services rendered and sometimes the Senate is not the right arena for resolution of such issues, maybe the courts of law, yet right now anyone is free to bring any matter to this House even if it was a domestic dispute the way the laws are currently structured. We might need to tighten that a little bit.

Madam, Temporary Speaker, I am one of those aspiring to come back to this House. We need to see some rationalization of Committees. We need to ensure that we have Committees that are able to undertake a mandate that is wide enough so that you do not have two Committees with overlapping mandates. Within those Committees, we have seen situations where they tend to focus on the things that are juicy and forget those that appear to be less juicy. I do hope that with the proposed amendments to the Standing Orders, we will be able to see some rationalization of Committees and also be able to get them to focus on the right things.

Finally, I want to talk about the issue of the Presidential Address. The current Standing Orders did not really anticipate a situation where the President would come to address the Senate and I can see that there is an attempt to cure this. This is because the proposal is to have a section that talks about an address to the Senate by the President.

The current Standing Orders focused on the joint Presidential Address where the Senate has always been treated badly. We have been sent to the National Assembly,



cramped up in one corner and generally treated as strangers in an event that is supposed to capture the entire Parliament. The proposal in this Report anticipates that the President or any other visiting dignitary is capable or in a position to address this House.

The Chief Justice graced the Senate when he was retiring and made one of the finest speeches that he had ever made in the years he served as Chief Justice. It was instrumental, significant and historical that that fine address was delivered in the Senate Chamber. We must also allow the President or any other visiting dignitary to come to this House and the Standing Orders should be clear on that.

Madam Temporary Speaker, I have seen that there is greater clarity on disciplinary matters. The choice of English that the Committee decided to adopt in this case is curious. For example, in amending Standing Order No. 110(1) in the definition of disorderly conduct, the Report says that conduct is disorderly if the Senator concerned “creates disorder”. I think the Committee should have gone a little bit deeper. The English language is quite rich such that we cannot have a Standing Order that says as stated above. You need to define what disorder entails beyond any reasonable doubt. This is because some of these things could be cultural.

Yesterday, for example, the Senate Minority Leader, Sen. Wetangula, made some screeching sounds while he was making his final address to this House, which can be construed as disorder depending on how you look at it. We should not be ambiguous in our definitions of disorder. I could walk in here with a whistle and start whistling because may be where I come from that is how we appreciate good points. You need to be very clear and not just say that “disorderly conduct is when someone creates disorder”.

Madam Temporary Speaker, it is also important that we have gone further to expand the definition and the instances of disorder. When I look at some of the proposals, I do not want to accuse the Committee that was working on this that they were trying to legislate for one Senator Moses Otieno Kajwang. I can see there is a definition of “disorder”. It says:

“A Senator commits an act of gross disorderly conduct if the Senator concerned attempts to or causes disorder of whatever nature during an Address by the President.”

Madam Temporary Speaker, I hope they were not legislating with the whistle blowing Senator in mind. I hope this was driven by a genuine concern to ensure the Address of the President remains a dignified State affair.

However, we must still make an argument on the rights of citizens, including Senators, to picket and to demonstrate and to protest legitimately when there are issues burning in the nation. That is a constitutional argument that has been used in the past; that is to picket, demonstrate and carry posters, not just today, but even in the days of the great Sen. James Orendo. Some of the changes and reforms that this country has enjoyed were as a result of the demonstrations and even the protests that we saw in Parliament. Therefore, we will need to look at these sections on definition of gross misconducts and disorder and make sure we are not attempting to clump down on legitimate protest or to narrow the space that parliamentarians have in this House.

I know Parliament is a House where there should be good manners, but good manners are reciprocal. You can only have good manners if people in power and the public also demonstrate good manners. Let us not define gross disorder and gross misconduct in a way that limits the space that Senators enjoy in this House.

With those many remarks, I wish to support.

Madam Temporary Speaker, I also wish well those Senators who have chosen a different path in public or private service. This Senate could not have achieved what it has achieved so far, without the contributions of all these Members, including those who have opted not to come back to this Senate.

We do hope that for those who will be running county governments, they will remember this Senate because it was established to protect those counties. For those who will be going to the National Assembly, I hope they will inject some sense of good manners and judgment. This is because the situation we find ourselves in of constantly fighting every year when it comes to the Division of Revenue Bill does not augur well for this county.

I wish well those who will be going to the counties. I also wish well those who will be enjoying private life and those who will be appointed as Cabinet Secretaries. One of us here will be a Cabinet Secretary in charge of the Economic Sector. This is a very broad mandate. That is Sen. Moses Masika Wetangula. I wish him well. I do hope that he will remember this Senate and look at it favourably. I hope he will advise the incoming President that it is the Senate that is a reasonable House that he should work with.

**The Temporary Speaker** (Sen. Ongoro): Thank you, Senator for the eloquent contribution.

**Sen. Lesuuda:** Thank you, Madam Temporary Speaker. From the onset, I rise to support this Motion because I was a member of this Committee. Under the leadership of the Hon. Speaker, Ekwe Ethuro, we were able to sift through recommendations on the amendments of the Standing Orders from individual Members and various committees of this House.

It is our mandate to review the Standing Orders of this House. It is a fact that for the last five years, we have learnt a lot of things that will make easier the work of those who will come after us in the Senate. It will also make the processes that we follow as a Senate to be more efficient and effective.

I would like to contribute on a number of proposals before us because most of the time we spent in ensuring that laws are put in place to fix every little thing and make procedures work in this House. However, most of the challenges that we have faced between the two Houses even when the law was so clear on what the Senate was supposed to do and on what the National Assembly was supposed to do, could be addressed without us going to court or resorting to arm-twisting. The unfortunate and the sad thing is that the dignity of the Senate and that of its Members has continuously been undermined by the National Assembly.

I hope after general election, the Senate and the National Assembly will have a cordial relationship. We would like to see them working together in a very cordial manner. Most of the issues we witnessed in the last five years, were political in nature and they could have been dealt with if there was good will from both Houses. I believe if there is goodwill, then a lot of business will be transacted amicably in both Houses.

It has been mentioned here that there are several Bills which were passed in this House, but they have been pending in the National Assembly for the last three years. Some of them are Members' Private Bills. It is a pity that some Kenyans are asking us what we have been doing for the last four and half years. We have done our part and passed over the Bills to the National Assembly. It is sad we have continued to see the slow movement of Bills from one House to the other House. Yesterday we thought it is

important to set time frame within which these Bill should be dealt with in either House so that they do not remain pending definitely.

One of the proposals here is for the President to address the Senate. Currently, if the President were to address Parliament today, we would be required to sit in the National Assembly. This does not augur well with the reputation of the Senate and it creates certain impression to us and to the rest of the country.

Hopefully after August 8<sup>th</sup> this year, I will be moving to the National Assembly. I believe if the President were to address us in this House, then that would enhance the stature and dignity of the Senate. This is because we will be debating a speech that was delivered to us in this particular House. The National Assembly will also be debating a presidential speech after the President has addressed them. This amendment is very important to both Houses.

Standing Order No.159 provides that the Budget Policy Statement (BPS) also be read in the Senate. This is because the Senate is also involved in the budget process. We have to debate and pass the Division of Revenue Bill and the County Allocation of Revenue Bill. Therefore, it is right and fair for the Senate to have an overall view of what the BPS contains in each financial year. When we are debating those two crucial Bills, we must do so after we have interrogated the BPS. Therefore, it will be very important that the Cabinet Secretary responsible for Finance comes to the Senate and reads it to us. That statement will be interrogated by the relevant Committee and also by Members of this House. They will have a better understanding when dealing with those two crucial Bills.

One other key aspect that we looked at, which is very important for the Senate, as it continues with its role of protecting the counties and defending the interest of counties, is the consideration of the cash disbursement schedule for county governments. This will ensure the Senate continues to play its role of protecting the interests of the counties. In the past, we have had delays in disbursement of funds to counties by the national Government. Now, with the inclusion of this Standing Order 160(b), after the Senate has passed the County Allocation of Revenue Bill, the Cabinet Secretary responsible for finance will table the cash disbursement schedule for county governments before this House.

I believe that the senators who will be here representing the counties will be able to interrogate, follow and share it with the county governments so that it is clear at this point the amount of money that has been disbursed to county governments and the next allocation will be disbursed at a certain time. It has time frames to be done so that there is no push and pull between the county governments and the National Treasury. Also, the Senate will be able to clearly follow up on the disbursement of funds, the funds at the county and use of money for its intended work.

I was a chairperson of a Joint Committee. When we looked at the Joint Committees, we said that it is important that we have two Co-chairpersons of any Joint committee of the Senate and the National Assembly. However, some Members may wish to relook at it later to see whether it is an issue that can be reviewed so that each House of Parliament has its Committee.

It is important that we review the number of committees that a Member can serve so that you give enough time to that Committee and enough resources are allocated to it so that we do not overstretch ourselves. In a day, there are a number of

Committees that you have to attend to and you want to be present in all of them. Therefore, we felt it is important to limit that number of Committees that a Member can serve to two and allocate enough resources to those Committees so that they can execute their mandates.

Impeachment of governors has continued to elicit mixed reactions. We looked at it at length. Having received various impeachment motions in this House and from how we talked of the challenges that were there, we reviewed the Standing Orders so that the impeachment process of governors is smooth.

I want to wish all the Members of the Senate who will be running for elective positions the best as we go on *Sine Die* recess period. Those who will be vying for governorship, we hope that once you are elected, the Senate of the 12<sup>th</sup> Parliament, will not have the same challenges with you. As senators, you have been tough. As a governor, you will have to lead by what you preached as a Senator. I hope we will have a cordial relationship between institutions. For those who will be re-elected as senators, be assured that you will have a great supporter, Sen. Naisula Lesuuda in the National Assembly. As a Member of the National Assembly in the 12<sup>th</sup> Parliament, I will show how the Two Houses of Parliament can work together to serve this nation. Those who are retiring from politics, we know, you never retire from politics. We will still be seeing you somewhere. I wish you the best as you continue to serve. Leadership is not only exercised when you are a politician. Therefore, you should continue to use your rich experience in your counties to ensure that devolution continues to benefit all of us.

Finally, we hope for a peaceful general election. As leaders going to the elections, we will preach peace and unity for our county even beyond the elections.

Thank you.

**The Temporary Speaker** (Sen. Ongoro): Sen. (Prof) Lesan Rottich.

**Sen. (Prof) Lesan:** Thank you, Madam Temporary Speaker. I want to thank the Procedure and Rules Committee that took their time and exerted their energies in reviewing the Standing Orders that we have been using in that last three years. It is the right time to look at this Report, having been here for close to four years using the Standing Orders that were adopted and passed by the National Assembly in the absence of the Senate. We have done as much as we could using the current Standing Orders. We are now well informed, having experienced the challenges with the current Standing Orders.

The speakers before me have enumerated cases of unease within the Senate as a result the current standing orders. Most of the work that has been done in the Senate and the National Assembly has been in the committees. This House has spent a lot of time on Committee work. I want to congratulate the Members of committees, particularly those that I serve in. I know the amount of work and knowledge that we put in in order to assist the nation.

In the current standing orders, as a consequence of Standing Order No. 146 that has been cited by one of my colleagues, the work that we have put in will probably lapse or be ignored. Some of the committees' work if not implemented, will "throw away" thousands of Kenyan shillings. Their recommendations are to try and salvage funds that will be lost for not applying the committees' reports.

I am particularly concerned about the Public Accounts Reports that have not been tabled in the House. Because of this Standing Order No. 146, they will lapse and a lot of

public money will be lost. That will be unfortunate. This standing Order No. 146 is not specific, it does not specify exactly what will happen if a Bill that has been passed in one House of Parliament lapses in the sister House while seeking its concurrence. This is one area of the current Standing Orders that needs to be tidied up.

I know of valuable Committees Reports that were generated as a result of a Private Member initiative. One example is the Select Committee on Inquiry into Affairs of Kenya Airways Report. Kenya Airways was throwing away millions of Kenyan shillings because of incompetence in its running. A member took the initiative of proposing to this House to establish a Select Committee that came up with useful information, an eye opener, of how resources of the country were being wasted by incompetent bodies.

Unfortunately, because of the Standing Orders that relate to the two Houses, as this Select Committee was working, there was jeering from the National Assembly purporting that the Committee was doing work that was outside its mandate. The information that the Select Committee was giving to the nation was the kind that would have saved millions of Kenyan shillings. It was appropriate and we did the right thing to form a Committee to look at the senate Standing Orders before the end of this session.

I know there are some Bills that we ought to have passed. There is one Bill about the pensioners from the county governments that as I was coming to this House, a member of the public expressed serious concerns about. The Bill is still pending in this House. It would have helped to elevate the lives of the county workers and motivate them to work better. The Bill will lapse according to Standing Order No. 146. It is an important Bill that this House could have passed. It directly plays in to our hands as custodians of the interests of the counties and their governments. This is one way we could have shown our concern for the pension of county governments' executives and the workers.

Madam Temporary Speaker, once more, I laud the work done by the Committee led by the Speaker and other very senior Members of this House. Some of them have opted to go and run the counties as governors. There is only one thing that I would like to ask for from my colleagues who have opted to run for governorship and I wish them well. When they get the position, I would like them to take leadership of county governments to the next level.

We have documented reports of loss of colossal amounts of money as a result of poor management by Kenyans who were voted in as governors in this country. I know that those who have sat here in the Senate are well-versed individuals. These are individuals who have shown their love for this country while they sat in this House. When they go out there, they should take the running of county governments to the next level, so that we can truly convince Kenyans that devolution was the best for this country. We will be proud to have been the first Senators to sit in this Senate, babysit the county governments and nurture them until they crawl. Now we want them to stand up and run and serve this country.

Madam Temporary Speaker, my colleagues who will come back to this House should continue with the same spirit that we have exercised in the past four years. One of the key things I believe they will do is to initiate and push forward to make this House the "Upper" House. I am sure they are well-versed on what they need to do. We need a referendum in this country so that the Constitution is amended to make this House the "Upper" House in order to reduce the bureaucracy and red tape involved in processes and

also reduce the expenses in terms of time wasted and benchmarking all over the country in order to show how to run the devolved governments.

Madam Temporary Speaker, as I conclude, I have been very fortunate to have sat in this House for the past four years and I have learnt a lot. I am not one of those who will come back to this House again. As a professor, I will go back to the terraces and watch the politics in this country as I continue to profess in my field of medicine.

Madam Temporary Speaker, with that, I wish this House the very best. I also wish the country a very peaceful and decisive election. I hope that there will be no doubt in the minds of Kenyans who will participate in the coming elections. May God bless Kenya.

I thank you.

**The Temporary Speaker** (Sen. Ongoro): Thank you Sen. (Prof.) Lesan. I will now give the Floor to Sen. Karaba.

**Sen. Karaba:** Madam Temporary Speaker, thank you very much for allowing me to contribute to this Motion and thank you very much for being on that seat. As we come to the end of this Session, I know that we will miss most, if not all Members, because of how they have conducted themselves in this Chamber. It is very sad to imagine that some of us will not be here when the Chamber is reopened in September this year. I cannot imagine the departure of very eminent senators in this House. I cannot even imagine how this Chamber will be without some of them. My chances of coming back are fifty-fifty. I might come back or not. So, I need the prayers so that I get 50 per cent plus one in order to be here on 9<sup>th</sup> August, so that I follow up most of the things that were done by the Senate and remind new Senators who will come.

Madam Temporary Speaker, the Motion as tabled by my friend, Sen. (Dr.) Machage, is very important. I wish it had come earlier because we are languishing in problems which are of our own making. We are a frustrated lot and we continue talking about issues that sometimes we have no answers to. We talk of Bills which are already in the National Assembly which have not been passed. That kind of lamentation will not do us any good because at the end of it all, all the Bills will lapse. I am very sad because I was involved in one of them which I am struggling to see whether it can go to Division tomorrow. If not, then it will go down into the drain.

Madam Temporary Speaker, some of the Bills have taken us a lot of time. We have been out of the country to see what happens out there. It is painful knowing that only one or two days or one week should have been reserved to make sure that at least Bills are passed, even if en masse, so that we go home in August a proud lot, having passed a number of Bills.

Some of us will go home lamenting that we worked very hard here but without any one Bill having been passed although we put all our effort or three quarters of our lifetime in this Senate. Here we are but we cannot do much because our time to leave has come as per the Calendar. We have to leave and go for the General Election on 8<sup>th</sup> August this year. Those who will be lucky will come back and those who will not be lucky will stay at home. It is sad that we will have to part and disconnect with some of our very able, sound minded Senators we have ever had in this country in the 11<sup>th</sup> Parliament.

Madam Temporary Speaker, I support the Motion wholeheartedly. Most of the Members who are involved are very prominent by nature, stature and skill. They are people whose sanity cannot be doubted. Therefore, we cannot doubt whatever they did to

come up with this Report. We therefore congratulate them for the good well-done job and we will support them. This was supposed to be a periodic review and it is covered in our agenda and that is a normal thing.

As Parliament, we have to continue reviewing our rules and orders as it has happened with the Committee that was chaired by our very able Speaker. That is in order because we are in a dynamic society but not static and we keep on bringing in fresh ideas into what otherwise would have been negated. We are happy that the Committee came up with very good proposals, some of which will go a long way to be remembered even by generations to come.

Madam Temporary Speaker, it is also important to note that some of the salient features captured in the Report are things that we have always been talking about. Why should petitions take six or ten days to be completed? Some of petitions can even take a year. If we put that petitions should be concluded after 60 days and then after that they are effected after 60 days, what a wonderful Senate will we have? Some of the petitions that will lapse are those that affect the lives of Kenya residents such as the one I tabled here last time about the greater Kirinyaga-Mwea Ranch which is supposed to be between Embu and Kirinyaga.

It will now take more time. We were expecting that as we go to the elections, this would be concluded. We would celebrate as Kirinyaga residents as we move towards what we think is ours historically but due to the fact that it had not been covered by the time it was out for 60 days in the Petition, we will now lament forever. I hope the new Senate will revisit this issue on time so that people will not continue suffering.

Therefore, this is a very timely move. The Committee has come up with this report. I hope that those who will come later will find it fit to say that it was a good thing done by people in the 11<sup>th</sup> Parliament.

Madam Temporary Speaker, there is also a very important view in the report about presentation of the Budget Policy Statement (BPS). This is mainly done by the National Assembly and very little is left to the Senate yet the Senate is supposed to oversight the counties. One wonders why there is such a contradiction. Whereas we represent the counties and budget proposals are meant to propose and propagate what is in the county, the Senate is left without doing much about the budget statement.

It is important, therefore, that this is noted. We should stick to it. As much as the budget will be discussed in the National Assembly, it is the role of the Senate to make sure that it is done on time, and then, we make it happen by oversighting the county governments. We are charged with the responsibility of protecting the counties. If we are not given the mandate to protect the counties, it means that devolution which is the key word for our survival here; we will be seen to be wasting our time.

So, it is important that as it comes to us, as we oversight and protect the counties, we should also protect the budget. Without the budget, there is nothing we will do, hence, we should be provided with the oversight facility; financial support. We should revisit the Sang Bill which was discontinued here. It was disallowed by the courts. Sometimes we wonder whether we exist because whatever effort we make towards making our ends to meet, we face bottlenecks and hurdles. The courts also join in negating our efforts.

Therefore, it will be very hard for people to note that we have been working hard because our fruits here have not been seen publicly. Anytime we try to succeed, we are blocked by the court, the National Assembly and the Constitution. That is the reason why

we should think of having a referendum anytime next year or in the next Government so that we can empower the Senate with the powers that be. We should give the Senate the teeth to bite. It should be seen as the House of finality; a House that makes decisions with finality. That is the only way the public out there and Members of the National Assembly will respect the Members who seat in this Senate.

Madam Temporary Speaker, it is also important for us to be seen like we are in a House that comprises of people who are experienced; people who have had time in this world and country to be where they are and have made a name in this country. That is what this Senate has been. We have had very prominent people like Sen. (Dr.) Machage, Sen. Orenge who in the 1970s fought for students' rights – I remember him because he was there when I was there – and people who have had a lot of experience in this country. These people will change their positions from being Senators to even being in Members of the National Assembly. Some of them will be governors, businessmen and even consultants with the Government.

I plead with them that when they get out there, they should explain to the public and the House they will be in that the Senate is the “Upper” House and should be respected and treated with the decorum it deserves.

Madam Temporary Speaker, it is important to recognise that the report which was tabled here today by Sen. (Dr.) Machage is welcome. It has come at the right time. We should support it so that we get a lot of good things as it states therein.

As I conclude, it is sad that I am leaving without even having passed a Bill. I have struggled for four years to pass a Bill on early childhood. Going by what I can see here and what we know, that tomorrow being the last day, this will lapse yet there was a lot of hope. This Bill is coming amidst a lot of developments in the education sector. We will have many reforms in the country regarding education but we cannot do that without the County Early Childhood Education Bill (Senate Bill No.32 of 2014).

Madam Temporary Speaker, to reform education we need to start from early childhood. Without that key Bill which has only one hour maybe to be passed – and it cannot pass because there is no quorum to pass it - We need to find out why we cannot pass Bills. Why should you go home without passing the Bill that you were supposed to pass? Why should the National Assembly keep more than 15 Bills from the Senate? Why should that happen? The moment we unravel that mystery, we will realise that the Senate is working. We should be seen like we can work.

There is also a Bill concerning the pension's scheme of the county governments which we are supposed to have passed. As we go to campaign, I do not know what people will say about us. We should have passed this Bill so that those workers in the counties will be given pension as they retire. Now, nothing will happen. We have not had time to work on it. So, we can only say *pole* because we have worked very hard but we have not succeeded in this calling. As much as we have football matches where you say that you are winning and you have not scored, that is not a win. A win is when we have had so many Bills passed and assented to by the President.

So, I wish you all the best of luck as you leave our august House. I hope that one day we will meet either in the same House or in a different House or position out there. Please remember those people who are in this House.

Madam Temporary Speaker, with those remarks, I beg to support.



**Sen. (Prof.) Lonyangapuo:** Madam Temporary Speaker, I also join my colleagues in supporting this Motion. I thank the team led by our able hon. Speaker, Sen. David Ekwee Ethuro and the entire team that has been listed here, including the Mover of this Motion, Sen. (Dr.) Machage for the tireless effort and commitment that they put in reviewing the Senate Standing Orders, particularly pointing out the procedure and the rules.

Madam, Temporary Speaker, what I see, which they have put clearly is that, they did a lot of wide consultations and received proposals from Senators. They also consulted the office of the Clerk of the Senate, members of the public, which is, indeed, great that they have been good members who have been following the proceedings of the Senate and Parliament at large. They also consulted the Procedure and Rules Committee and those who had already been there to come up with this. They also got approval of a number of Senators as per the Standing Orders and the Petition is here for us to discuss. They strictly followed the Standing Orders from the first to the last and proposed what should be done.

The Members here have, indeed, enumerated what we have done since we came in early 2013 as the first inaugural Senate in the devolution era. We have tremendously done a lot of work, generated a lot of Bills, Motions and Statements, some of which saw the light of day and a number of them remained in our sister House which is the “Lower House”. Almost every Senator here came up with a Bill and we have them there.

I want to give a lot of commendation to Kenyans for electing the top cream of leaders to come to this House as the first Senate in the devolution era. I remember I brought about four of them, some having been deposited in the archives in the “Lower House”. It is a pity that our own House in Parliament which is supposed to be doing their own work has been faithfully pouring their business to this House. We have done a lot of justice to some of the Bills coming from the “Lower House”.

The only one we can be proud of is the one that went compelling leaders in the counties to sit together; the famous Sen. Sang Bill. I note that Sen. Sang has decided to vie for the position of governor in Nandi County. I am hoping that he is going to actualize his own Act that was approved and put into action; that leaders of that county are supposed to be sitting together, from the Governor, Senator, Women Representative and everybody else, to agree on how the money assigned to that county can be utilized.

Madam Temporary Speaker, Sir, it is a sorry state that most of the Senators do not know how their money was spent and that is why we are left to grapple with the amount of audit queries that come to the Senate. The County Public Accounts and Investment Committee has been laboring on our behalf to work on that. It is a pity that some of the reports have not been tabled here--- I hope that even tomorrow some of them can be put on the Order Paper before we adjourn because they are ready.

The Committee mentioned Standing Order No. 212 about County Public Accounts and Investment Committee (CPAIC). Having sat there as a Vice Chairperson, I noted that some governors have simply been refusing to come. Some have notoriously been avoiding to appear by faking sickness and journeys; that they have travelled abroad or they have been called by the Council of Governors (CoG). It is not really good that people can evade duty.

However, I also note that in today’s Order Paper No. 20, we were supposed to deal with the Parliamentary Powers and Privilege Bill (National Assembly Bill No. 35 of

2014) which has a cure for some of the governors who have been refusing to appear here. If that Bill is passed, we can easily be summoning them and if they do not appear, they are supposed to be delivered here. We have a challenge where the Inspector-General has been saying that we need to use our powers because we have that privilege. The Director of Public Prosecutions (DPP) told us to see how that law can be brought. I now see it is here.

Some of the Committees we have petitioned have come here, and they have been touching on the lives of Kenyans. The Finance, Commerce and Budget Committee has been receiving a lot of Petitions. It is a pity some of the Petitions are going to lapse and may be restarted after this. Fortunately, anything that touches on misappropriation of funds does not die. The life of Parliament can elapse, but the obligation does not. It does not matter where some of them will be, because they may be thinking that they have retired and are not going to be called. It is going to be very painful as some of them will be delivered to the Senate, the National Assembly or to the courts, especially those who will have refused completely to take responsibility.

I also note, with a lot of appreciation, what our Committee has done, particularly in the Fifth Schedule. They talked about the rules of procedure for the hearing and determination of the proposed removal from office by impeachment of a governor in Standing Order No. 68. We have had almost three or four cases starting with the one of Embu County, which according to this Senate the governor is in office illegally. All the Committees of the Senate have refused to have any dealings with him whatsoever. However, courtesy of a court ruling, the governor has been hiding there and he does not come for audit queries.

So, it is important to have a procedure or rules that should be put in place so that every Committee that is assigned and identified by the Senate, while dealing with any impeachment in future, can have something to follow unlike previously where a Committee would generate their own rules after being formed. The rules may vary from one county governor or deputy to another, depending on the issues that have been generated by their respective county assemblies that have impeached them.

Madam Temporary Speaker, we need to commend this Committee because we are now re-aligning after the first life of the Senate in devolution. We are now making things a bit clearer and tighter so that we can be able to dispose of them and be able to engage our colleagues in the "Lower House". The conflict that has been perceived to be existing between the two Houses should come to a stop because the Standing Orders are now very clear. Although, initially they were also clear, there have been some elected Members who have been simply stubborn to obey them. For example, we have been having this instance where a dispute has arisen and a Committee has been called to resolve the matter, for example, the Division of Revenue Bill where the National Assembly has simply ignored the input of the Senate.

I take this opportunity to say that for the purpose of the public who are listening to us, there are some leaders who should never be trusted in any public office at all because they turn them into their own offices and choose to do what they want. Some of the officers like elected leaders have been notorious. You need to scrutinize them and ensure that they take their work seriously. Otherwise, there is no need to elect them.

I also note with some little bit of concern that some of the leaders who have been here; our own leaders in the Senate, for example, the Senate Majority Leader the Senate

Minority Leader and party whips have not been taking their work seriously. We need to take our work seriously. I personally know that I will not come back to the Senate because I am going to the county as a governor, to pray and stand with my people. However, we should choose people who are going to take their work seriously. The two leaders of the House must take their work seriously. They should not be sending Short Messaging Services (SMSs) that we are meeting and yet they do not appear. This House has been running courtesy of the Standing Orders and the seriousness of the majority of Members, but not others.

Madam Temporary Speaker, I want to wish everybody the best. It is time that we take our responsibility seriously as elected leaders, irrespective of what position they are vying for. Those who are going to the National Assembly, please, put some order and sense there. Some Senators will fight for their seats while others are going to counties as governors. For once, we need to see unity of leaders working together so that this nation can be proud of itself. We found Kenya here because of the sweat and the commitment of our forefathers. Therefore, we are not exceptional.

I also note with a lot of appreciation in this Senate that from the year 2022, the Senate will attract many people. This is because the first elected governors who are still young and have accumulated a lot of wealth without sweating for it, will be struggling to remain relevant in politics. So, they would want to come to the Senate and nowhere else. Therefore, there are seats that would attract many leaders are in this House. They will spend a lot of resources and use helicopters to campaign to come here. The Senate could be down now, but very soon it would be very much up and even our own colleagues who are going to the National Assembly will come back. Therefore, we want to look at it positively.

It is time to give our best, look back and be proud. Going forward, personally I am very proud that I brought a lot of Bills to this House. I worked to the extent that even when there was a survey, people in my West Pokot County found that I was once declared a hardworking person. This is true because I work for them tirelessly. That is why they want me to serve them as a governor.

Lastly, the disorder we are seeing now where people are involving hooligans in their campaign is being perpetuated by our opponents. We should condemn any acts of hooliganism in the strongest terms possible. Every political party should not have those people roaming around. Leaders who seem to be perpetuating this violence should focus on other things that will benefit their supporters. Unfortunately, some of them are in the high ranks in this country, but it does not matter whether this hooliganism will degenerate into something bad.

You may visit a place and this mess follows you. So, these are some of the things that we need to focus on and avoid looking down at some particular parties because we are a democratic nation with a multiparty democracy. You can vie anywhere in the former Central Province on a party that is not popular and win. In West Pokot, for example, Kenya African National Union (KANU) is the most popular. Therefore, they cannot demean KANU in my county because it is the most popular party. We are proud of it because we are keeping our heritage and history. By the way, some of your parties are dying and you will come back to KANU; *Chama cha baba na mama* very soon. So, these are some of our concerns; that you should stop looking down upon us.

I know we have the National Super Alliance (NASA) that wants to go to State House and we have Jubilee who wants to remain there. Indeed, we need to play our politics maturely because leadership is not to divide our people, but to build and bond us more. There is a leader who is elected after every election we need to obey and stand by them because God gets us through our elections through our own votes.

I wish you well; may we continue to stand as a nation even after elections.

I support.

**The Temporary Speaker** (Sen. Ongoro): Thank you, Sen. (Prof.) Lonyangapuo. There being no further requests to deliberate, I call upon the Mover to reply.

**Sen. (Dr.) Machage:** Madam Temporary Speaker, I have been privileged in the few years I have served as a Member of Parliament and Government to participate in drafting of Standing Orders of not only the Senate, but the National Assembly and the county assemblies.

In the Tenth Parliament, I was also in the Rules and Procedures Committee. I am one of the people who will go to the annals of history to have actually helped in drafting the current Standing Orders in use at all those levels of legislation. I am proud that I have also participated fully in the history of making better the Standing Orders of the Senate. I have participated fully in the amendments that have happened in the current history of the current Senate of four years. I thank God for that gift; it is not a gift that everybody enjoys in his lifetime.

I have listened carefully to the contributions of Members of this House. I have listened to the contributions of Sen. Karaba, an educator and a legislator who is very experienced in matters of governance. I have listened to the contributions of Sen. (Prof.) Lonyangapuo, a person with vast experience in Government, who has served as a Permanent Secretary in previous governments, and a Professor in his own right in our academic institutions. I have listened to Sen. M. Kajwang; a youthful Senator who joined us after the demise of his brother, the late Sen. Kajwang who we cherish to remember. We thought that that was the end of the legacy, but this young man is gifted. We thank God for the gift of him in this Senate. Many members have contributed, the likes of Sen. Lesuuda, Sen. (Prof.) Anyang'-Nyong'o and others. I thank everybody and may not mention everybody by name.

I believe this is not the end of amendments of the rules that govern this House. This is periodical. It is likely that tomorrow we will have one rule not functional; it will be the duty of every Member of this House to pick it out and raise an amendment to it.

Madam Temporary Speaker, I do not know whether I will have an opportunity to address this House tomorrow, which might be the last time I will do so. I will address the Senate because I intend to move to the National Assembly in the next elections. However, I have proudly served this House and served it with all my ability and love. I have contributed to the best of my ability. I hope my presence in the House for four years has been beneficial. For those who will serve this House in the coming Parliament, we pray that the few hills and valleys that have to be crossed by this House will be things of the past. Maybe I will help if it will not work in the Twelfth Parliament, when the Thirteenth Parliament comes in 2022, when I will be one of the candidates for the presidential elections for this country.

*(Applause)*

I am told we have the likes of Hon. William Samoe Ruto and of Sen. Moi; watch out Sen. (Dr.) Machage is coming in 2022. I will have the experience, the age and the respect as a statesman to stand and vie for that seat in this country. It will be the first time a Member of the minorities will be vying for that position in this country.

Madam Temporary Speaker, may God bless you for the good job you have done for this Senate. May God bless everybody.

I beg to reply.

**The Temporary Speaker** (Sen. Ongoro): Thank you, Sen. (Dr.) Machage, for that very sentimental contribution.

This Motion, definitely, does not affect counties. Therefore, I will proceed to put the question.

*(Question put and agreed to)*

Order Nos. 9 to 17 are at the division stage and observing the attendance in the House, we definitely do not have the numbers. Therefore, all of them will be set aside. We will make an attempt to have the Divisions done tomorrow.

Looking at the next Orders, I observe that Sen. Wamatangi, the Senate Majority Leader, Sen. Murkomen and Sen. Wangari are not in attendance. We will, therefore, also defer them.

## MOTION

### ADOPTION OF REPORT OF MEDIATION COMMITTEE ON THE HEALTH BILL (NATIONAL ASSEMBLY BILL NO.14 OF 2015)

THAT, the Senate adopts the Report of the Mediation Committee on the Health Bill (National Assembly Bill No. 14 of 2015) laid on the Table of the Senate on Thursday, 25th May, 2017 and pursuant to Article 113 of the Constitution and standing order 155 (3) of the Senate Standing Orders, approves the mediated version of the Bill.

*(Motion deferred)*

## BILL

### *Second Reading*

### THE COUNTY PENSION SCHEME BILL (THE SENATE BILL NO.20 OF 2016)

*(Bill deferred)*

**COMMITTEE OF THE WHOLE**

THE COUNTY ASSEMBLY SERVICES BILL  
(SENATE BILL No.27 OF 2014)

THE COUNTY STATUTORY INSTRUMENTS BILL  
(SENATE BILL No.10 OF 2015)

THE PRESERVATION OF HUMAN DIGNITY AND  
ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL  
(SENATE BILL No.8 OF 2015)

THE PERSONS WITH DISABILITIES (AMENDMENT) BILL  
(SENATE BILL No.13 OF 2015)

THE NATIONAL CEREALS AND PRODUCE BOARD  
(AMENDMENT) BILL (SENATE BILL No.15 OF 2015)

THE COUNTY EARLY CHILDHOOD EDUCATION BILL  
(SENATE BILL No.32 OF 2014)

THE MEDICAL PRACTITIONERS AND DENTISTS  
(AMENDMENT) BILL (SENATE BILL No.2 OF 2016)

THE ASSUMPTION OF OFFICE OF GOVERNOR BILL  
(SENATE BILL No.10 OF 2016)

THE KENYA ROADS BILL  
(NATIONAL ASSEMBLY BILL No.26 OF 2015)

THE PARLIAMENTARY POWERS AND PRIVILEGES BILL  
(NATIONAL ASSEMBLY BILL No.35 OF 2014)

THE COUNTY GOVERNMENTS (AMENDMENT) (No.4) BILL  
(SENATE BILL No.18 OF 2014)

THE AGRICULTURE, FISHERIES AND FOOD AUTHORITY  
(AMENDMENT) BILL (NATIONAL ASSEMBLY BILL No.17 OF 2015)

THE MICRO AND SMALL ENTERPRISES (AMENDMENT) BILL  
(SENATE BILL No.12 OF 2015)

THE NATIONAL HOSPITAL INSURANCE FUND  
(AMENDMENT) BILL (SENATE BILLS No.9 OF 2015)

*(Committee of the Whole deferred)*

**ADJOURNMENT**

**The Temporary Speaker** (Sen. Ongoro): Hon. Senators, there being no other business for consideration, the Senate, therefore, stands adjourned until tomorrow, Thursday 15<sup>th</sup> June, 2017 at 2.30 p.m.

The Senate rose at 4.55p.m.