

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 27th February, 2014

*The Senate met at the County Hall,
Parliament Buildings, at 2.30 p.m.*

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

PRAYERS

QUORUM CALL AT COMMENCEMENT OF SITTING

The Speaker (Hon. Ethuro): Order, hon. Senators. We need to determine if we have a quorum.

The Clerk of the Senate (Mr. Jeremiah Nyegenye): Mr. Speaker, Sir, we have 18 Senators in the House. We have a quorum.

The Speaker (Hon. Ethuro): Then let us proceed with business.

MESSAGE FROM THE NATIONAL ASSEMBLY

APPROVAL BY THE ASSEMBLY OF MEMBERS FOR APPOINTMENT TO THE PARLIAMENTARY SERVICE COMMISSION

The Speaker (Hon. Ethuro): Order, hon. Senators. I have a Communication to make.

I wish to report to the Senate that pursuant to Standing Order No.40 (3) and (4) the Clerk has delivered to me the following Message from the National Assembly regarding the approval by the Assembly of members for appointment to the Parliamentary Service Commission.

That the National Assembly by a resolution passed on Wednesday, 26th February, 2014 and pursuant to the provisions of Article 127(1) (d) of the Constitution approves for appointment Hon. Dr. Abdullahi Ibrahim Ali and Mrs. Lonah Mumelo to be members of the Parliamentary Service Commission. This message was conveyed via letter ref. No.KNA2/4/302 dated 26th February, 2014.

Standing Order No.40 (6) provides that:-

“When the Speaker reports a message from the National Assembly under paragraph (4) or (5), the message shall be deemed to have been laid before the Senate and the Speaker may-

- (a) direct that the message be dealt with forthwith;
- (b) appoint a day for the consideration of the message; or
- (c) refer the message to the relevant Committee of the Senate for consideration.”

I now, therefore, refer the Message to the Standing Committee on Health, Labour and Social Welfare to deliberate on the subject matter and report to the House by Tuesday, 11th March, 2014. The curriculum vitae for the nominees are available in Room 10.

Thank you.

Next Order!

PAPER LAID

REPORT ON FAMILIARIZATION TOUR OF KPA, KPRL, AND KPC IN MOMBASA COUNTY

Sen. Mwakulegwa: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, Thursday, 27th February, 2014:-

The Report of the Standing Committee on Energy, Roads and Transportation on the Familiarization Tour of Kenya Ports Authority (KPA), Kenya Petroleum Refineries Limited (KPRL), and Kenya Pipeline Company Limited (KPC), in Mombasa County between 5th to 8th August, 2013.

NOTICE OF MOTION

ADOPTION OF REPORT ON FAMILIARIZATION TOUR OF KPA, KPRL, AND KPC IN MOMBASA COUNTY

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

THAT, this House adopts the Report of the Standing Committee on Energy, Roads and Transportation on the Familiarization Tour of Kenya Ports Authority (KPA), Kenya Petroleum Refineries Limited (KPRL), and Kenya Pipeline Company Limited (KPC), in Mombasa County between 5th and 8th August, 2013 laid on the Table of the House on Thursday, 27th February, 2014.

STATEMENTS

MANAGEMENT OF REPORTS BY THE AUDITOR-GENERAL AND THE CONTROLLER OF BUDGET ON THE PERFORMANCE OF COUNTY GOVERNMENTS

Sen. Billow: Mr. Speaker, Sir, I wish to give a Statement on the Auditor-General's reports on the performance of county governments that arose from the proceedings of the Committee.

It is our duty, as Parliament, to require the Executive, both at national and county levels, to follow rules related to financial operations and to openly report to Parliament on the exercise of their powers and resources granted.

As regards the county governments, the Constitution contemplates two levels of oversight; at the county level by the assemblies and at the national level by the Senate. Article 96 clearly requires the Senate to exercise oversight over revenues allocated to county governments. This mandate is given effect in the Public Finance Management Act; Section 8(1) (c) says:-

“8(1) The Committee of the Senate established to deal with budgetary and financial matters has responsibilities for the following matters, in addition to the functions set out in the Standing Orders—

(c) examine financial statements and other documents submitted to the Senate under Part IV of this Act, and make recommendations to the Senate for improving the management of government's public finances; and---.”

Mr. Speaker, Sir, Article 226 of the Constitution further requires the county assemblies to also exercise oversight of financial management in the counties. This mandate is given effect also in the Public Finance Management Act, Section 149 which says:-

“149. (1) An accounting officer is accountable to the county assembly for ensuring that the resources of the entity for which the officer is designated are used in a way that is—

(a) lawful and authorised; and

(b) effective, efficient, economical and transparent.”

Mr. Speaker, Sir, consequent to the above provisions, the Constitution in Article 229 provides that the Auditor-General prepares annual audit reports of the counties and submits them to Parliament and county assemblies, which must consider them within three months and take appropriate action. We have now received these reports and will commence their considerations soon in an objective and impartial manner.

Mr. Speaker, Sir, the same reports have also been sent to the counties. We urge all the county assemblies to deliberate on these reports through the relevant committees and take appropriate action as provided for in law. It is the responsibility of each of the clerks of the assemblies to forward these reports to the relevant committees for tabling and consideration. Procedurally, the committees will invite officers from the office of the Auditor-General to present the queries in the report in a meeting in which the county government entity will also provide responses. This will be the same procedure our committee will adopt in examining these reports. The report of the committee together with the recommendations will be tabled before the assemblies in the counties for consideration and action in the same way that we will also submit our recommendations to this House.

Mr. Speaker, Sir, we also urge each county government to prepare a written response to the audit queries raised in the reports within two weeks of receiving the same and submit them to the Auditor-General with copies to the Senate and respective county assemblies. It is traditional parliamentary practice that such reports furnished to Parliament are not published until they are tabled in the House. In recent weeks, these reports have been published in sections of the media before they were tabled in the House. Such actions will be inimical to our Standing Orders fundamentals, that reports be tabled.

Mr. Speaker, Sir, it has also been observed that some of the distinguished members of the House have been discussing these reports with the media and in public rallies before they are laid in the House. This has been construed in some quarters to suggest that the reports were being leaked deliberately to malign the county leadership, which is not the case. In order to avoid this perception and protect the interests of the counties, our committee appeals to all Senators to refrain from taking the debate on the counties outside the House before the same report has been tabled.

Mr. Speaker, Sir, lastly, while every Senator has the mandate to speak for and on behalf of his or her county on any matter, we request that our public discourse on the reports of the Controller of Budget and the Auditor-General be contextualized on the specific issues raised in the reports to avoid blanket accusations of financial impropriety premised on the reports which will not serve the interests of the counties that we are mandated to pursue and may be perceived as an unwarranted attack on the leadership of the counties.

Thank you.

The Speaker (Hon. Ethuro): Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I want to congratulate the Senator for Mandera County and Chairman of the Committee on Finance, Commerce and Economic Affairs for that Statement. I would also like to use this opportunity to point out that some of the issues that he has mentioned have immediate challenges. Maybe, as Committee, we should device, either through this House or through communications with the National Assembly, a way in which we can address the issue of budgeting. Unless the office of the Auditor-General is adequately funded especially by way of human resource, now that we have got 48 governments, we need proper auditing mechanisms around these 48 centres.

Over and above that, it is important that we give sufficient funds to the institution of the Ethics and Anti-Corruption Commission (EACC) because of the many recommendations will arise from the decisions of the Committee on Finance, Commerce and Economic Affairs which will come from the reports of the Auditor-General. The Committee will recommend that the EACC takes over. We need to adequately fund that Commission.

Mr. Speaker, Sir, finally, but not least, we also need to adequately fund the office of the Director of Public Prosecutions. Without that kind of funding the question of audit becomes a fairy tale. We have to make it practical and provide enough funds for Mr. Tobiko to recommend people to be sued and, the EACC to go to the bottom of everything and the Auditor-General to have quality reports by attracting proper professionals from our universities to take up jobs in audit.

Thank you.

The Speaker (Hon. Ethuro): Sen. (Prof.) Lesan.

Sen. (Prof.) Lesan: Mr. Speaker, Sir, I rise to request for a Statement from---

Sen. Billow: On a point of order, Mr. Speaker, Sir. Could I respond to the clarifications that have been sought first?

The Speaker (Hon. Ethuro): Yes, Senator.

Sen. (Prof.) Lesan, I thought you were contributing to the Statement made by the Chairman of the Committee on Finance, Commerce and Economic Affairs.

Sen. (Prof.) Lesan: No, Mr. Speaker, Sir. This is a request for a statement.

The Speaker (Hon. Ethuro): Let us have Sen. Billow first respond to the issues raised.

Sen. Billow: Mr. Speaker, Sir, I want to clarify for the sake of the Senator for Kakamega County that, indeed, the budget for the independent constitutional offices that carry out this very useful oversight work like the Auditor-General, the EACC and so on is very limited. In fact, we have learnt this from our meetings. Yesterday we met with the Auditor-General and this morning we met with the EACC. In both cases, they have not been given any additional funding for the 47 new county governments. In fact, the Auditor-General's budget last year was Kshs2 billion, the same amount he was getting when he was auditing the national government. In the case of the EACC, this morning they informed us that whereas last year before the county governments were in place, they got Kshs1.8 billion. The same was reduced in the last financial year after the 47 county governments came into being, to Kshs1.2 billion. So, the challenge is there for these institutions to be able to carry out their mandate effectively. Our committee has proposed to meet with the Budget Committee of the National Assembly to push for additional funding, so that these institutions can carry out their work effectively.

The Speaker (Hon. Ethuro): Hon. Members, I just want to emphasize the point made by the Chairman of the Committee on Finance, Commerce and Economic Affairs on public comment on matters that are seized by the Committee. He is even making reference that even before the matters have actually been seized by the Committee or tabled in this House, there is a lot of public debate. Since Senators have an opportunity to interrogate those documents as you are required, it is only fair that you only comment after the Committee has concluded its work. I know that is a bit difficult, but I will ask Senators to try to really restrain themselves from commenting on this because the report is sent to Parliament for interrogation. It is not final. It is up to Parliament to make its own report after all the parties have been heard.

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

The Speaker (Hon. Ethuro): What is it, Sen. Murkomen?

Sen. Murkomen: Mr. Speaker, Sir, I agree with the Chairman of the Committee on Finance, Commerce and Economic Affairs that we might need to restrain ourselves. When we visit our counties, there are issues that the locals want us to address. They just tell you: "Can you tell us this and that." It is important for us to know the specificity of what the committee is seized of. Our only food and bread and discussion is devolution. Once we are gagged--- For example, we will be happy to know that nine counties are being interrogated by the Committee. Then we will avoid issues on those counties. We

will not raise them as examples and then we will focus on others. The House is being bashed right, left and centre and the only way we can make our case to the public is to tell them that, for example, “the Auditor-General or the Controller of Budget reports says this and that.”

Mr. Speaker, Sir, we hope your ruling will not gag us from the general principles of devolution and accountability because that is our bread and butter.

The Speaker (Hon. Ethuro): Any other intervention on this particular matter?

Sen. Orendo: Mr. Speaker, Sir, I was looking at Article 229(8) of the Constitution that requires Parliament within three months after receiving an audit report, to debate and consider the report. I do not know whether this Committee has the capacity with respect to every report received, we can be able to debate and consider those reports because this is a constitutional timeline. If we go beyond it, we will not be acting within the four corners of the Constitution. The Chairman needs to consider whether he has the capacity to deal with these audit reports. As the Senator for Elgeyo-Marakwet is saying, any delay in dealing with this work can render the Senate completely unable to exercise its core function effectively.

So, I would want to hear a reaction from the Chairman whether or not the Committee can be able to fulfill this constitutional requirement. I am aware that some of these audit reports were published and given to Parliament, including the one from Embu County more than one and a half months ago.

The Speaker (Hon. Ethuro): Chairman, you can respond to that.

Sen. Billow: Mr. Speaker, Sir, on the question raised, the traditional practice for the House is that a report has to be tabled on the Floor of the House. That is when it is properly before the House and Members can be seized of it and can debate it. That was not intended to gag Members. The idea is so that Members are actually speaking from a point of information and based on a report that is before the House because you can be challenged that, the report has not even gone to Parliament.

Mr. Speaker, Sir, we have discussed the question of Article 229(8), in the Committee and our decision is that at the level of the Senate, we will examine the accounts of a sample of the counties. We are working with the Auditor-General in terms of determining which particular counties have serious issues. Those are the ones that we intend to focus on. Definitely our report will be before the House very soon, so that we will be within that constitutional deadline. But it is within the mandate of each county assembly to actually discuss in detail. We were advised yesterday by the Auditor-General that no county assembly has so far tabled any of those reports in the House before their committees. This is why we raised this statement that they have a responsibility to raise it. We would request the Senators to urge their respective assemblies to have these reports placed before the respective committees of the House and deliberated upon.

Sen. Orendo: Mr. Speaker, Sir, could I just have one more go at this?

The Speaker (Hon. Ethuro): Proceed.

Sen. Orendo: The problem that I have is that we do not have a discussion. Article 229(8) says that once you receive the reports, you must debate and consider them. So, if you want to use your discretion to deny us a chance to look at all the reports that you received then I am afraid you do not have that power, it is our duty. Even the ones that

are doing well, we want them before the House, not just the ones which are doing badly. If you use your discretion not to discuss a report in relation to a particular county, there is going to be a political issue that: “Why has the Senate decided not to consider a particular report?” You know in the Kenyan parlance, a lot of words can be said about that. I do not want to suggest that your discretion is as elastic as it appears.

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

Sen. Orendo: I have not finished the sentence.

The Speaker (Hon. Othman): May be we should get another one from Sen. Murkomen.

Sen. Murkomen: Mr. Speaker, Sir, in your ruling, I want you to rule the Chairman of the Committee completely out of order for denying the House the opportunity. I thought I did not hear him right when he said that “we will sample”. The Constitution does not say: “A sample of county reports.” It says all reports must be debated by the House. But then they must be enabled to be able to look at all those reports within the next one and a half months because in my reading, debating and considering is within the three months that the Constitution talks about. So, we must get the reports in good time. We are ready to debate here consistently from Monday to Friday or whatever time we extend, to ensure that we debate every county in so far as those reports are concerned.

Mr. Speaker, Sir, give the right direction to the Chairman. Rule him out of order; give him directions that this House requires these reports on this issue.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Othman): Yes, Sen. (Dr.) Khalwale.

Sen. Othman, please take note of the questions.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, on the same point, may I request you to recall your experience when you used to sit in the Public Accounts Committee in the other Parliament. You will recall that such reports used to come in respect of Government Ministries. At no time was the Committee restricted to only sample out. We were dealing with all the Ministries so that when your report comes to the House it is comprehensive and you speak to the performance of all Ministries. In this case, it is mandatory that you speak to all county governments including the county governments of Kakamega and Mandera.

The Speaker (Hon. Othman): Yes, Sen. (Prof.) Kindiki.

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Mr. Speaker, Sir. I want to support the sentiments that have been made by Sen. Orendo, Sen. Murkomen and Sen. (Dr.) Khalwale without repeating, over and above that, with regard to the specific issue of Members of this House not discussing matters that are before Committees.

Mr. Speaker, Sir, I request that you take a bit of time and give us an articulate ruling in your characteristic style because unless a Member of this House is a Member of a certain Committee, the nature of our business does not allow the rest of us to know what is before a Committee. So, that is the first hindrance. Some Senators here are probably Members of one Committee. Others do not belong to any Committee like yours truly. That is the first limitation.

The second limitation is with regard to the thin line between commenting on matters that are before this House or a Committee and commenting on the merits of a report. If you gag us too much, we will have nothing to say over the weekend. Like Sen. Murkomen said, the demand is very high. The moment you land in your county, the first question you encounter is what you are doing about this or that. So, the issue is that, we cannot discuss the merits. However, telling us that we cannot comment simply because a Committee is looking at a matter, that becomes a bit difficult.

Mr. Speaker, Sir, however we rely on your wisdom as usual to help us.

Finally, I have received a lot of calls across this country from our colleagues and partners on oversight; Members of County Assemblies (MCAs). They are getting worried that the Senate is becoming a little assertive and that probably they are not being appreciated for the important role that they play in oversight.

I want to request for your direction again, not necessarily now, to help and guide this House, and of course, our partners in county assemblies, in terms of the complementary oversight role of the Senate and that of the county assemblies. The way it is crafted, in the various provisions of the Constitution I have seen, these are parallel systems; both the county assemblies and the Senate.

I really support that and I hope that you can spend some time and invest in a good ruling that will guide this House and guide devolution in the years to come.

Sen. Kagwe: Mr. Speaker, Sir, I want to perhaps assist my Chairman in terms of the issues discussed and how we arrived at them.

First, the idea was not to table a sample of the reports from the Auditor-General. The idea is to table all the reports. We said that it was possible for us to discuss specific counties on the basis of cross cutting issues that are apparent and clearly applicable to all the counties.

I am following up on the question that was raised earlier regarding the capacity of Committees; it is very difficult to go through 47 huge volumes in the short time that Sen. Orengo has pointed out. However, it is possible and we requested the Auditor-General for a summary of everything that is there so that we see whether there are cross cutting issues that are applicable to all the counties. These are the highlights of the main issues that we need to look into. However, when it comes to discussions on the Floor of the House, we agreed that we should table all the reports and that any Member can raise any issue on any county. I think it is important for us to clarify that.

Mr. Speaker, Sir, the Constitution is also clear in terms of the relationship between our oversight ability and that of the county assemblies. The Constitution clearly envisages a situation where there are two levels of oversight, both at the Senate and at the county governments. We as the Senate are supposed to look at the wider picture. This includes the monies or revenues that are allocated by the national Government. At the county level, it is very clear that specifics of the works of various Ministries should also be over sighted by MCAs. I am not saying this to do your work. I am only assisting my colleague where I can.

Sen. Billow: On a point of order, Mr. Speaker, Sir. I think my colleague in the Committee has already responded to the queries that have been raised. It is not the intention of the Committee to only table the few that we mentioned. All of them will be

tabled. More importantly, in the Statement I read earlier, I said we will require all county governments to respond in writing to all the queries. That means that we will have all the queries addressed in terms of getting the Reports.

However, in terms of in-depth examination, we will be focusing on some of the counties not based on our own subjective assessment but on the advice of the Auditor-General. Those are the ones we will be looking at in more detail. The reason we made this statement is to tell the general public that it is important for the county assemblies to start looking at those reports through their Committees and in detail in the manner that has been mentioned.

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. I am sorry I have to raise this issue severally. You were invited by the Senate Majority Leader to make a ruling or to interpret between the oversight role of this House and the county assemblies. If you all remember, there was a paper prepared by the Chair of the same Committee which is very informative. I am reading Article 226(2) of the Constitution which says:-

“The accounting officer of a national public entity is accountable to the National Assembly for its financial management and the accounting officer of a county public entity is accountable to the county assembly for its financial management.”

In Article 226(2), my reading would be that in the principle of the Committee which is the core working point in the Senate and the good relations between this House and the county assemblies, we will continue allowing county assemblies to invite accounting officers who are Chief Officers or County Executive Officers, in most cases, in the counties for accountability to the various departments of the Ministry.

However, I will take advantage of Article 96 of the Constitution which says that this House overlooks the whole county. As such, that is why, in my understanding, we cannot invite a County Executive Member or a Chief Officer if we want to avoid conflict with the county assemblies. We will invite the county assemblies to invite them. However, in the overall oversight of the whole county, we will invite the Governor as the Chief Executive of the County to come and shed light on the rest of the issues. So, my reading of 226(2) is that. That does not, however, take away the power of the Senate to summon anyone under Article 125, if need be.

In terms of maintaining the relationship between the county assemblies, the Senate and the National Assembly, it is important that we allow them, under Article 226 to continue ventilating the issues of the Chief Officer. This House should not reduce itself by taking up its power to invite the Chief Executive Officer and County Executive Officers. We will leave that to the domain of the county assemblies under Article 96 and invite the Chief Executive Officer as defined by the Constitution in Article 175 to shed light on the overall issues.

I know that you will spend time to give a more detailed communication including looking at the paper that was done by the Chair of that Committee which is indicative of the relevant sections.

The Speaker (Hon. Ethuro): Hon. Senators, I allowed that matter to be canvassed by more people and some had a bite more than once, for the very good reason that this is important. So, I will take the suggestion of the Senate Majority Leader that I spend a bit

of time looking into this matter. The communications will be two. One will be in terms of oversight between the Senate and the county assemblies on matters of the county and the other one is about commenting on Committee business.

If we gag the House and everybody reads about our goodwill from the Press that will not be good. The issue is not to gag the House. Those issues are critically important. We do not want to stop Senators from talking to their people if they demand such kind of discussions. However, that can be arranged in a manner that you do not have to be reported. Some of these areas will need some consideration. Part of this is about shared responsibility. We need to agree with the organs that are charged with the responsibility on the levels and situations that each organ can handle. That is what was said by Sen. Murkomen.

The fundamental point raised by Sen. Orengo is definitely important that each and every report – this was supported by Sen. (Dr.) Khalwale who also talked about resources – comes to the House. We are not reporting only on the bad things. Our duty is also to report on the good things. So, if counties are performing, let us not just condemn them. They need to be appreciated so that others can learn from them. If you are not performing that well, it is important that the report is brought here. In terms of the support and the timeline of three months, I am sure that the Office of the Clerk will facilitate committees to ensure that they have capacity to carry out the business that is required of them.

We have another Statement by Sen. Lesan. I also want to listen to the Chairman of the Committee on Finance, Commerce and Economic Affairs and to encourage all Chairpersons. It is important to be proactive. You should not always be waiting for Members to ask you. If you are dealing with an issue that has immense national interest, then we need to commend the Chair and Committee Members on being proactive on this matter.

(Applause)

How come I do not see any applause from the Committee Chair and the Members?

USE OF HELICOPTER BY BOMET CEC MEMBERS
TO TRAVEL WITHIN THE COUNTY

Sen. (Prof.) Lesan: On a point of order, Mr. Speaker, Sir. I rise to request for a Statement from the Chairperson of the Sessional Committee on Devolved Government concerning the daily use of a helicopter by County Executive Members of Bomet County while travelling within the county. Bomet is a very small county, geographically. This is a question which I am persistently asked by the citizens in Bomet. They need an answer from us regarding that. I direct this Statement to the Sessional Committee on Devolved Government.

Sen. Murkomen: Mr. Speaker, Sir that is a very unique question. I am wondering how to convene a committee meeting. Anyway, we will try and bring an answer in two weeks.

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of information, Mr. Speaker, Sir.

Sen. Murkomen: I am willing to be informed by the Senate Majority Leader.

The Speaker (Hon. Ethuro): Before you get the information, I am sure that you are aware that the Committee is sessional. So, it is basically dead.

(Laughter)

For purposes of our work, we will use the sessional committee and maybe Sen. (Prof.) Lesan you may have to wait a little bit before we get the sessional committee back in place.

Sen. Kagwe: Mr. Speaker, Sir, perhaps your guidance and direction here might help the Senator for Bomet. It appears to me that this question should rightly actually be in the Committee on Finance, Commerce and Economic Affairs, because it involves the expenditure of money and not the process of devolution.

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Mr. Speaker, Sir. Further to what the Senator for Nyeri County has said, could the Senator for Bomet also, perhaps, rephrase the question? The reason is that I heard as if the Senator for Bomet County is questioning the mode of transport. The reason I am asking this is that we also do not want to look like a House that looks at small things like how people dress or how they travel, unless the question is that the use of this mode of transport is related to the expenditure in counties. That question has not really brought out that. It was very general. I am not really trying to deny the people of Bomet from asking questions about their leaders. Unless there is a clear linkage between the question and functions of the committees of this House and a bit of information that we can receive from the relevant Cabinet Secretary, then we should be careful so that we do not just ask even Cabinet Secretaries questions that they cannot answer.

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. There was an initial ruling that you made and I am surprised that I have been masquerading as the Chair of an ongoing Sessional Committee having held a meeting this morning. I did not know that we are *functus officio*. But if that be the case, I agree with your ruling that it should go to the Committee on Finance, Commerce and Economic Affairs, but, again, really to the point that there must be a link between an individual public officer spending money and misappropriation of county finance, so that then we do not look like we are asking--- All of us use the same mode of transport once in a while, if we are lucky, but not on any public funds.

The Speaker (Hon. Ethuro): Sen. Murkomen, when you become that lucky, who resources your luck?

Sen. Murkomen: Mr. Speaker, Sir, for the record, my own resources.

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. For the record, if you listened to the comments by the Senate Majority Leader on the question asked by Prof. Lesan, he said that it is trivial and small. I find it unacceptable. Is he in order?

The Speaker (Hon. Ethuro): I equally find it unacceptable that you are putting words into the mouth of the Senate Majority Leader. He never said that it was trivial. He

just raised some concern, where that kind of question can have difficulty. I think that those are the kind of issues that ideally would be canvassed before the Committee, because it will need to make a report. So, to me, he was guiding even the Committee when it is interrogating that particular matter.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, you will recall that earlier on in the life of this Senate, you allowed a similar Statement to pass and it was actually responded to. I, therefore, see no reason the Committee on Finance, Commerce and Economic Affairs should not respond to Prof. Lesan's question. You will recall that when a jet was used to take a State officer to West Africa, I raised this matter and you allowed it. An answer came and we made further clarifications. If it is true that it is not public funds that are funding those helicopter trips in Bomet, it will be a quick answer. We will just be told that it is private funds and it ends there. But if it is public funds, we should not wait for the abuse to continue for a whole year, so that it is only when the auditor brings the answer that we become excited.

Sen. Orendo: On a point of order, Mr. Speaker, Sir. I am worried about what Sen. (Dr.) Khalwale has just said; that if the helicopter used in Bomet was from private sources, then that is alright. It is very dangerous if public service and work is being done on the basis of facilities offered privately, which means that the agenda in that county probably is being driven by some undisclosed person. In fact, the opposite situation is even more dangerous. But I would agree with the Senate Majority Leader that the question should be crafted a little bit differently. I even know about the other case which Sen. (Dr.) Khalwale is talking about. I think that the way it was crafted made it easy for an answer to be elicited from the concerned Committee. Even as we go round as Committees, if you go into somebody's private vehicle or are given a present, even if it is a kilogramme of sugar, if you accept it, you will be committing a grievous offence.

The Speaker (Hon. Ethuro): Chairman!

Sen. Billow: Mr. Speaker, Sir, it is true that ultimately, whether there was misuse of expenditure in terms of hiring a helicopter in the county and so forth, it will come to the auditor. But there is a request for a special audit to be conducted with regard to misuse of money by hiring helicopters and several other things between the months of August and December last year in Bomet. That request was forwarded through the Clerk's Office to our Committee and I think that we will be discussing it. It came also from the same Senator. I think that it would be repeating the same work, because he has already made a request. So, in my view, we will handle it through that arrangement.

Sen. (Eng.) Muriuki: Mr. Speaker, Sir, I rise to request for a Statement from the Chair of the Committee on National Security and Foreign Affairs with regard to the status of the Internally Displaced Persons (IDPs) in Nyandarua County.

Mr. Speaker, Sir, as a consequence of the 2007/2008 post election violence, many IDPs---

Sen. Orendo: On a point of order, Mr. Speaker, Sir. Eng. Karue is asking for a Statement and I have seen it in the Order Paper. But now he is going beyond what is contained in the request. I am in that particular Committee and that is why I am taking an interest in this matter. So, if he feels that this request is not detailed enough, then he

should come with a new request. Otherwise, I think what he should do is to take the request which is in the Order Paper, but I stand to be guided.

Sen. (Eng.) Muriuki: Mr. Speaker, Sir, I am at a loss.

The Speaker (Hon. Ethuro): Indeed, Eng. Muriuki, you are at a loss. Just resume your seat.

(Eng. Muriuki resumed his seat)

We need to dispose the matter of your neighbour, Prof. Lesan.

Sen. Munyes: On a point of order, Mr. Speaker, Sir. I had a request before we went for recess that is quite similar to Eng. Muriuki's and I thought that we could put it together.

The Speaker (Hon. Ethuro): Order, Senator! You may resume your seat.

Sen. Muriuki, you can see the impact of your loss. Sen. Munyes, you will wait for Sen. (Eng.) Muriuki to raise the matter and then you can raise your matter as well. For now we just wanted to dispose of Prof. Lesan's matter.

Since the Committee on Devolved Government is not there, and the Committee on Finance, Commerce and Economic Affairs is already seized of the audit request and also, generally the matter is equally applicable to them in terms of expenditure, I direct that Sen. (Prof.) Lesan bears with us so that the Committee on Finance, Commerce and Economic Affairs can include that as part of the issues that they are investigating. We will wait for the report of the Committee.

Sen. (Prof.) Lesan: Much obliged, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Sen. Kerrow, you will undertake to ensure that, that particular bit is covered; you should also take into account the contributions from the various Members. The Senators have raised quite a number of concerns which you will take on board.

Sen. (Eng.) Muriuki!

RESETTLEMENT OF IDPs IN NYANDARUA COUNTY

Sen. (Eng.) Muriuki: Mr. Speaker, Sir, now I can request for my Statement from the Chair of the Committee on National Security and Foreign Relations, with regard to the status of IDPs in Nyandarua County.

Mr. Speaker, Sir, as a consequence of the 2007/2008 post election violence, many internally displaced persons, commonly referred to as IDPs took refuge in Nyandarua County from various trouble spots around the country. Many of the IDPs have been in various camps spread around the county waiting for help. Others were integrated into the community in one way or the other. For example, distant relatives or sympathetic well-wishers afforded the refugee family a corner of their *shamba* to pitch a tent. This category was simply referred to as integrated IDPs. The IDPs in camps have by and large been settled or assisted to settle by the Government. But the integrated IDPs appear to have been forgotten. They have been crying out to the Government to settle them like every other IDP, but to no avail.

Mr. Speaker, Sir, they were greatly alarmed when the Government made an announcement recently to the effect that the IDP settlement programme had been completed and concluded. Could the Government, therefore, state:-

- (a) The number of integrated IDPs there were in Nyandarua County as per the Government records at the end of 2008.

For the benefit of the Chair concerned, 2008 is when the Government did a census of the IDPs.

- (b) How many of those integrated IDPs have been settled to date?
(c) The remainder who are yet to be settled or their cases addressed and what the Government intends to do about them.
(d) How many other IDPs – that is the ones in the camps – are not yet settled or assisted to settle, and what the Government intends to do about them.

Thank you.

The Speaker (Hon. Ethuro): Committee Chairperson.

Sen. Haji: Mr. Speaker, Sir, first, I want to thank my very loyal Member of the Committee, Sen. Orendo, for coming to the rescue of the Committee.

Secondly, if my memory serves me well, when His Excellency the President and the Deputy President were closing the last IDP camp in Eldoret, they said that all IDPs had been settled. So, I do not know whether this Question serves any purpose because if I am going to be given the same answers. It will not serve a useful purpose. All the same, if the Senator insists, I am prepared to answer it on Thursday, next week.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. You have heard the Chairperson of the Committee say that as far as the Deputy President is concerned, all IDPs have been settled. Yes, that is true, but the IDPs that Sen. (Eng.) Muriuki is speaking to are not only in Nyandarua, but across the country. Some of the IDPs were integrated by their families. Culturally, for example, our community found it difficult to allow their relatives to live along the roads and in camps. So, all the IDPs who came from Trans Nzoia in 2008 were actually integrated in their families in Vihiga, Kakamega and in Bungoma. The same thing happened for the IDPs of Siaya because of their culture. I am happy to note that even members of your community, Sen. (Eng.) Muriuki, have borrowed a leaf from us. So, it is important that the Chairperson gives us a national response to that issue, because actually the IDPs are still there.

Sen. (Eng.) Muriuki: On a point of order, Mr. Speaker, Sir. I just wish to clarify to the Chairperson that what he has just said is the exact problem that the Government - and none other than the Deputy President announced publicly on the issue of the IDPs; that all the IDPs had been settled and the matter closed. One of the consequences of that is that on the 25th of January, 2014, the integrated IDPs called all of us in Nyandarua County – the leaders, the Government headed by the County Government – and they all came. There were over 5,000 people in that field who were addressed by the Senator, the Governor and the County Commissioner on behalf of the national Government. The County Commissioner even came with the numbers; that there are 36,000 IDPs who have not been touched by the Government. So, the alarm is too much. It is only fair that the Chairperson of the Committee takes up the matter. You can quote that the Senator for

Nyandarua is saying that we have 36,000 unsettled integrated IDPs as per the Government records, not our records. What is the Government doing about it?

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Yes, Sen. (Dr.) Machage. Just raise the specific matter.

Sen. (Dr.) Machage: Mr. Speaker, Sir, I would also like to request that the Chairperson gives us some information about what the Government is thinking about IDPs that did exist before 2007. We have IDPs of 1992 and 1997. What is the Government thinking about them?

The Speaker (Hon. Ethuro): Yes, Sen. Ndiema?

Sen. Ndiema: Thank you, Mr. Speaker, Sir. I think Sen. (Eng.) Karue is right, in that there are many IDPs who were displaced over time, not only in Nyandarua, but even in Trans Nzoia. The number of IDPs who settled within the camps were very few. Culturally, most of our people did not have to stay in the camps; they went to the market centres near to their relatives and they are still displaced. I think if the Chairperson could accept to get all the records from all the counties in Kenya, it would help.

Sen. Munyes: On a point of order, Mr. Speaker, Sir. The problem of IDPs is not over yet. For the Chairperson to say “we settled them,” yet in Turkana we have five camps---

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

The Speaker (Hon. Ethuro): What is it, Sen. Haji?

Sen. Munyes: Let me finish!

Sen. Haji: Mr. Deputy Speaker, Sir, I did not say that they have been settled. I said that a statement was issued to that effect. So, it is not me to settle these IDPs.

Sen. Munyes: Mr. Deputy Speaker, Sir, then that statement is erroneous. We have not settled ours in Turkana; the five IDP camps have not been completed and, so, we cannot say we have settled them. So, could the Chairperson include that response in his answer?

Sen. Billow: On a point of order, Mr. Speaker, Sir. This issue of IDPs is a very interesting one. We live in one nation and IDPs are those people who have been displaced through internal conflicts. There are conflicts which have been there all over this country. Everyone here knows that in Mandera County from 2011 to 2013, there were conflicts. Which IDPs are we talking about?

The Speaker (Hon. Ethuro): Order! Order, Sen. Billow! Order!

Sen. Billow: Mr. Speaker, Sir, we need guidance because we also represent---

The Speaker (Hon. Ethuro): Order! Order! Do you know why I gave you the chance to speak when there were many others? It is because I thought yours was more of a point of order, like what the Chairperson, Sen. Haji, had raised. He did not say that it was concluded and there was a report to that effect, where you have misrepresented. But now you want him to make your intervention, which is okay. So, wait for the proper turn because there were others who were coming before you.

Sen. Muthama!

Sen. Muthama: Mr. Speaker, Sir, I stand on a point of order to tell the Chairperson that in January, 2008, I was one of those very new Members of Parliament (MPs) who visited the most affected areas---

The Speaker (Hon. Ethuro): Order, Sen. Muthama! Your point of order must be related to the issue, whether you have the Floor or not.

(Sen. Muthama stood up in his place)

No! No! No! We are not interested in where you visited and on which day.

Sen. Muthama: Mr. Speaker, Sir, let us all agree that this is one issue that has been a big shame to this country. Kenyans are suffering; children---

The Speaker (Hon. Ethuro): What is the issue?

Sen. Muthama: Mr. Speaker, Sir, the Chairperson – with all due respect and I respect Chairpersons in this House – must bring the Statement here at least to tell this House when those Kenyans will be settled, because they have that constitutional right to be settled by the Government that is in power.

The Speaker (Hon. Ethuro): That is better now.

Sen. Muthama: Thank you, Mr. Speaker, Sir.

(Sen. Kittony spoke off record)

The Speaker (Hon. Ethuro): Order! Such a point does not exist. Order! Order! Order, Sen. Kittony! Here we deal with points of order or points of information.

Sen. Kittony: It is for clarity, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): That one does not exist for now!

(Laughter)

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

Sen. Kittony: Mr. Speaker, Sir---

The Speaker (Hon. Ethuro): Order, Sen. Kittony! We have already moved to Sen. G.G. Kariuki.

Sen. G.G. Kariuki: Thank you, Mr. Speaker, Sir. Is it possible for the Chairperson of the Committee to bring to this House a list of the number of people we are talking about who are called IDPs in the whole country so that we stop discussing ambiguities in this House?

The Speaker (Hon. Ethuro): The second last to rise will be Sen. Sang! Proceed, Sen. Kagwe!

Sen. Kagwe: Thank you very much, Mr. Speaker, Sir. I rise on a point of order to seek your guidance in relation to the Question, but in a broader perspective.

Mr. Speaker, Sir, the Chairperson of the Committee under this hybrid system where the Chairperson of a Committee is an “oversighter” and a responder as Government is beginning to be a bit of a problem, in the sense that you have just heard the Chairperson of that Committee say what was said by the Government.

Mr. Speaker, Sir, my question on this point is; what happens when a Chairperson gets a response that is unacceptable to the House, but it is the response that the Chairperson has got from the Government?

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

The Speaker (Hon. Ethuro): Sen. Sang.

Sen. Sang: Thank you, Mr. Speaker, Sir. I seek clarification from the Chairperson, with your indulgence. When the Chairperson of this Committee responds to this issue, he should not just limit himself to the IDPs in this country courtesy of the Post Election Violence (PEV) and the other ethnic clashes that we have had in this country, or any other conflict, but he should also look at the IDPs resulting from evictions by Government. In my county, we have IDPs courtesy of Government evictions from the forests, and I think some of these IDPs have not been resettled. So, it is important that if we are looking at IDPs, we should not just look at ethnic conflicts or any other conflicts in this country, but any other IDP or any other person in this country who has been evicted from his land or from Government land. The Government should provide a solution to these kinds of IDPs too.

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

The Speaker (Hon. Ethuro): A special one from the Senator for Tana River.

Sen. Bule: Thank you, Mr. Speaker, Sir. When the issue of IDPs is addressed, it actually touches me a lot because we have been affected in so many ways. We have IDPs caused by the Government, we have natural IDPs because sometimes drought and some other issues may displace us, but, actually---

The Speaker (Hon. Ethuro): Sen. Bule, what are the issues you want the Chairperson to address?

Sen. Bule: Mr. Speaker, Sir, the issue is that IDPs are always spoken about as if they are a group of special people, but they are all over Kenya. So, actually the issue of IDPs has to be addressed equally in all counties and it has to be addressed afresh.

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. I have only one point of order.

The Speaker (Hon. Ethuro): Order! We have got this Business all wrong, and I am partly to blame. We have got it all wrong.

(Sen. Wako remained standing while the Speaker was on his feet)

Sen. Wako, you know what to do; you should freeze where you are.

(Sen. Wako spoke off record)

Now you are doing it twice; you would rather remain where you are.

(Laughter)

Order! Order, hon. Senators! We have really got it all wrong. One, this was a specific Statement requested by one Senator on the specific circumstances of IDPs. You

may wish to be enjoined, but that is in terms of proposing specific requests related to that of the Chairperson, but you have really turned it into a debate even before the Chair has got his response. Since the matter is hot and as you can see, it is also taking its effect on the Speaker, I will try to help the Chairperson.

One, I think you should deal with the issues that were asked by Sen. (Eng.) Muriuki because those ones are specific. Those are real, but as the Chairperson of the Committee, you provide that oversight on behalf of the House, then you can also entertain these other suggestions that have been raised by the other Senators and on the specific matter from Sen. Kagwe on what the Chairperson is supposed to do, given that he is not a Cabinet Secretary.

I do not think we should really feel that impotent. We provide oversight. You get your response from the Government, it is you as the Chair and as the Committee to convince yourself whether that response is correct. What has obviously come out is that Senators disagree with the opinion given by the Government in terms of the finality of settling the Internally Displaced Persons (IDPs). As an oversight Committee, you are at liberty to actually even initiate your own interrogation of that matter further by even going to the counties affected, inviting memoranda, asking other people who have issues to come then you can compare what the Government gave you and what you have found as a Committee of the House. These things are available so that you can come here and put an opinion. Committee Chairs are not just conveyors of messages from the Executive to the House. You should interrogate the matter and where you feel that you need more information, look for it. The Chair and the Office of the Clerk will facilitate the Committees to get to the bottom of any particular issue. That is our job.

Sen. Munyes, your Statement also expired last year. So, you cannot enjoin it to the new one. So, you should revive it and bring it back. I am sure the Chair can deal with those issues.

Sen. Haji: Mr. Speaker, Sir, thank you for your guidance to me and other Senators. As I said earlier, we will try to answer the Statement which was requested by Sen. (Eng.) Karue on Thursday and I take your advice. I want to assure the House that we, as a Committee, will endeavour to go and find more information, after I have answered this one on Thursday because the issue of IDPs is so hot.

Sen. Elachi: Mr. Speaker, Sir, I just wanted to seek your guidance in terms of looking at the Committee on National Security and Foreign Relations and the issues that have been raised, you realize that the Government used the Ministry in charge of Devolution to deal with issues of IDPs. Will I be in order to request that while he looks at it from the internal security side, he should also look at the Ministry in charge of Devolution and what they have done so far?

Sen. Orengo: On a point of order, Mr. Speaker, Sir. I was rising on a point of order in regard to the guidance you have given the hon. Senator from Nyeri and I was looking at this particular Standing Order when a request of Statement is made. The Standing Order indicates that the request is made seeking a Statement from a Committee Chairperson, it is not a Statement from the executive. What I was wondering is that, is it in order for a Committee through the Chair to bring a Statement in which it will relay to the House the position given to the Committee from the executive if necessary and also

make its own opinion on that Statement because when it comes to just being conveyors of information from the executive, it makes the Senate also lose its decorum and authority. Is it in order?

I think this is important because if indeed it is a Statement from the Chair of a particular Committee, if the executive is not willing to give that Committee the appropriate information, the Committee can get other information. It is in order to also to say that the Government has failed to give its own side of the story and to suggest appropriate action to be taken. The Statement is really from the Committee and not necessarily from the executive. So, I stand guided by the Chair on that particular Standing Order because we have been operating on the basis that the Statement is a Statement from the executive. My reading of that Standing Order is that it is not necessarily so.

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. Just a very quick supplementary, I do not think it is satisfactory to this House when such Questions like the one raised today or substantive questions of these nature are brought before the House and the Chair, including myself, I am not saying because of him but I am saying going forward, just goes to a public officer or a Minister, I think it is better when the Committee summons the relevant people so that what Sen. Orendo was raising can be achieved in terms of what he said. When you are reporting to the House, you say, we formed an opinion but although the officer said this or that, there exists certain contradictions that we never agreed with.

I think it works better if, instead of getting written Statements from public officers, the Committee summons them. This can be possible so that the Member who was interested is also notified. He can go to that Committee meeting and ask questions. The Committee should be the framework through which the House or an individual Member can achieve answers. I am not just saying this for Sen. Haji but going forward as well for the Committee, it would be easier if we summoned the officers to the Committees.

The Speaker (Hon. Ethuro): The final word from the Chair and we must dispose of this matter.

Sen. Haji: I will be very fast, Mr. Speaker, Sir. Although the suggestion is good but look at the practicality of the matter. We do not have officers of the Senate on the ground and it would be very cumbersome to summon everybody in the counties to come and give you evidence. It will bog us down and the Senators will not be able to represent the people.

With those remarks, I beg for your guidance.

Sen. (Eng.) Muriuki: This is my final word. It is good and I accept the request by the Chairman to bring the Statement on Thursday. However, on the issue raised by Sen. Murkomen, which is that instead of the Committee just asking for a Statement, they summon the Cabinet Secretary involved because the Government has publicly issued a Statement publicly saying that the IDP issue is over, whereas the Senator for Nyandarua, I am saying it is not correct.

What I was requesting the Chair to give a direction on is to follow up on Sen. Murkomen's suggestion. Instead of just getting a Statement from the Government, the Committee should summon the person concerned, in this case, the Cabinet Secretary

concerned. In this case, there was a question whether this is an issue of the devolved government or of internal security. As far as I know, the IDP issue is being handled by the internal security because they have the records. So, it is quite in order for the Chair of the Committee---. However, the substantive request is that you should summon the Cabinet Secretary so that the Questioner like me can also be present so that we can raise subsidiary issues and the Chairman can have a substantive answer or report to the House without just copying a report from the executive.

Thank you.

The Speaker (Hon. Ethuro): I do not know why Sen. Orengo re-opened this although he says he stands guided. I thought he would go beyond being guided and appreciate the Chair for guiding because we had already determined this matter and disposed of it. We agreed with the Chairman of the Committee to bring the Statement; specifically the Statement requested by Sen. (Eng.) Muriuki, on Thursday. The Chairman has promised the House that they will also now investigate the other issues that Members have raised. I think that is the proper way of doing it. He has been given suggestions including calling the Cabinet Secretary, calling the Principal Secretary and also calling the Senators who represent these kind of counties. These options are available to the Committee. I want to advise the Chair not to sound like he has no capacity. You have a lot of capacity. You can summon people to come to appear before you, you do not have to go to them. They will come and give you all the information you need without leaving the Senate.

Another Statement, the Senate Majority Leader.

BUSINESS FOR THE WEEK COMMENCING
4TH MARCH, 2014

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I rise under Standing Order No.43(2) to issue a Statement regarding the business of the Senate for the week commencing 4th March, 2014.

Hon. Senators, pursuant to the provisions of Standing Order No.43 (2), this is to present the Senate business for the coming week as follows:-

On Tuesday, 4th March, 2014, the Rules and Business Committee will meet at 12.00 p.m. in order to schedule business of the Senate for the week commencing 4th March, 2014.

The Senate will continue with business that would not have been concluded in today's Order Paper on Tuesday.

On Wednesday morning, the Senate will continue with business not concluded on Tuesday, as well as debate the Report of the Standing Committee on Energy, Roads and Transportation on the familiarization tour of the Kenya Ports Authority (KPA), the Kenya Petroleum Refineries Limited (KPRL) and Kenya Pipeline Company Limited (KPC) in Mombasa County and embark on any other business scheduled by the Rules and Business Committee.

On Wednesday afternoon, the Senate will continue with the business not concluded on Tuesday and Wednesday morning and consider any other business

scheduled by the Rules and Business Committee including the following Bills which have been republished.

1. The County Governments (Amendment) Bill, 2013
2. The County Industrial Development Bill, 2013
3. The Wildlife Conservation and Management (Amendment) Bill, 2013
4. The Kenya Medical Supplies Authority (Amendment) Bill, 2013.
5. The Alcoholic Drinks (Amendment) Bill, 2013 and
6. The Community Land Bill, 2013.

Finally, on Thursday, 6th March, 2014, the Senate will continue with the business not concluded on Wednesday afternoon and consider any other business scheduled by the Rules and Business Committee.

I thank you and, hereby, lay this statement on the Table of the House.

(Sen. (Prof.) Kindiki laid the Statement on the Table)

The Speaker (Hon. Ethuro): If we do not have more statements, let us proceed to the next order.

COMMUNICATION FROM THE CHAIR

PROCEDURE TO BE FOLLOWED IN CONSIDERATION OF THE RBC REPORT ON REVIEW OF THE STANDING ORDERS

The Speaker (Hon. Ethuro): Senators, before we proceed with Order No.8, I would like to remind the House about the guidance I gave on 5th December, 2013 with regard to the procedure that will apply in consideration of the Report by the Rules and Business Committee on the Review of the Standing Orders.

As hon. Senators will recall, in the past, Reports on the review of the Standing Orders were considered in three phases. In the first phase, when the Order for the Motion was read, the Chairperson of the Committee moved the Motion:

“That, Mr. Speaker do now leave the Chair,” which was subsequently seconded and a question proposed to initiate debate on the policy and principles implied in the Report. At the end, the question was put;

“That, Mr. Speaker do now leave the Chair.”

If this was agreed to, the House resolved itself into a Committee of the Whole.

In the second phase, the Report was considered in the Committee of Whole in a similar manner as the Committee Stage of a Bill except that the Speaker took the Chair as the Chairman of the Committee of the Whole since he was also the Chairman of the Rules and Business Committee. The Clerk read each of the proposed amendments to the Standing Orders, one after the other and each amendment was disposed of in that order like in the case of a Bill. When all the proposed amendments had been disposed of, the question of the Motion for the Adoption of the Report was put.

In the third phase, the House resumed and the Speaker reported progress of the Report. The question was then put;

“That, the House doth agree with the Committee in the said Report.”

Hon. Senators, the new procedure that will apply to Order No.8 is now provided for under Standing Order No.247 which provides as follows: Upon tabling of a Report of the Rules and Business Committee under Standing Order No.244, 245 and 246, the procedure set out at Standing Order No.245(5) and (6) shall apply with the necessary modifications. Standing Order No.245 (5) provides: The Senate shall consider the proposed amendments to the Standing Orders as reported from the Rules and Business Committee on a Motion that the Report of the Rules and Business Committee be approved.

You will note that the proposed amendments to the Standing Orders are contained in the Report of the Committee as an annex to the Report. Any proposal to amend the amendment proposals will, therefore, be an amendment to the Report and may be styled as an amendment to approve the Report subject to the following amendments.

If you have an amendment, the amendment must have been approved by the Chair. I am only aware of two, so far, and if you have not brought your amendment, you may be time barred. Owing from these provisions, we will not have the Motion; “That, Mr. Speaker, do now leave the Chair.”

We will not also be having the Committee of the Whole on Order No.8 since the Motion before us is for the approval of the Report of the Rules and Business Committee under Standing Order No.245(5). If the Report is approved, the amendments proposed will similarly have been approved.

Sen. Billow: On a point of order, Mr. Speaker, Sir. With regard to your direction on the amendments, we have just received copies of the Report when the sitting started. Therefore, we could not submit amendments before because we did not have copies. I have some proposed amendments.

Will you be kind enough to accept them now?

The Speaker (Hon. Ethuro): Sen. Billow Kerrow, the paper was laid on the Table yesterday afternoon and the Notice of the Motion was given yesterday afternoon. The Rules and Business Committee wanted maximum participation and to do a special sitting to ensure that most of the amendments which had been proposed last time were factored in the Report.

Standing Order No.53(1) is very clear. It says:

“The proposer of an amendment to a Motion shall, before moving it, hand the proposed amendment in writing, signed by the proposer to the Clerk, at least, two hours before the order is read,”

We read the Order at 4.00 p.m., and you had up to 2.00 p.m. Really, under the circumstances, this is very clear.

Hon. Senator: Use your discretion under Standing Order No.1.

The Speaker (Hon. Ethuro): I can only use Standing Order No.1 when something is not provided for and I am still bound by Standing Order No.1 to continue operating along the established procedures and precedence.

Sen. Billow: On a point of order, Mr. Speaker, Sir. Maybe I need to seek your guidance. Where it is provided, for instance, in the Public Finance Management Act

(PFM) that a certain responsibility falls under a certain Committee of the House, specifically under the PFM Act; that is what I wanted to seek clarification on.

The Speaker (Hon. Ethuro): What is your question?

Sen. Billow: The Public Finance Management (PFMA) Act, section 8 says that the Senate Finance, Commerce and Economic Affairs Committee will, among other things, look at the Reports under Part 4 which include the Report by the Controller of Budget. If you are dealing with the approval of the Division of Revenue, Budget and so on, it then follows that monitoring of that Budget and utilization is done by the same Committee. That is what I wanted to say. Legally, this will remain under that Committee. Section 8 talks about the functions of the Finance, Commerce and Economic Affairs Committee of the House.

The Speaker (Hon. Ethuro): Hon. Senators, this is the second Session. Session one, I was a bit relaxed. I just wanted to give you the warning that we should strictly abide by the Standing Orders. What we have done this afternoon did not strictly conform to the Standing Orders. However, being the first week, I was giving time for memory which may have been lost during the recess so that it is regained. From next week, you will have no excuse but I will rule you out of order if the matter is not properly processed.

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. While accepting and respecting the provisions of the Standing Orders on the time allocation and submissions of amendments, it is also known that this Report was tabled yesterday. However, no copies were given to Senators until today. Would I be in order to request, therefore, that every time a report is tabled, copies are availed at the same sitting so that such a situation does not arise, where we have to peruse over the Report instead of giving it due diligence on every clause?

The Speaker (Hon. Ethuro): The ruling is that when the Report is tabled, you have to make 250 copies or so. So, there will be copies which are obtained from Room 10 for us. We do not carry them to the Chamber. Once a Report of the Committee is tabled, sufficient copies are provided for in Room 10 which you can pick after tabling of the Report because that is the time that the Report is made public and available to the House. So, maybe we are waiting to receive it here and that could be the problem.

I also note that there is a tendency to ambush the Chair on amendments. The practice of the House is that we should not engage in ambushes. Whatever issues you have should be canvassed with the Chair before you raise them. That is one thing that may get you in trouble with me. So, from next week, if you have not canvassed a matter, I will rule you out of order. You need to give the Chair notice on what you want to raise. Now, listening to Sen. Billow, he may be sounding reasonable but this may be an ambush and a surprise.

MOTIONS

ADOPTION OF REPORT OF THE RBC ON
THE REVIEW OF THE STANDING ORDERS

Sen. Murungi: Mr. Speaker, Sir, I beg to move the following Motion.

THAT, pursuant to Standing Order No.247, the Report of the Rules and Business Committee of the Review of the Standing Orders laid on Wednesday, 26th February, 2014, be approved.

Mr. Speaker, Sir, this is a Report of the sub-committee of the Rules and Business Committee (RBC) which was formed on 23rd April, 2013 to review the Standing Orders of this House. The Members of the sub-committee are listed on page 2 of the Report and I do not intend to read those names.

Mr. Speaker, Sir, the Report has extensively been discussed and approved by the Rules and Business Committee which you, Mr. Speaker, are the Chair. I would like to take this opportunity to most sincerely thank you, Mr. Speaker, my co-Chair, Sen. Orendo and the other colleagues, both in the sub-committee and in the RBC who have worked tirelessly to make this Report possible.

The Committee decided to review the Standing Orders and the powers granted the Senate by Article 124 of the Constitution and also Standing Order No.244 of our Standing Orders so as to improve the procedural efficiency of this House in discharging its constitutional mandate in Articles 94, 96 and other provisions of the Constitution.

Mr. Speaker, Sir, I believe that the sub-committee has done a great job, which we are now bringing to this House for debate and possible approval. The Senate is a very important institution in enhancing our parliamentary democracy. We are the apex institution of devolution. The Senate has a critical role to play in consolidating both constitutionalism, rule of law, parliamentary democracy and development in this country. So, our mandate is very broad. Under Article 96 of the Constitution, it is the duty of the Senate to represent and protect the interests of the counties and promote and enforce openness, transparency, accountability and public participation.

*(Sen. Murkomen crossed the Floor
without bowing to the Chair)*

Sen. Muthama: On a point of order, Mr. Speaker, Sir. Sen. Murkomen who is one of the leading Members in House has just crossed the Floor without even bowing to the Chair, as if he is going to the market. Is he in order to do that?

The Speaker (Hon. Ethuro): Order! Order! Sen. Murkomen, can you confirm or deny?

Sen. Murkomen: Mr. Speaker, Sir, I deny. But I am willing to bow for avoidance of doubt.

The Speaker (Hon. Ethuro): Which confirms that you even doubt your own denial.

(Laughter)

Proceed, Sen. Kiraitu!

Sen. Murungi: Thank you, Mr. Speaker, Sir. This is also the reason we should take the procedures and traditions of the House seriously.

Mr. Speaker, Sir, the oversight mandate of the Senate is very broad. This is because we have to be involved in overseeing the county planning processes. We have to undertake the oversight of the budgeting processes, from the beginning to the end. We have to oversight expenditure and project implementation in the counties. By overseeing the county governments, we are also talking about overseeing all these processes; both the county executive and county assemblies. So, we are not just doing a postmortem exercise. The oversight process begins from the beginning to the end of the budget circle. So, this is a very broad mandate that we, as Senators, must exercise. In so doing, I have no doubt that as Senators, we are going to attract many enemies and opponents, as when our very able Senator, Dr. Khalwale, and his Committee did during the Wambora case.

Mr. Speaker, Sir, in addition to what we have done, we are proposing that we pass some specific legislation, for instance, an impeachment act, which clarifies the procedures that the Senate should follow at the legal level. It should clarify the role of the county assemblies and Senate, so that we insure the process from interference by other bodies like the courts. We also know that the Senate has many institutional and administrative challenges which are not being addressed by the Report that we have brought before you. For instance, our efficiency and effectiveness at the county level is seriously hampered by lack of resources. Our offices are in a sorry state, understaffed and under-resourced.

You cannot equate a Senator to a Member of the County Assembly or a Member of the National Assembly who represents only one constituency. We feel that we need a split in the Parliamentary Service Commission, so that we have a Senate Service Commission, which will exclusively focus on empowering Senators to perform these great tasks that are imposed on us by the Constitution.

Mr. Speaker, Sir, we had occasion to travel to Australia with Sen. Fatuma Dullo and Sen. Mutula Kilonzo Jnr. in December, as Members of the Committee on Legal Affairs and Human Rights, courtesy of our Chairman. We saw in Australia that the Senate has its own Senate Administrative Service and the Legislative Assembly also has a separate administrative machinery. So, we are not asking for something new. The Clerk has been to Australia and knows what I am talking about. This is what we need in order to empower the Senate.

Mr. Speaker, Sir, the Report was tabled yesterday by Sen. James Orengo and he also moved this Motion. I want to thank him for doing so. This is the second time that this Report is being tabled. We tabled it in December last year. I even attempted to move it on 5th December, and the HANSARD will bear me out, because I took you through the Report at that time. Because of the shortage of time and also the rule against repetition, I do not intend to take the Senate through each and every rule that we intend to amend in

this Report. Allow me to just highlight some of the key amendments that are being proposed.

Mr. Speaker, Sir, quickly running through the Report, we can start at page 5, where we are proposing that the Speaker presides over the election of the Deputy Speaker. On page 6, Part IV, there is the Senate political leadership which deals with both the election and the removal of the Majority and Minority leaders and Whips.

Mr. Speaker, Sir, Standing Order 20, on page 7, the Deputy Minority Leader is also being catered for and required to act especially when the Senate Minority Leader is unable to perform his functions, like it happened to Sen. Moses Wetangula. There was no provision for Sen. Abdirahman to act. Now, this provides for that, and also for a Whip to act when both the Senate Minority Leader and the Deputy Senate Minority Leader are not available.

Mr. Speaker, Sir, on page 9, there are issues of quorum. We are amending Standing Order No.34, so that the Speaker does not have to count the members present every time during the beginning of a sitting. In the Commonwealth tradition, the Speaker is supposed to be blind to quorum. He should only realize it when the matter is raised by a Member. So, this amendment will allow the Senate to continue without us being counted as we come in at the start of a sitting.

Mr. Speaker, Sir, Standing Order No.41 is being amended. Initially, we provided for Messages from the President. We are now providing for messages from county assemblies and Governors and also making provision for our Speaker to give advisory opinions to the speakers in the county assemblies.

Mr. Speaker, Sir, on page 12, under Standing Order No.42, we are providing for what we are calling the Statements Hour; one hour on Tuesdays, Wednesdays and Thursdays, commencing not later than 3.00 p.m., for Senators to raise issues arising out of their counties or any issue of a general topical concern.

Mr. Speaker, Sir, on page 14, there is the question of limitation of debate. Standing Order No.98 provides that in moving Bills, Sessional Papers, *et cetera* and debating them, no person can speak for more than 15 minutes, unless with the permission of the Speaker. However, the Mover of any Motion has a maximum of 60 minutes and 30 minutes when replying. The Senate Majority Leader and Senate Minority Leader are also given a maximum of 60 minutes, because they represent big constituencies.

Mr. Speaker, Sir, on page 15, there is Standing Order No.144 which deals with re-introduction of Bills after the Session. Here we are providing that the Bill should not lapse at the end of a Session, but can continue at the beginning of the following Session.

Mr. Speaker, Sir, on page 16, Standing Order No.174 is being amended to provide for the Deputy Speaker to chair meetings of the Rules and Business Committee when the Speaker is not available to Chair those meetings. As it is now, it becomes very difficult for somebody to chair when the Speaker is not there, because there is no rule empowering any Senator to chair the meeting.

Mr. Speaker, Sir, the next innovation, which has generated quite a bit of interest are the Committees. These are provided for between pages 17 and 21 of the Report. It is proposed that certain Committees which cover very large dockets be split, so that we can be more efficient in our oversight functions, regarding those functions. I think that this is

in the Second Schedule that is being amended. It is being proposed that the Committee on Agriculture, Land and Natural Resources be split into two, that is, the Committee on Agriculture, Livestock and Fisheries and Committee on Land and Natural Resources. It is also being proposed that the Committee on Education, Information and Technology be split into two, that is, Committee on Education and Committee on Information and Technology. Education is a very big docket as it covers education from nursery schools to universities. Therefore, it should be handled by a separate Committee. Similarly information and technology is where Kenya is going, hence it needs specific focus by a separate Committee.

Mr. Speaker, Sir, the Committee on Energy, Roads and Transportation is also considered to be too large. It covers all the energy issues, that is, electricity, petroleum, renewable energy, oil, gas and coal. Infrastructure, transportation and roads is also a very big docket covering the ports, airports, roads and railways. It was felt that this is too big to be handled by a single Committee. It is, therefore, proposed that the Committee be split into two; the Committee on Energy and the Committee on Roads and Transport.

Mr. Speaker, Sir, equally, the Committee on Health, Labour and Social Welfare is also being proposed to be split into two; one, the Committee on Health and, two, the Committee on Labour and Social Welfare. You all know that health is considered to be a very big docket covering issues all the way from the dispensaries, health centres and all the various levels of the hospitals, including national institutions. So, the Committee also proposed that, that Committee also be split into two Committees.

Mr. Speaker, Sir, the focus has also gone on to Standing Order No.209, and it is being proposed that, that Standing Order be amended to produce a new Standing Order No.209(a). The purpose of this amendment is to enhance our oversight role by creating a new Sessional Committee which is to be called County Public Accounts and Investments Committee (CPAIC). Sen. (Dr.) Khalwale will be very happy with this. We are looking at page 17 of the Report.

Mr. Speaker, Sir, I think we need to read the functions of this new Committee. The Committee will be known as the County Public Accounts and Investments Committee. It will consist of a Chairperson, who shall be a Member of the Second largest party or coalition of parties in the Senate- and not more than 11 other Senators; which means that it will be chaired by the Opposition in the Senate.

Mr. Speaker, Sir, the functions of the CPAIC shall be as follows:-

(1) Pursuant to Article 96(3) of the Constitution, exercise oversight over national revenue allocated to county governments.

(2) Pursuant to Article 228(6) of the Constitution, examine the reports of the Controller of Budget on the implementation of the budgets of the county governments.

(3) Pursuant to Article 229(7) and (8) of the Constitution, examine reports of the Auditor-General of the annual accounts of the county governments.

(4) Examine special reports, if any, of the Auditor-General on county government funds; and,

(5) Examine reports, if any, of the Auditor-General on the county government public investments and exercise general oversight over the county public accounts and investments.

So, this will be a very powerful watchdog Committee of this House and I would really urge hon. Senators to support the creation of this Committee.

Mr. Speaker, Sir, it is also proposed that the Committee on Finance, Commerce and Economic Affairs be renamed to read the Committee on Finance, Commerce and Budget. This is covered on page 20 of our Report. The purpose of this Committee – and I think we should pay some attention so that there is no overlap between the Committee we are creating and this other one – will be to:

(1) Discuss and review the estimates of the county governments and make recommendations to the Senate.

(2) Examine budget policy statements which are presented to the Senate.

(3) Examine and report on the budget allocated to constitutional commissions and independent offices.

(4) Examine Bills relating to county budgets, including the Division of Revenue Bill.

(5) Examine and review the report on borrowing requests by counties.

Mr. Speaker, Sir, we expect many county governments to seek Government guarantees and borrow external funds. So, this will be a very important Committee in ensuring that there is no irresponsible borrowing by our counties.

The Committee will also consider all matters relating to resolutions and Bills for appropriation, sharing of national revenue among counties and all material concerning the national budgets, including public finance and monetary policies and public debts, trading activities, commerce, tourism, investments and disaster policies; planning and development of policy by the counties.

Mr. Speaker, Sir, we have seen a need for us to make our counties centres of productivity. This Committee will be critical in examining the various projects that are being proposed by various counties to ensure that they are properly designed and that we really do not form white elephants. It will also ensure that they are properly monitored from the budgeting to implementation.

Mr. Speaker, Sir, I know I talked at length when I was moving this Report last year. It is not my intention to repeat what I said during that time. I will invite the hon. Senators to read the HANSARD as well.

Mr. Speaker, Sir, I now beg to move and request my co-Chair, Sen. Orengo, to second the Motion.

Thank you, Mr. Speaker, Sir.

Sen. Orengo: Thank you very much, Mr. Speaker, Sir. I rise to second and also register my appreciation for the leadership of Sen. Kiraitu Murungi in piloting this work to conclusion and reporting to the Rules and Business Committee (RBC), chaired by you. I would also like to congratulate the Members of this sub-committee who worked tirelessly in order to make sure that we have these rules for consideration, and as we may know, that is contained in the Report.

The Standing Orders, as they stand today, were approved by the National Assembly in the Tenth Parliament in exercise of powers which were granted to it by the Constitution of Kenya 2010 as part of the mechanisms of enabling a smooth transition from the old Order to the new Order. But as it is, the National Assembly was working

from the perspective that they had no record other than the operations of the First Senate, whose functions were not quite the same as this particular Senate. They also tried to borrow from other experiences.

But, Mr. Speaker, Sir, since we have sat, deliberated and debated on this in the Senate since March or thereabouts, it came to pass that there were areas within our Standing Orders that needed review, and where there were lacunas or where there were inconsistencies, this required a new look and, therefore, the preparation of this Report was crucial. I think it was crucial that it comes as early as possible so that if we, indeed, need to review these Standing Orders again, then we prefer the time when our term of office is about to expire.

Mr. Speaker, Sir, my able co-Chair has really gone through the Report comprehensively and I do not want to undertake repetition in seconding this matter. But I just wanted to emphasize this; that Committees of the House of the Senate and the Standing Orders flow from Article 124(1) of the Constitution. So, when you sit in a Committee of the House, you are a creature of the Constitution; that body is critical because sometimes when we sit in these Committees, we assume that we are a creature of Standing Orders. But, actually, the enabling constitutional basis for the establishment of these committees is in the Constitution itself. So, when you sit as a Committee, you are exercising, to some respects, constitutional functions related to the core mandate of Parliament as spelt out in the Constitution.

Therefore, I am just saying this in relation to the fact that sometimes when parliamentary committees summon entities, state organs or public officials, there will be assumptions that this is just a 'small' Committee created by the Senate. But these committees emanate from Article 124 of the Constitution and, therefore, in the manner in which they are provided for in the Standing Orders, it is to enable the Senate to perform its functions as spelt out or enumerated in the appropriate chapter in the Constitution.

The second thing, as I said, Mr. Speaker, Sir, is the Standing Orders. The Standing Orders also flow from the Constitution and, to that extent, they are at the level of any other legislation by Parliament.

Mr. Speaker, Sir, you have just gone through the procedure for approving this Report and the amendments, and compared it to the manner in which we pass Bills here. For what it is worth, it is not for other reasons that it will have to go through a Committee of the Whole, but in this case Chaired by Mr. Speaker. In that same part of the Constitution in the next article is the power of the House to summon witnesses, including committees. It is important that the provisions that relate to the powers of Committees and Parliament to summon any person to appear before it are enumerated just after the provisions that relate to Standing Orders and the privileges. So that when the Senate is summoning anybody, it is not a simple matter.

I think there is a feeling out there that, probably, the Senate is going overboard in trying to summon persons to appear before its Committees; and the Senate sitting as a plenary – if required in the impeachment proceedings – would assume that even the Plenary of the House if it was required to be so, even a witness can appear before the Plenary of the House of Senate. That is why the rules or the provisions that relate to the power to call for evidence is an important power given to Parliament, and the powers are

the same as those of the High Court. I am saying this with emphasis; that when the High Court is sitting giving orders against Parliament, this House has also the same powers as the High Court to summon any person. The emphasis is on “any person.” And the day that we are going to summon any person, they will realize the authority of the Senate, and those powers include powers to enforce attendance.

I mean, that is not a power that is just lying there; to enforce attendance, it means that even the Commander of the army – and I am glad about the military; that they have appeared before us; I have been in Committees where they have appeared. Other people think that they are higher in the pecking order than those men and women who look after our borders and protect the security of the people of Kenya and its territory. The House and its Committees also has the power to compel the production of documents or to issue a commission or request to examine witnesses even abroad. There were instances where this Parliament actually can go out of our territory to hear evidence or collect evidence.

So, Mr. Speaker, Sir, I am saying this just as a matter of emphasis and hope that the Committees which are established by this Parliament will enforce the authority of this House so that the Senate is not just seen as a law making organ. The biggest transformation that we have had from the old Constitution to this Constitution is that Parliament is not just a law making organ; it has got oversight responsibilities, it has got budget making responsibilities and then it is also one of the highest courts in the land. This is such that when this Parliament or this Senate undertakes an impeachment process, there is no appeal after this Senate has made the decision on questions of impeachment. There is no provision for appeal, and that is in the Constitution. So, it is important that some of these things are appreciated. I like the words which the Senate Majority Leader has constantly used; that we are not a parastatal; neither are we a tribunal, because this is a constitutional power that we are a tribunal investigating as much, that when Parliament sits on some account, then it is a tribunal; we are not. More importantly, we are not a trade union.

(Laughter)

So, I thank the Senate Majority Leader for those very well used phrases and words.

Just for finality, the arrangement of our Constitution is such that in this Constitution, the first institution and organ of governance that it deals with first is the legislature, then the executive, the judiciary, and the system of governance known as devolution. Therefore, in the hierarchy and order of things, the legislature comes first. You should not be shy to say that the framers of this Constitution meant their words and meant the architecture of this Constitution by putting the legislature first. That follows from Article 1(2) of the Constitution which says that the sovereignty of the people is exercised directly by the people or through its elected representatives. Having said all that, I will just highlight one or two areas because I think my co-chair has gone through this Report comprehensively.

First, when we require a Special Sitting of the House, it was a matter of the Majority Leader and the Minority Leader consulting, but we have said that to have a Special Sitting, there must be at least 15 Senators who agree with them that we need that

Special Sitting. So, it is not a matter that is left only to the leadership of the House. The other one that my co-chair did not point out because they are several, is that Standing Order No.30 has also been amended so that this House will be meeting only during the afternoons of Tuesday, Wednesday and Thursdays so that we have enough time for Committees on Tuesday mornings, Wednesday mornings and Thursday mornings. This is because a lot of the Senate work will be done through the Committees. This is also very critical because it has been very difficult to have sufficient time for the Committees to do their work while the Senate is in Plenary.

The other one is Standing Order No.33 which relates to adjournment on a matter of definite urgent national importance. Previously, it was required to give two hours notice but we think that if it is so urgent and important, those two hours should be reduced to one hour because you may just come from your county and there is an emergency and you arrive in the early afternoon and if you are required to give two hours notice, you may not be able to deal with the emergency. At least, for the purpose of the Senate to be seized of the matter, you needed at least about 12 or so hours.

Mr. Speaker, Sir, since this Report has been with the Senators from last year and since my able co-chair has done a wonderful job by going through the Report comprehensively, we may have missed something but that is because we want these things now to be dealt with at a later stage clause by clause.

With those few remarks, I beg to second.

(Question proposed)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, thank you for giving me the opportunity to contribute in support of this Motion. I want to make it very clear from the beginning that I am in total support of the excellent job of the Rules and Business Committee through a sub-committee that was co-chaired by two eminent lawyers of this country, the sons of this country who need no introduction; Sen. Kiraitu Murungi, Senator for Meru County and Sen. James Orengo, the Senator for Siaya County. The job done by this sub-committee is fantastic, the language used is simple, straight forward and clear. The proposals that are being made for amendment are quite clear and justifiable.

Mr. Speaker, Sir, allow me to say a few things, I will not take a long time. I think as many of my colleagues as possible would want to contribute. The first one is to realize the importance of this exercise and the importance of the review of Standing Orders. I want to support what the seconder of the Motion, my senior, Sen. Orengo has said, which is, that ordinarily in the traditions of Parliament, review of Standing Orders is not an everyday thing. It is not something that would happen often. Therefore, it is one of those things that are rare. In fact, in most cases, Standing Orders are reviewed to take effect in the next or subsequent Parliament. So, we count ourselves as very lucky to be involved in this exercise of making sure that our Standing Orders are better and more coherent. We have sealed the gaps and loopholes that exist in the Standing Orders at the moment.

Mr. Speaker, Sir, let me thank the Committee and the sub-committee of the Rules and Business Committee. Let me also say that I have read with a lot of keenness all the

recommendations and I have noted, for example, the prayer that we make here every day is proposed for shortening. I have read that prayer, I have compared with the prayer we had before and I am sure it is good. It is short and strong enough and it is consistent with the first paragraph in the preamble to our Constitution which says:-

“We the people of Kenya, recognizing and acknowledging the Supremacy of the Almighty God of all creation.”

So it is consistent with the Constitution, it is consistent with the National Anthem that opens by saying “Oh God of all creation”. Sometimes we take for granted things like having prayers in our institutions of governance, having prayers in our national anthem and having prayers in our Constitution but I am convinced beyond doubt that these are some of the things that stabilize a nation. These are some of the things that make a nation grounded. I know in some countries, they are even trying to remove any mention of God or mention of prayers from their constitutions and from their currencies. These are places where you can see that there is a lot of decadence and a lot of deviation from the basic foundations that are essential for the formation of the society. Therefore, I want to commend the work done around that.

Mr. Speaker, Sir, the second thing that I want to say is that I have seen proposals by this Committee around the issue of political leadership in the Senate, I want to agree that we need to strengthen the position of deputy majority and deputy minority leaders so that they can serve the parliamentary parties which they represent in this House so that they are not seen, as I have heard in some quarters which I will not name because they are outside this House, there are people serving in these positions and nobody knows what they do. They look like flower girls and flower boys just escorting the substantive holders of office; which is not the intention of the drafters of the Constitution and it is not the intention of the drafters of the various legislations that create these offices. So, it is good we strengthen the offices so that when the majority leader is not present, automatically, the deputy majority leader acts and does so with authority and influence. The same applies to the whips, rather than having a situation where when the substantive holder of that office is not around, the deputy has no authority to transact and represent the parliamentary party concerned. So, this is a very welcome proposal.

I have seen that they have also strengthened the process of removing such people from office including the majority leader, which is also good, because it will encourage accountability. Sometimes you get into an office and you think you are the best thing that happened in the world. You forget that these public or party positions can be occupied by any other person. So, it is good that we be reminded that there is even that process of removing you from office. So, that process should be strengthened and made impervious from manipulation so that we can have accountability and responsibility in the offices that we hold. I support that section on political leadership in the Senate whole heartedly and I think that is a welcome addition.

I have seen amendments to allow the Speaker of this House to invite visiting heads of states to address this House. This is an extremely important provision for the entrenchment of our democracy and for the entrenchment of the dignity of this House. Many heads of state --- Maybe I should share this, in my previous life, I was an academic for more than a decade and I really travelled in many places in this world. I was able to

study a bit of foreign parliaments and this tradition whereby every visiting head of state will not resist the temptation of getting in touch with the legislature of that country. It is a tradition that I have desired to entrench in this country because of two reasons: First, it is a learning experience even for our democracy, for example, when you have a visiting dignitary like a head of state or some other eminent person coming to share with the House the experiences of their democracies and the challenges.

On the other hand, it makes the Houses of Parliament, in this case; the National Assembly and the Senate, esteemed by society once they realize that when a president or a dignitary comes here, they would want to have contact, at the minimum, with the representatives of the people of that country. So, this is a very welcome thing and it also helps us to learn. Unlike in the past when I used to travel a lot and read a lot, these days I have become very local because I am either in Tharaka Nithi, in Elgeyo Marakwet or in Mombasa. I do not travel as I used to. I am sure Sen. Hassan is aware of this. I am not saying it is bad to be in Mombasa, Tharaka-Nithi or Elgeyo-Marakwet, but I would want to know what is happening in Australia, Sweden or South Africa so that I can be a better legislator and a more informed leader of my people.

Mr. Speaker, Sir, I also want to support the issue of the morning session especially Wednesday morning. If we can give more time to committees to discharge their duties, three days a week, that is, Tuesday, Wednesday and Thursday in the morning and the Plenary meets in the afternoon. So, much of the work of the Senate and Parliaments around the world is being processed through committees because that is where the experts are. If you are looking at finance issues or audit issues, you take it to that Committee because that is where Sen. Billow Kerrow is, that is where all the gurus in finance and business issues are. That is where you will find Sen. James Orengo, Sen. Moses Wetangula, Sen. Kiraitu Murungi, Sen. Kipchumba Murkomen, Sen. Hassan Omar, Sen. Judith Sijeny and all other eminent sons and daughters of Kenya who serve in that Committee. It is good if we can give them time to do quality work so that when things are brought to the plenary, it becomes easy to deal with them. This Report is a testament. When it was given to a small group of experts, they generated very useful amendments, non-contestable and that has helped us to move forward.

Very quickly, let me comment on the issue of receiving Messages and the provisions relating to Governors and county assemblies sending Messages to this House. This will really entrench the interactions between the various institutions that are related to the work that the Senate does. Therefore, I support that.

I have noted that the Statement Hour will be every Tuesday, Wednesday and Thursday. I want to thank them for providing 60 minutes for the Senate Majority Leader to give a Statement relating to the exercise or responsibilities of his office. I hope that I am speaking for my brother, the Senate Minority Leader, that this is not something to misuse. It is something to use when, for example, there is need to clarify on some things that relate to our responsibilities.

I have seen this Report and the final point I want to make in support is with regard to the proposed splitting of some very large committees. Let me say that I have heard the arguments that we are a small House and, therefore, if we have many committees, this may create a lot of work load. I do not think so because I know many Senators who are

feeling under-utilized. At least, I speak from the Majority side but I can also see my sister, Godliver, nodding her head. She feels under-utilized because she is available. Some Senators are saying that since they are purely legislators under the new Constitution, then they are available and ready to serve. Therefore, the idea that we are few and that we cannot have many Committees is not correct.

Secondly, we have a very huge mandate. Some of these Committees are taking in too much such that they cannot deliver, for example, the Committee on Energy, Roads and Infrastructure. Energy in itself is a huge area. There is geothermal development, hydro power, solar and wind among other things. There is also infrastructure which includes railway, ports, harbours and roads. You cannot function this way and I support the splitting that has been proposed.

As my brother Sen. Murungi said, we need to separate Education from Information Communication and Technology.

Without much ado, I totally support this Report and thank you for the opportunity to contribute.

Sen. (Dr.) Machage: Thank you Mr. Speaker, Sir. I congratulate the Committee for giving us a comprehensive and well thought out Report. Allow me to pay tribute to Members of the Tenth Parliament of the Committee of the Rules and Procedure which you served and which I served. We were with Sen. Musila and many other Members who in their imagination came up with the Standing Orders that we have used so far. Looking at the few amendments that have been done on the document that we have been using, they deserve our gratitude and recognition for the work they did in harmonizing the Standing Orders in line with the new Constitution.

The new amendments have increased the value of the current Standing Orders. This means that the new Standing Orders may not need a lot of amendments soon. I believe that is still open and it is an exercise that may be done only once in the lifetime of a Parliament if need arises.

I am more pleased with the opening statements and remarks of Sen. Murungi on the observations of the importance of the independence of this House with regard to the Parliamentary Service Commission (PSC). That is a well thought out issue and we should congratulate this Committee for having gone that far.

The Standing Orders also recognize the position of the Speaker after being elected to immediately begin chairing. Our Standing Orders, as they are now, allow the Clerk to continue chairing the election of the Deputy Speaker. Now, the Speaker will immediately take control of the House after being sworn in.

I am pleased with the amendment that gives gentlemen, the male gender of this House, an opportunity to carry a handbag to the House of course for the purpose of documents. This has only existed but for the female gender. I think this should not be the end because the PSC is supposed to give Members laptops for the purpose of documentation. I hope that we will not carry these bags with our documents for very long before we are given the necessary tools of communication.

Currently, we are having problems dealing with Bills that lapsed in the last session. Indeed, the amendment of Standing Order No.144 will allow Bills not to lapse and continuing with them will be encouraged as much as possible. Although I differ with

the Chair and his Vice Chair who said that this document was tabled a long time ago. As far as I am concerned, tabling was done yesterday. Let us forget what happened in the last session. It was tabled yesterday and that is what the Standing Orders say. There are some new amendments that the Chair had not gone through in the last session.

I fully support the recognition of the fact that some Committees are very large. Indeed, the current Committee on Health, Labour and Social Welfare has not gone into labour and social welfare. This Committee has only managed issues of health. I congratulate this Committee for having thought it wise to divide this Committee, especially knowing that medical services have been devolved to the county governments. That Committee has a lot of work of oversighting at that level.

Without much ado, I support.

Sen. Kittony: Thank you Mr. Speaker, Sir for giving me an opportunity to support this very well researched amendments or proposals and to congratulate the Committee. I am particularly happy because it is clearly evident that we all have faith in the work that has been put in and the new proposals. The direction that this Upper House is taking truly demonstrates our efficiency in carrying out our mandate of reaching the people.

I support the proposals that have been put here especially with regard to Committees that have been split and the new ones that will be created. As Sen. (Dr.) Machage has said, I have been serving in the Health, Labour and Social Welfare Committee and its mandate was quite large. I believe that by doing this, we will ease the work. I am happy that these proposals will go a long way in showing the reality of what the Senate is doing in reaching out and fulfilling our mandate.

I support the proposals.

Sen. Karaba: Thank you Mr. Speaker, Sir for allowing me to contribute in support of the work done by the Committee which has already presented its Report this afternoon for discussion and adoption. I am, personally, very happy that some of the issues covered here have answered my prayers. I have been praying that the Committee on Education, Information, Communication and Technology is split. It has taken almost one year for this prayer to be answered.

As it is written in the Bible, God can answer a prayer in one day, after a month, after two years or it can even take forever. The prayers have been answered and we are happy about it. There are very many people who are happy with the developments that are covered by this Report. We have other Committees like the one on Agriculture, Land and Natural Resources, Energy, Roads and Infrastructure and the Committee on Health, Labour and Social Welfare. We are also happy to note that other Committees have been created to give credit to this House.

When we talk about the splitting of these Committees, we have a point. However, some people may think that we are wasting time and probably when we do not have a quorum, things would not work. A quorum of three people would do much better than a whole Committee which is nine Members. So, the quorum here should not discourage us from doing what is important. I am sure that the moment we have this one done and the committees are split and the new Chairpersons added to the number that already exists in

the Liaison Committee, I am sure that we will see a very big difference in the way that this Committee will run its affairs.

Mr. Speaker, Sir, last Friday, much as I had wanted the Committee on Agriculture, Land and Natural Resources to go and visit my people in Mwea, I was shocked to see only three or four Members and yet, the Committee is comprised of nine Members. So, once you have committed Members they always do what they would like to do. But if Members are not ready to work, they will not do so even if they are ten, 20 or 30. So, it is important to have people who are committed to do the job. I am sure that after this you will see a lot of returns coming to this House in the name of Committee meetings. There will be a very big change in the deliberations that will be passed in the Committee rooms, and I am sure one of them will be the Committee on Education, Information and Technology.

Mr. Speaker, Sir, you will note that the Committee on Education, Information and Technology is a very vast Committee. It covers the whole country in terms of the Ministries. Information Technology is involved in every other Ministry. So, if you combine it with education, which has more than 240 teachers employed, this number is too big to be managed by a sub-committee. You will find that the problems which emanate from the Ministry of Education are very serious and we need to know why some of these problems are there. The only way that you can do that is by having an almost 24 hour surveillance committee, which will look into the problems, training, recruitment and discipline of the massive Ministry of Education. It is also good to note that the Ministry of Education takes more than two-thirds of the country's Budget. If that is the way the Budget is going to be allocated, we need to have a Committee which will look at the way it will be implemented so that we do not have problems at the grassroots, where the Early Childhood Development (ECD) teachers have been employed.

Mr. Speaker, Sir, I fully agree and support the Committee's Report. I hope that this will be an eye opener for all the other Committees. I hope that the work which has been lagging behind for sometime will be fast-tracked. I hope that this will be a re-awakening bell and we are going to work very hard and see a lot of changes in the Senate.

I beg to support.

Sen. Ndiema: Mr. Speaker, Sir, I beg to support the Motion. I would not like to repeat the issues that have been discussed, other than to say that some degree of independence of the Senate will really assist because of the peculiar functions that we undertake in the counties. The facilities that are there currently are not adequate. As representatives of the counties and their governments, we need, for instance, adequately staffed offices, with qualified staff, including researchers and so forth; people who will be able to interact on equal terms with the county executives and represent the Senator when he or she is in Nairobi.

Mr. Speaker, Sir, even office space for the Senators is a big issue. The amount of, say, Kshs35,000 to hire an Office Assistant is really not adequate. What kind of an office will you have for yourself and your staff? The financial resources are not also adequate because, as a Senator you need to interact with people. You should be the focal point and convener of consultative fora in the county. Therefore, you need finances to hire halls and

get resource persons to be able to be in touch with the public on the ground in order to effectively participate in decision making. So, I think the establishment of a service organization for the Senate would be very useful.

Mr. Speaker, Sir, on the issue of committees, I want to thank the Committee for coming up with the proposed committees. This will really make our work easier and make us more efficient in terms of productivity and effectiveness in the counties.

Mr. Speaker, Sir, on the issue of Messages, I think it is very important that as a Senate, the organization that is responsible for devolution, we should have constant interaction with the county executive and the assemblies. But while that is required, I think it will be very important that it is also recognized in these Standing Orders; that as per the Constitution, the Senator represents the counties and their governments. Therefore, for any Message that perhaps would emanate from the counties, there is need to rope in the Senator somewhere, so that messages do not just land from the counties to the Speaker without the knowledge of the Senator for that county. This is very critical. Otherwise, that process would undermine the functions and authority of the Senator in that area.

With those few remarks, I beg to support.

Sen. Hassan: Thank you, Mr. Speaker, Sir, for this opportunity. Like my colleagues who have spoken before me, I also want to congratulate the Co-Chairs of the Committee, the Senator for Meru, Sen. Kiraitu Murungi and the Senator for Siaya, Sen. James Orenge.

Mr. Speaker, Sir, since we were elected, we have been trying to find our footing, particularly in how we conduct our business as a Senate. I think that this is what inspired this particular process; to have a review of our Standing Orders. As many of the previous speakers have suggested, this is not something which we do every other day. But since we are doing it now, we must do it right.

Mr. Speaker, Sir, for me, there is just one pertinent point. I want to laud the Committee for not only trying to manage committees in a sizeable manner by splitting some of the already existing Committees, but particularly the creation of the County Public Accounts and Investments Committees, which if you look at the mandate stipulated, are directly the mandates that every Kenyan has been asking us to perform as the Senate. I do laud the work that has been done by the Committee on Finance, Commerce and Economic Affairs, particularly with respect to accountability, but the Senate needed to assert itself and its authority, particularly based on constitutional functions of the issues that we were mandated to actually oversight.

I think this will be an extremely important Committee of the Senate. It will assert the Senate's authority with respect to the resources in the counties. I think that many of us in the last couple of weeks have been treated to very horrific media accounts of how monies at the county level have been squandered and massive allegations made against certain public officials, including Governors. I think it is important that the Senate asserts its authority with respect to oversight, through this Committee.

Mr. Speaker, Sir, more importantly, this Committee will largely facilitate the formation of a board that this Senate has already approved, that is, the County Development Board, which I do believe will work hand in hand with this Committee in

terms of the exercise of some of those mandates of oversight with respect to the finances that will be given to counties. If we fail in this particular responsibility, I am quite concerned of the growing disillusionment by the Kenyan people with respect to devolution. Therefore, there can only be one guardian angel towards devolution, as the Supreme Court has asserted. That guardian angel is this House of Senate, in particular, to curb the wastage that we have witnessed since the inception of county governments, with respect to spending of public resources.

Mr. Speaker, Sir, I want to share the sentiments of Sen. Ndiema. He and I spent a couple of days in the United States and were able to see how the State Senate and the Federal Senate work. Senators should be capacitated to perform the functions of their offices, so that they can be able to facilitate meetings and citizen participation frameworks or forums to enable effective representation and other businesses that the Senator will from time to time be able to, at his or her discretion decide. We are greatly at a loss in terms of realizing the respective capacity and impact that every Senator can have. Comparatively, the Governor has an entire government and appoints people every other day. He has a cabinet and a budget. Then Members of the National Assembly preside over as patrons to the Constituencies Development Fund (CDF) and other development funds that have been allocated to constituencies. The Senator has only one bodyguard and a small and thin structure which is almost similar to that of a constituency office. Therefore, on account of that, Senators are unable to meet their expectations. We are in a political process as any other politician and if our capacity is not strengthened, I can reasonably forecast that the Twelfth Parliament might have very few of us who are in the Eleventh Parliament.

Mr. Speaker, Sir, we are constantly in political competition and Kenyans out there have yet to comprehend the roles and mandates of Senators. We are expected to perform roles like any other Member of Parliament and sometimes even relative to the functions that are performed by the Governor. As I walk through the streets of Mombasa, people ask me why the drainage is not working and the roads are not patched and so on. Therefore, the Senate should assert itself, not only in terms of its practice of business in the House, but also through the conduct of Senators when they are out of the House and in their respective counties.

Mr. Speaker, Sir, I do know that there have been various proposals including how to split a very big service Commission; to handle the mandate of the Senate and the mandate of the National Assembly. I think that in due course this needs to be asserted. Therefore, as we move further on, I think that time is running out. We have now three years for this Senate to prove its worth and functions no matter how few they appear within the Constitution. This is vital and fundamental to the enactment of the new structure of governance that envisages both the national and county government structure. Therefore, all these Committees that have been created must now work towards strengthening not only the profile of the Senate, but the mandate of the Senate. We need to be seen more and more asserting ourselves on national issues.

Mr. Speaker, Sir, many issues do arise in this country and I see those debates in the National Assembly. The National Assembly summons certain State officers, but I

hardly see the Senate asserting itself. I hope that these renewed rules will be able to give us that impetus to deliver on the mandate that we have been urged to deliver upon.

Mr. Speaker, Sir, therefore, moving forward, I hope that we will, more and more be current in terms of addressing issues that we need to address or as they emerge in this country from time to time, not only within the whole House of the Senate but within our Committees too. It is also laudable to have freed Wednesday morning for Committee work. Sen. Murungi, Sen. Orengo and the whole Committee was genius. Therefore, I think that gives us ample time.

Despite all that, I also had made presentations to them verbally as I saw them criss-crossing the various Committee rooms in this House. I made presentations to Sen. Murungi that we needed to allow Senators to walk into the Chamber without ties so that there are those of us who only put on a tie as we walk into the Chamber and remove them immediately we exit. You will relieve us of a heavy burden. I would even appreciate if that Standing Order was just created for the purposes of Hassan Omar being allowed to be discharged the burden of the tie. I think these Standing Orders will evolve with time.

Mr. Speaker, Sir, I beg to support all the sentiments that have been articulated and fully support the implementation of these new Standing Orders and the adoption of this Report.

Sen. G.G. Kariuki: Thank you, Mr. Speaker, Sir, for this chance. Mine, first of all, is to commend the men and women of honor who sat to decide on this subject that we are debating now. The important thing here is the opportunity that you accorded this House and also the Committee to sit and decide over the matter which affects the running of this House.

Mr. Speaker, Sir, what I know is that any institution which does not go by the rules or any institution which does not respect its rules, it will never deliver the way it is supposed to deliver the way it is expected to by the Standing Orders. What is more important as far as I am concerned, is that the amendments which have already been undertaken are not the last; that an individual Senator has a right to propose through the Chair to have an amendment for even the amendments that we are going to pass immediately after. There is no limit. I think that is a leeway that we should be proud of because there is no system which must go unabated. There is no system which should last forever without injecting new life into it.

Mr. Speaker, Sir, when we opened this House, I am on record saying that the Standing Orders that we came and adopted or which guided this House for the last nine months or one year were not our Standing Orders because they were done – although constitutionally – by the National Assembly before the Senate came into being. It has come to be that we now can say that we have our own document which we believe in for the time being, and that is the Standing Orders of today. I think it is important for us to understand that the Standing Orders are the ones which have given life to the Committees that we are proposing to add on to the existing Committees. It is important for hon. Senators to accept the view that any successive Senate or Parliament, in my view, will depend very much on the Chairpersons of these Committees because in effect, they are like Ministers of Government. They are expected to be working around the clock to make

sure that the House is satisfied with their normal Business and also that the House is quite clear that the Committee is doing Business as they were supposed to do.

Mr. Speaker, Sir, I am very grateful to you because even in your introduction to these amendments, it was very clear that you gave an opportunity to almost everybody, even to the press, to let people know that there will be a Committee to amend our Standing Orders for those who may be having some interest to participate in proposing the same. Of course, as you understand, it is not easy for us to have forwarded our wishes, but now that we are getting into the real Business of the House and we are getting to the real meat of our purpose of being here, next time we will feed the Committee which will be there with a lot of other information to enable this House to do even much better. The important thing again, if I may repeat, is that next month, if Sen. (Dr.) Khalwale and myself decide that we need to do a new amendment to these Standing Orders, I find that there will be no limitation; that we are allowed by the rules of the game to bring forward any amendments. That means that the men and women of this House will not be bogged down by wanting to do something that they cannot do because there is freedom to do that kind of thing because, finally, the Standing Orders belong to us and to this House. Therefore, we can do whatever we want to do with them, provided it is going to give us some more effect in our deliberations.

Mr. Speaker, Sir, I also support the Committee – we were personally involved in selecting its Members – of Sen. Orendo, Sen. Murungi, Sen. (Dr.) Zani, Sen. Elachi, Sen. Keter and Sen. Ongeru. I think that these are good people and they did a very commendable job. I know it is easy to want to be nominated or appointed to a Committee, but to deliver in that Committee becomes a big problem. All of us would wish to be in a Committee. We also want to be Chairpersons of Committees but to deliver is another issue. There are some of those Members of the Committees or Chairpersons of the Committees who know for sure that they do not do any work, but still they want to stick there. It is most unfortunate because we do not have guts, for example, if we know that Sen. (Dr.) Khalwale – and I am referring to Sen. (Dr.) Khalwale because he is my friend – if he is the Chairperson of a Committee and we know for sure he is not providing leadership, you will find that there is nobody who has the guts to say that Sen. (Dr.) Khalwale needs to be replaced. We must now be open and clear in our own minds that if someone is not productive; if three or four Members of the Senate decide and feel very strongly that there is a need to change membership of the Committee on Finance, I think that time should come and we should become very clear in our minds that this needs to be done. Otherwise, we shall be playing a game that is going to affect us outside there by not wanting to remove Sen. G.G. Kariuki from a Committee because he is a ‘good’ man or he is a ‘nice’ fellow’ and, therefore, let us keep him. You will be affecting your progress out there. I think this thing needs to be said and be said clearly.

It is also the duty of the hon. Speaker, together with the Senate Majority and Minority Leaders to monitor the Committees and their Chairpersons. They should be having consultations almost every now and then to reveal what these Members of Committees are doing or whether they are effective or not. They should not just wait indefinitely because these Committees were selected on a friendly basis. We have become mature now; we are of age. The mistake which was made, in my submission,

needs to be corrected. It is easier to correct the mistakes we made during our time. We selected Chairpersons in a hurry due to political manipulations, and we did all these things. Therefore, I think time has come for the gentlemen and women that I have just mentioned to sit down and do an evaluation of whether we are doing what we are supposed to do in our deliberations and whether reports are available.

Mr. Speaker, Sir, those reports that always appear on the Table here, sometimes I wonder like a scholar whether we are going to just keep papers in an archive. There are so many papers in our archives. If you want to read anything about Kenya, Kenyans are very good and they have written extensively. Unfortunately, the way I look at it, because I am a Member of a number of Committees, I find that we are all going to be the same people and there will be no change. The Committee will just sit down, ask somebody to come for an interview and they can come or refuse to come. And when they come, they decide what to say and what not to say. I think we must be given some teeth by the Standing Orders. Actually, we should get more teeth and sharpen them so that they can bite. When a person is invited by a Committee, either by summons or by request, he needs to know that he is appearing more or less in a court of law where he has to explain whatever is required.

Mr. Speaker, Sir, I was very concerned with the philosophy of the Committee where it says that the committee is the best way of doing things. I am very sure in my mind that if committees do their work properly, they are the institutions which are supposed to make or carry the name of the Senate forward - Through committees with the kind of friendship we expressed ourselves towards our friends that we do not want to disappoint them, I think that is where we will start failing.

Regarding the prayers, I think it is okay, you can make it as short as possible because God knows what you are trying to say even before you have opened your mouth. You can just say "Please God help me" and that would be enough or "Let me do whatever you direct me to do" and that is more than enough other than tiring Him by giving a lot of rhythm ores, words with no meaning which do not add anything. So, I agree with whatever was done, we go by it and maybe in the next few months, we shall come back and say these prayers are too long and we need to reduce them. God waits for you to reduce or to make it big. It is up to you, it is your own problem. He does not have any problem to share with you but you have the problem that you are asking him to solve for you.

Mr. Speaker, Sir, another point I want to comment on is, when you delete the word 9.00 a.m. on Wednesday, it has been a tradition and Kenyans are very difficult to change what they found. They are too conservative. It just got into our mind and into our system that the sitting for Wednesday morning at 9.00 a.m. must remain so. I am happy that this has been changed that we should be meeting in the afternoon and the morning session can be used to do other things which are equally of more value than sometimes when we just sit here.

Mr. Speaker, Sir, the word one hour on the Motion of national importance, it is also important because we do not have very much to say on such a Motion except that hon. Members or Senators like to talk too much and sometimes they get out of the real discussion. I have experienced this. I plead and I pray that as we are maturing as

Senators, we should also grow together with the Standing Orders. What I have noticed, I do not know whether it is because we do not have enough business or not, sometimes we set a subject and you find hon. Members deviating from it and introducing a fresh discussion.

Mr. Speaker, Sir, I think it is important for the Chair to save the time of this House. If it is a Motion regarding a certain issue, we must stick to it in future instead of allowing somebody to find time to speak in the whole afternoon, going round proving that he can talk too much. I think it is time we stuck to the subject and we make sure that we stick there.

I want to thank you once again for giving me this opportunity and I am looking forward that we shall be working together all the time. Very soon, we shall bring an amendment, I do not know who asked who, whether it is the Speaker, the Standing Order or it is we who wanted to ambush the Speaker, but for sure to clear my problem, show me what the Standing Order says. In fact, I found it a bit unfortunate but I had drafted a Motion yesterday, I stayed with it waiting for Sen. Kiraitu to move the Motion so that I can amend it as usual but I found myself completely out of order because I needed to do these things yesterday. I quite agree. As a scholar, I would like to be corrected all the time so that I know more. Now next time, I shall not repeat the same mistake.

God Bless You and I wish you luck, thanks a lot. I beg to support.

The Speaker (Hon. Ethuro): Order, hon. Senators. I want to thank Sen. G. G. Kariuki for those good words and we will always learn. I want to give guidance. We have to be done by 6.30 p.m. There are two other Members with amendments so I will give a chance to each and we dispose of that amendment. We shall allow other Senators to contribute to the amendments. Therefore, I am still covering the amendments and also those who still want to contribute.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I thank you for the chance and I also wish to congratulate you for putting together a strong team of Sen. Orengo, Sen. Kiraitu, Sen. (Dr.) Zani, Sen. Elachi, Sen. Keter and Sen. Ong'era who have made us proud. Like those who have spoken before me, I want to join them in supporting this particular Report but with an amendment.

Mr. Speaker, Sir, my amendment which I propose to speak to in support of this Motion is in regard of, hon. Senators, if you go to page 10 of your Report, you will find there is an introduction of a new Standing Order No.41(a). This is to cater for the transmission of messages from the county governors.

I propose that the Motion be amended by deleting the full-stop after the word "approve"---

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Khalwale. I read a communication to approve the Report subject to the following amendments.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I beg to move that the Report be approved, subject to the following amendment.

THAT, the Motion be amended by deleting the full stop after the word "approved" and deleting the proposed new Standing Order No.41(b) and replacing it with the following---"

Mr. Speaker, Sir, before I go through the details of what it is that I am amending, I want to announce to the House the import of this amendment. The import is that the new clause wants to allow messages from the county government, which you represent, to reach the Senate. In the proposed order, the arrangement is that the governor will then go directly to the Speaker and deliver the message. That does not conform to the best international practices.

The Speaker (Hon. Ethuro): Order Sen. (Dr.) Khalwale. Stick to the procedures. You either read the amendment or just say as in the Order Paper, then you can now explain.

New Standing Order No.41B

Sen. Dr. Khalwale: Mr. Speaker, Sir, I beg to move that the Motion be amended by deleting the full-stop after the word “approved” and deleting the proposed new Standing Order 41B and replacing it with the following:-

New Standing Order 41B

Messages from County Governors

41B(1) A Senator shall deliver to the Speaker a copy of the message received from a County Governor at the first available opportunity after receipt and in any event, not later than the next day not being a Saturday, Sunday or public holiday.

(2) A Senator shall read to the Senate any message from the Governor of his county to the Senate. Such messages shall be in writing and shall be signed by the Governor of the county.

(3) If a message is received from a County Governor, at a time when the Senate is in session, the Senator shall report the message to the Senate at the first convenient opportunity after its receipt and any event and not later than the next sitting day.

(4) If a message is received from a County Governor, at a time when the Senate is not in session, the Speaker shall forthwith cause the message to be transmitted to every Senator and shall call upon the Senator of that county to report the message to the Senate on the day that the Senate next sits.

(5) The Clerk of the Senate shall transmit a message from the Senate to a County Governor.

(6) When a Senator reports a message from the County Governor under paragraphs (3) or (4), the message shall be deemed to have been laid before the Senate and the Speaker may-

- (a) direct that the message be dealt with forthwith;
- (b) appoint a day for the consideration of the message; and,
- (c) refer the message to a relevant Committee of the Senate for consideration.

Mr. Speaker, Sir. The justification is as follows: That to purport to allow the governor to deliver the message to the Speaker directly is to go against the best international practices. I had the opportunity of serving this country for five years at the Ministry of East African Community and every morning before we went to Arusha, we used to go to State House to be briefed by the President. Then you carry the message of the President to the Council of Ministers in Arusha and after you have briefed them, you take it to the Secretary-General of the East African Community (EAC) because you were going there as a delegation. So, in this case where we want to purport that the governor delivers a message directly to the Speaker, we are going against the best international practices.

What we should do is that it is the delegation of that county that the governor should submit his message to; then the head of that delegation or the person that the head of delegation would have delegated to will submit that particular message to the Speaker. In effect, we are saying that the Senator will receive the message from the governor and then delivers it to you. Once he delivers it to you, you are now aware at the shortest opportunity to circulate to the rest of the Members of this Assembly for them to be ready to allow the Senator an opportunity to articulate that particular message to the entire Senate. This is good manners because we want forever the governor to be aware that you are his delegate; you are the one who carries his intention to the nation of Kenya.

I, therefore, wish to propose that a Senator shall deliver to the Speaker a copy of the message received from a county at the first available opportunity and that the Senator shall read to the Senate any message from his county and that the message---

The Speaker (Hon. Ethuro): Order. You have already circulated the amendment. I think you are done.

Sen. (Dr.) Khalwale: Thank you. I circulated the amendment in the interest of saving time and I now want to call upon my new found friend, Sen. Murkomen, Senator for Elgeyo-Marakwet, to now second my Motion.

Sen. Murkomen: Mr. Speaker, Sir, I think my new found friend's amendment is timely, well thought out and therefore I stand here to second it for the simple reason that it will put meaning into what the Constitution calls that a Senator is a representative of the county. That link is very important because the message that has been going around for some time now is as though governors and senators are supposed to operate, distinct from each other. In fact, part of the problem that we are facing now is because from inception as soon as the elections were over, despite the fact that we campaigned with our governors jointly holding hands together, many of them thought that the relationship ended the day elections were over. Therefore, they forgot that the linkage between the Senate and the county government is very important. That linkage is also demonstrated by the manner in which we participate in Division of Revenue Bill and the Allocation of Revenue Bill.

It is not supposed to be just an exercise in futility; allocation of revenue is meant for a Senator to transmit the message from his own governor to say "go to Nairobi and make a case for this amount of money for this particular project or go to Nairobi and argue that we need conditional grant for this particular project". If a Senator can be sent for such important responsibility, a very key responsibility when it comes to management

and running of the county, survival of the county, what about just any other message that is going to be passed to this House? I am not just talking about any message because even that message that is being considered under this amendment could be a message that is related to allocation of money.

It could happen that somewhere in the middle of the year, a county that was given conditional grant on health, for example, could feel that running a particular provincial hospital has become expensive, Kakamega County cannot run it and they want to send Sen. (Dr.) Khalwale to transmit a message to the Senate that if there is anything they can do to push the national government to increase conditional grant, please do. That message cannot get the Senator of the particular county by surprise just in the House. A Senator might be walking in the House and might hear the Speaker reading some statement from his own county. It is important that the synergy between the county government and the senator be demonstrated and be very clear. I told this to my Members of County Assembly (MCAs) and the Governor.

As soon as the Governor launches a project, the Senators start asking; what is our direct connection to the money that we are allocating? I told my Governor after launching a project of seed distribution – something similar to what happened in Embu is happening in my county only that it has not become a scandal but correct information - that as soon as he distributes the seeds or seedlings for planting, he should explain to the public many things.

They normally start talking by saying; “my government is giving you seeds to go and plant.” However, before he concluded his speech, the last words he said were that the money he used to purchase the seeds was brought by the Senator, Sen. Kipchumba Murkomen. The Governor should not forget that link because it is important.

The link is that the Senator brought the money but the Governor is the one to manage it at the local level and to distribute it. I told them that it is important for the Governor to spread the message to the people so that I do not leave my job in Nairobi – fighting with Sen. Khalwale – to better manage my county - to go and carry out civic education. I told them that it would be very easy if on every project that is launched; using money allocated nationally, the citizens are reminded that it is their Senator who did that. I support these amendments and urge Members to support, not only international best practices but also to anchor the relationship between the Governors and Senators the way we carry out our business in this House.

Lastly, I want a message to go out very clearly that this message has a tall responsibility. It is like a father. A father who loves his child will always ensure that the child eats well and gets the best education. However, when that child misbehaves, the Bible says; “spare the rod and spoil the child”. So, if we enlist that rod and carry out some disciplinary action on our counties, it is not because we hate our counties but because we love them. For the Senate so loved the counties, that we have no other reason than to ensure that accountability becomes an integral part of our work.

I beg to second.

The Speaker (Hon. Ethuro): I can see that you have been carried away, including treading on very dangerous grounds.

(Question of the amendments proposed)

Order, hon. Senators, I want to plead with you, looking at the time, that we close the amendments. We will deal with the issues as amended. So, I will now put the question. This is not a matter affecting counties.

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be inserted in
place thereof be inserted, put and agreed to)*

(New Standing Order 41B as amended agreed to)

Standing Order 16

Sen. Sijeny: Thank you, Mr. Speaker, Sir. I want to support the Motion and to propose an amendment.

THAT, the Motion be amended by deleting the full stop after the word “approved” and inserting the following:-

Subject to inserting an amendment to Standing Order 16 as follows:-

(a) By deleting paragraph (1) and substituting it with the following-

16(1) There shall be a panel to be known as the Chairpersons Panel which shall comprise of three Senators to be known, respectively, as the First, Second and Third chairperson of Committees and who shall be entitled to exercise all the powers vested on the Chairperson of Committees.

(b) In paragraph (2) by deleting the word two and substituting therefore with the word “three.”

This is important. I urge my colleagues to support the amendment because there are at times when we do not get the two who are in the Chairpersons Panel because of the respective responsibilities within the Senate. We end up nominating one of the Senators to stand in for the Chairpersons or the Speakers’ Panel.

The Senate has also increased its committees, meaning that there will be a lot of responsibilities. It is, therefore, important to amend paragraph 2 and include the number of Speakers who will be responsible.

With those few remarks, I beg to move the amendments and request Sen.(Dr.) Machage to second.

Sen. (Dr.) Machage: Mr. Speaker, Sir, the reasons given for that amendment are very true. Indeed, at one time, the Senator for Migori had to urgently be requested to accept to be nominated to Chair a sitting which was on the verge of collapsing.

Mr. Speaker, Sir, I beg to second.

The Speaker (Hon. Ethuro): Sen. Machage, unfortunately, you had already spoken. The amendment must be proposed for it to be before the House. So, the Mover and Seconder should not have spoken.

Sen. Murkomen: Mr. Speaker, Sir, I had not spoken to the Motion itself. I have only seconded and this is the second amendment.

Mr. Speaker, Sir, the Speaker's Panel is not a very easy panel. I am even surprised that today, by God's grace you have remained awake. I was waiting for you to doze. It is a very tough job and considering also the amount of work that it entails, I would have even gone further to make it four. This is because in terms of numbers, we are less than the National Assembly, but in terms of work hours that we sit here, it is the same. Therefore, it is important to have enough panelists, so that we can assist one another. The panelists are also Members of various Committees and we are servicing a little bit more Committees than our numbers in this House. Therefore, I think that the proposal from Sen. Sijeny is very good. I know that the rules do not allow me to amend further, but maybe somebody will do it.

Mr. Speaker, Sir, I second an additional panelist to make it three, but if had the power to amend, I would say "four."

(Question of the amendment proposed)

(Question, that the words to be left out, be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Standing Order 16 as amended agreed to)

(Question of the Motion as amended proposed)

Sen. Muthama: Mr. Speaker, Sir, from the outset, I wish to just remind you that the Standing Orders were drafted in the Tenth Parliament and most of those who did it did not consider or foresee the amount of work that would be done by the Senate.

Mr. Speaker, Sir, with the additional five Committees, first of all, I want to assure Members here that it will be possible to distribute positions, because some Members have been complaining about being pushed into a certain Committee and they want another. With the five additional Committees, it will be easy now to accommodate Members.

Mr. Speaker, Sir, for those who have joined Parliament for the first time, you have realized now that it is not the number of Committees that matters, but the amount of work that you do. It is not just about pushing to be put in two or three committees. You have seen the amount of work that it takes. Many times, you will find that there is no quorum in most of the Committees since they sit at the same time. So, this time with all due respect, we tried to focus on two committees per Member, because everybody will be

accommodated. By doing so, we will do our work effectively and deliver services to wananchi.

Mr. Speaker, Sir, I beg to support.

Sen. Okong'o: Mr. Speaker, Sir, let me also take this opportunity to support the Motion as amended.

Mr. Speaker, Sir, I also want to support the work of the Committee in changing the Standing Orders, particularly, the creation of the County Public Accounts and Investments Committee is very important to our counties. We have noticed more often than not Governors traversing the world seeking investors. This Committee now will be responsible to countercheck what expenses they have incurred and which investors they have flown into the country and from where. As Senators from various counties, we can also understand that, for example, Investor A who is coming to Nyamira is from a particularly country and is going to invest this much.

Mr. Speaker, Sir, rules, laws and procedures are made for easier work and governance. We cannot say that this is the last time that we are amending these Standing Orders. If need arises in the future and there is reason to go further and examine what to do, we can do that.

Mr. Speaker, Sir, thirdly, the splitting of Committees is a welcome move, but with a rider from me. My observation is that we must interrogate ourselves; whether we are going to work for this country or ourselves. I am very reluctant that the Committee that I sit in – the Committee on Education, Information and Technology – should be split. This is because we have undertaken a lot of good work. But since many believe that splitting of these committees can easily work, so be it. But the most important thing that I have to put to the Senators is that we must interrogate ourselves. If we sit in these committees, are we going to discharge our work effectively?

Mr. Speaker, Sir, I also concur with my Whip who has just said that we have to look at the committees that we are going to sit in and the amount of work that we are going to put in. We should do this for the sake of the nation and not being a Chair or making trips to China, Canada and elsewhere. The essence is: What will these bring to our relevant counties?

Mr. Speaker, Sir, last but not least, we have witnessed that now that the relevant Chairs of Committees report on behalf of the Government, sometimes it becomes very difficult to summon the Cabinet Secretaries and departmental heads to bring answers to the Committees. With this new awakening and order and assertion of the powers of the Senate, which emanates from the Constitution, I urge all those Members of various Committees, to tighten their belts and engage the relevant Committees, so that when questions are asked by Members, we expect to have answers in the shortest time possible.

Mr. Speaker, Sir, with those few remarks, I support the Motion as amended.

Sen. Hargura: Thank you, Mr. Speaker, Sir.

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

The Speaker (Hon. Ethuro): Let us give Sen. Hargura a chance briefly.

Sen. Hargura: Thank you, Mr. Speaker, Sir. I would have liked to contribute to this Motion as amended. But, I just want to make one comment. I am happy to be in a country where the Constitution, national anthem and everything else starts with prayers,

because that is the only way that we can recognize God so that He can assist us in whatever we are doing. But because of time, it is better if we conclude this matter and ask the Mover to reply, so that we can vote on it.

The Speaker (Hon. Ethuro): Did you have to do so, Sen. Hargura, because you have already contributed?

Sen. Wamatangi: On a point of order, Mr. Speaker, Sir. I had risen on a point of order, just exactly on what Sen. Hargura is saying. In view of the time, would I be in order to ask that the Mover be now called upon to reply?

*(Question, that the Mover be now
called upon to reply, put and agreed to)*

Sen. Murungi: I want to thank you, Mr. Speaker, Sir, and all the Members of this House who have overwhelmingly supported this Motion. They have fully supported it as well as the amendments; they have even given more arguments to reinforce our own arguments regarding the amendments that we proposed.

Mr. Speaker, Sir, allow me to especially thank the ‘bullfighter,’ Sen. (Dr.) Khalwale, for bringing a very important amendment which reinforces the role of the Senator as the representative and the symbol of the county.

(Applause)

Mr. Speaker, Sir, the Senator is the most appropriate person to convey these messages from the Governors; and because that is our duty, we are the people who represent the counties. So, I fully support that amendment and I also thank the hon. Senators for supporting Sen. (Dr.) Khalwale’s amendment.

Mr. Speaker, Sir, allow me also to thank Sen. Sijeny for her amendment to increase the Members of the Chairman’s Panel to three. We also have been sympathizing with you as you sit for very long hours, and we think this will relieve you and also release you to do much more in terms of the administrative functions and even some reading, which you have to do for the purposes of serving this Senate better.

Mr. Speaker, Sir, the Senate Minority Whip, my friend, Sen. Muthama, has brought a very important point regarding Members of Committees moving from one Committee to another, merely registering technical appearances and not making any useful contributions to any of the Committees. I think as the Committees increase, we are called upon as Members to take the Committees seriously and do much more. But I will also urge the Office of the Clerk – because they are the ones who allocate rooms and they are the ones who should be scheduling the Committee meetings – to make sure that they do not create concurrent meetings of their Committees, especially where the Members are the same.

I have been a victim – I am called to the Committee on Energy, Roads and Transportation at 10.00 o’clock on Fourth Floor; and then the Committee on Legal Affairs and Human Rights meets on the Third Floor at 10.00 o’clock; then I am called from the Committee on Energy, Roads and Transportation to be told there is no quorum

in the Committee on Legal Affairs and Human Rights. So, I am one of those people who have been running up and down the stairs. It is not that I do not want to work, but the way the Committee meetings have been scheduled makes it impossible for you to concentrate on any particular Committee. So, I think we need to organize our work much better.

Mr. Speaker, Sir, having said that, I really want to thank the hon. Senators; we think that we are now going to have a better legal and procedural framework which will make the Senate more efficient than it has been before.

With those few remarks, Mr. Speaker, Sir, I beg to move.

(Applause)

The Speaker (Hon. Ethuro): Hon. Senators, I, therefore, wish to put the question after determining that this is not a matter affecting counties. So, each and every Senator has a vote.

*(Question of the Motion as amended,
put and agreed to)*

Resolved accordingly:-

THAT, pursuant to Standing Order No.247, the Report of the Rules and Business Committee on the review of the Standing Orders laid on the Table of the Senate on Wednesday, 26th February, 2014 be approved subject to the following amendments:-

New Standing Order No.41B

THAT, the Motion be amended by deleting the full stop after the word “approved” and deleting the proposed new Standing Order 41B and replacing it with the following:-

New Standing Order 41B

Messages from County Governors

41B (1) A Senator shall deliver to the Speaker a copy of a message received from a County Governor at the first available opportunity after receipt and in any event, not later than the next day not being a Saturday, Sunday or Public Holiday.

(2) A Senator shall read to the Senate any message from the Governor of his County to the Senate and such message shall be in writing and shall be signed by the Governor of the County.

(3) If a message is received from a County Governor, at a time when the Senate is in Session, the Senator shall report the message to the

Senate at the first convenient opportunity after its receipt and in any event not later than the next sitting day.

(4) If a message is received from a County Governor, at a time when the Senate is not in Session, the Speaker shall forthwith cause the message to be transmitted to every Senator and shall call upon the Senator of that county to report the message to the Senate on the day the Senate next sits.

(5) The Clerk of the Senate shall transmit a message from the Senate to a County Governor.

(6) When a Senator reports a message from a County Governor under paragraph (3) or (4), the message shall be deemed to have been laid before the Senate and the Speaker may-

- (a) direct that the message be dealt with forthwith;
- (b) appoint a day for consideration of the message; or
- (c) refer the message to the relevant Committee of the Senate for consideration.

Standing Order No.16

THAT, the Motion be amended by deleting the full stop after the word “approved” and inserting the following:-

Subject to inserting an amendment to Standing Order 16 as follows:-

a) By deleting paragraph (1) and substituting with the following:-
16 (1) There shall be a panel to be known as the Chairpersons panel which shall comprise three Senators to be known, respectively, as the First, Second and Third Chairperson of the Committees and who shall be entitled to exercise all the powers vested in the Chairperson of Committees.

b) In paragraph (2) by deleting the word “two” and substituting therefore the word “three”.

The Speaker (Hon. Ethuro): Next Order.

COMPENSATION FOR VICTIMS OF DETENTION AND OTHER HUMAN RIGHTS ABUSES

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I notice that I only have two minutes but all the same I will kick off the Motion, then we deal with it next week, with your permission.

Mr. Speaker, Sir, I beg to move:-

THAT, aware that the Bill of Rights in the Constitution is an integral part of Kenya’s democratic state and its framework for social,

economic and cultural policies whose main objective is recognition and protection of human rights to among other things preserve the dignity of individuals and to promote social justice; recognizing that many Kenyans suffered from human rights abuses perpetrated by government agencies, especially between 1970s and 1980s including detention without trial and against those suspected of complicity in the coup attempt of August 1982; noting with concern that the victims of these abuses were treated inhumanely leading to painful deaths while others were dismissed from employment exposing them and all their families to undignified social, economic and psychological conditions; further noting that the High Court has in the past awarded several former detainees millions of shillings in damages for torture, concerned that most of the surviving victims are poor and cannot afford to access the court processes, this Senate calls on the national Government to comprehensively deal with the compensation of former detainees and those unfairly dismissed from employment after the August 1982 coup so as to facilitate reconciliation and entrench the development of a just society in Kenya.

Mr. Speaker, Sir, as I move this Motion, I want to pay special tribute to those Kenyans who put their lives on the line in the fight for the second liberation of this country that was at its peak in that period that I have referred to. I have in mind, the Late Martin Shikuku, the Late George Anyona, the Late Jaramogi Oginga Odinga, the Late Masinde Muliro, Sen. James Orengo, the Late George Kapten, Mr. Wanyiri Kihoro, hon. Abuya Abuya, hon. (Dr.) Chibule wa Tsuma---

The Speaker (Hon. Ethuro): Order. Your time is up. You will proceed next time the Motion comes up.

ADJOURNMENT

The Speaker (Hon. Ethuro): Order, hon. Senators. It is time for interruption of business. Therefore, the House stands adjourned until next Tuesday, 4th March, 2014 at 2.30 p.m.

The Senate rose at 6.30 p.m.