

MEMO

To : Clerk of the Senate

Thro' : Senior Deputy Clerk (M.A)

Thro' : Director, Legislative and Procedural Services

From : Clerk Assistant II

Date : 3rd August, 2018

*Hon. Speaker
You may approve
and sign.
6/8/18*

*Forwarded to
03/08/18*

**THE SECOND REPORT OF THE PROCEDURE AND RULES COMMITTEE
ON THE REVIEW OF THE STANDING ORDERS**

Attached is a report of the above subject matter for your approval and tabling.

Amos K. Sikweya
Amos K. Sikweya

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REPUBLIC OF KENYA

TWELFTH PARLIAMENT (SECOND SESSION)

THE SENATE

**SECOND REPORT OF THE PROCEDURE AND RULES COMMITTEE
ON
REVIEW OF THE SENATE STANDING ORDERS**

Approved
[Signature] 2/8/2018

Clerk's Chambers
The Senate
Parliament of Kenya
NAIROBI

August, 2018

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PREFACE

The Procedure and Rules Committee is established under standing order 179 and is mandated to, among other matters, “consider and report on all matters relating to the Standing Orders”. The Committee is also charged with the task of proposing amendments to the Standing Orders for consideration by the Senate. Further, the Committee may, from time to time, propose rules for the orderly and effective conduct of business of Committees.

The Committee was constituted on 14th February, 2018 comprising the following Senators-

1. Sen. Kenneth Lusaka, EGH, MP - Speaker of the Senate/Chairperson
2. Sen. Kithure Kindiki, EGH, MP - Deputy Speaker /Vice Chair
3. Sen. (Dr.) Margaret Kamar, EGH, MP - Member
4. Sen. Steve Lelegwe Ltumbesi, MP - Member
5. Sen. Rose Nyamunga, MP - Member
6. *Sen. Cleophas Malalah Wakhungu, MP - Member
7. Sen. (Dr.) Christopher Lang’at, MP - Member
8. Sen. Beth Mugo, EGH, MP - Member
9. Sen. (Dr.) Agnes Zani, MP - Member

* Sen. Cleophas Malalah, MP ceased being a member of the Committee on 16th May, 2018 and replaced with Sen. Judith Pareno, MP.

Hon. Senators,

Part XI of the Senate Standing Orders relate to the procedure for consideration of Statements. The Senate has used these provisions well. However, earlier in this session, specifically February - May, 2018, the number of requests for statements received rose significantly. This was compounded by the fact that currently there is no limit as to the length and content of individual requests and the requests end up being very lengthy and even at times stating facts which may be obvious or verifiable by way of simple inquiry. The result is that it takes inordinately long to prosecute a request. The number of statements received during a sitting day and approved for request in plenary that day, without having been scheduled on the Order Paper for the day, had also increased.

Further, whenever a response is provided, there is usually extensive interventions and deliberations undertaken in plenary in respect of each statement sought or response issued. The result is that the number of statements considered during each sitting has been few, compared to the new requests received for processing. Put plainly, the requests are far many than responses.

Hon. Senators,

The current manner of processing statements has presented challenges in terms of, among others –

- i) a growing pile-up of statements scheduled for responses, with only a few being issued each sitting day, even when the responses are ready;
- ii) calls by Senators for Statements to be limited to not more than one hour during each sitting;
- iii) complaints from Senators whenever their statements on the Order Paper are not reached during a sitting;
- iv) complaints from Committee Chairpersons of being ‘ambushed’ in the Chamber, by being required to respond to and give time commitments in respect to requests for statements which were not scheduled on the Order Paper;
- v) balancing the need for legislative output viz-a-vis the representation mandate of a Senator;
- vi) lack of clarity on the role of the Committee in processing responses; and
- vii) lack of follow up mechanisms or long-term interventions on the matter.

Complaints continue to be received from Senators as to why the statements they sought are not scheduled for issuance on a particular sitting day or week, and what criteria is applied in determining which responses are scheduled.

Hon. Senators,

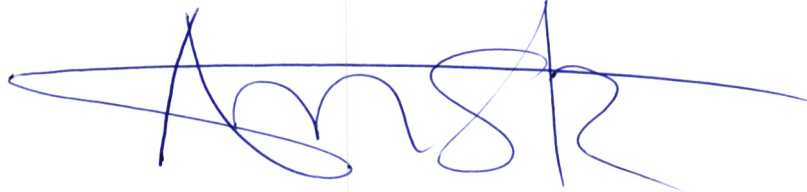
The Senate Leadership, in its retreat held on 5-6 April, 2018 in Nakuru County, among other issues, deliberated the matter of Statements. One of the resolutions from the retreat was that the Procedure and Rules Committee takes up the matter with a view to proposing amendments to the Standing Orders to change the manner in which statements are processed in the Senate.

On 15th May, 2018, the Speaker of the Senate deferred all statements under standing order 46 (2) (b), pending the deliberation and determination of the matter by the Procedure and Rules Committee. However, Hon. Senators have been using the provisions of standing order 46 (2) (a) to make statements.

Hon. Senators,

This Report contains the considerations of the Committee on the matter, the proposed amendments to the Standing Orders, the general observations of the Committee and its recommendations.

It is therefore my pleasure to present this report to the Senate for consideration and adoption.

A handwritten signature in blue ink, appearing to read 'Kithure Kindiki', written in a cursive style.

**SEN. (PROF.) KITHURE KINDIKI, EGH, MP
DEPUTY SPEAKER OF THE SENATE/VICE CHAIRPERSON
PROCEDURE AND RULES COMMITTEE**

DATE:.....

1. ESTABLISHMENT AND MANDATE OF THE PROCEDURE AND RULES COMMITTEE

The Procedure and Rules Committee is established pursuant to Standing Order 179(1) which provides as follows –

- (1) There shall be a select committee to be known as the Procedure and Rules Committee.*
- (2) The Committee shall comprise-*
 - (a) the Speaker as Chairperson;*
 - (b) the Deputy Speaker as the Vice-Chairperson;*
 - (c) members of the Speaker's Panel; and*
 - (d) three other Senators reflecting the relative majorities of the seats held by the Parliamentary Parties in the Senate, who shall be nominated by the Parliamentary Parties and approved by the Senate at the commencement of the term of Parliament.*

The Committee was fully constituted on 14th February, 2018 comprising the following Senators-

1. Sen. Kenneth Lusaka, EGH, MP - Speaker of the Senate/Chairperson
2. Sen. Kithure Kindiki, EGH, MP - Deputy Speaker /Vice Chair
3. Sen. (Dr.) Margaret Kamar, EGH, MP - Member
4. Sen. Steve Lelegwe Ltumbesi, MP - Member
5. Sen. Rose Nyamunga, MP - Member
6. *Sen. Cleophas Malalah Wakhungu, MP - Member
7. Sen. (Dr.) Christopher Lang'at, MP - Member
8. Sen. Beth Mugo, EGH, MP - Member
9. Sen. (Dr.) Agnes Zani, MP - Member

* Sen. Cleophas Malalah, MP ceased being a member of the Committee on 16th May, 2018 and replaced with Sen. Judith Pareno, MP.

2. THE MANDATE OF THE COMMITTEE

The mandate of the Procedure and Rules Committee as stated in SO 179 is to –

- i) consider and report on all matters relating to the Standing Orders.
- ii) propose amendments to the Standing Orders which shall, upon approval by the Senate, take effect at the time appointed by the Senate.
- iii) propose rules for the orderly and effective conduct of committee business and any such rules shall, upon approval by the Senate, continue in force until amended or repealed by the Senate.

3. PROCEDURE ON REVIEW OF THE STANDING ORDERS

Article 124 of the Constitution mandates each House of Parliament to establish committees and make standing orders for the orderly conduct of its proceedings.

The current Senate Standing Orders were adopted on 14th June, 2017, and amended on 14th December, 2017.

Part XXX of the Senate Standing Orders defines the procedure for amendment of the Standing Orders. Proposals for amendments of Standing Orders may be made in three ways. The first one is by the Procedure and Rules Committee proposing amendments at any time. Secondly, is by an initiative of a Senator and processing by the Procedure and Rules Committee. Finally, the periodic review of the Standing Orders, by the Procedure and Rules Committee, not later than three months to the end of the term.

The current proposed amendments of the Standing Orders are pursuant to Standing Order 246 which provides that:

“The Procedure and Rules Committee may, at any time, propose amendments to these Standing Orders.”

4. BACKGROUND TO THE REVIEW OF THE STANDING ORDERS

The Senate Leadership held a retreat on 5 – 6 April, 2018 in Nakuru County where, among other issues, the matter of Statements was discussed. One of the resolutions from the retreat was that the Procedure and Rules Committee takes up the matter with a view to changing the manner in which statements are processed in the Senate.

The Committee considered the matter and made the following observations –

- i) The Order on statements had become popular with Senators in pursuance of their representation and oversight mandate;
- ii) During this Second Session, specifically February to May, 2018, the number of requests for statements received each week had risen significantly. This was compounded by that there is no limit in place on the length and content of individual requests, and it took inordinately long time to prosecute a request;
- iii) The number of statements received during a sitting day and approved for request in plenary that day, without being scheduled on the Order paper for that day, had also increased.
- iv) The exponential increase in statements had led to the Senate spending more than half of its sitting time deliberating on Statements at the expense of other legislative business;
- v) The current manner of processing statements had presented challenges in terms of time taken, responses given and lack of follow up mechanisms or long term interventions;
- vi) On 15th May, 2018, the Speaker of the Senate deferred all statements under standing order 46 (2) (b), pending the deliberation and determination of the matter by the Procedure and Rules Committee;
- vii) Since then, Senators have been using the other provisions on statement, and in particular the provisions of standing order 46 (2) (a) to make statements.

5. PROPOSED AMENDMENTS TO THE STANDING ORDERS

Arising from the above challenges and the resolution of the Senate Leadership Retreat, the Procedure and Rules Committee considered the manner of processing statements and proposes amendments to the Standing Orders. The Committee has consulted with other stakeholders including the Senate Business Committee and the Liaison Committee. The proposed amendments are aimed at -

- a) widening the scope of statements and developing a practice of drafting of requests for statements that ensures they are short and precise and limited only to seeking information and pressing for action without delving into points of arguments or statements of obvious points of fact or law;
- b) ensuring that there is enough time for processing and approving a statement and subsequent listing in the Order Paper and also allowing a Committee ample time to process a response;

- c) ensuring that after a statement has been requested, it is referred to the relevant Committee which shall process the matter by inviting all concerned persons including the Senator who requested the statement and may table a report on the matter; and
- d) making committees more accountable by mandating them to make periodic statements on their activities.

After deliberations, the Committee resolved to **adopt** the proposed amendments to the standing orders as follows –

THAT Part XI of the Standing Orders be deleted and substituted with the following new Part-

PART XI-STATEMENTS

46. Statement Hour

- (1) Notwithstanding standing order 40 (*Sequence of proceedings*), there shall be time to be designated “Statements Hour”, every sitting day, commencing not later than 3:00 p.m. and ending not later than 4:00 p.m. during which a statement under this Part may be made.
- (2) A Senator making a statement under this Part shall not speak for more than ten minutes, unless with the permission of the Speaker.

46A. Senators’ General Statements

- (1) A Senator may make a statement on a matter of county-wide, inter-county, national, regional or international concern or on a matter of general topical concern.
- (2) A Senator who wishes to raise a matter under paragraph (1) shall at least three hours before the Senate meets on the day on which the statement is proposed to be made, hand to the Clerk a written notification of the matter signed by the Senator.
- (3) The Speaker may, where appropriate, refer a statement made under paragraph (1) to the relevant Committee for consideration.

46B. Senators' Requests for Statements

- (1) A Senator may request for a statement from a Committee relating to any matter under the mandate of the Committee that is of county-wide, inter-county, national, regional or international concern.
- (2) A Senator who wishes to raise a matter under paragraph (1) shall at least twenty-four hours before the Senate meets on the day on which the statement is proposed to be requested, hand to the Clerk a written notification of the matter signed by the Senator.
- (3) Where a statement has been requested from a Committee pursuant to paragraph (1) –
 - (a) the Speaker may allow comments in relation to the statement for not more than fifteen minutes; and
 - (b) the Committee may invite the Senator who requested the statement, the relevant Cabinet Secretary or any other person the Committee may consider necessary during deliberations on the statement and may prepare and Table a report on the matter.
- (4) The Speaker may allow the Senator who made the request for a statement under paragraph (1) or any other Senator to make comments or observations in relation to the report tabled under paragraph (3) (b), for not more than twenty minutes.

46C. Procedure for Requesting Statements

- (1) The Clerk shall submit a request for statement received under standing order 46A (2) and standing order 46B (2) to the Speaker for approval.
- (2) The Speaker may refuse to allow a request for statement under paragraph (1) unless satisfied that the matter may properly be discussed in the Senate.

46D. Contents of Requests for Statements

- (1) The facts on which a request for statement is based may be set briefly but extracts from newspapers and other media or quotations from speeches shall not be admissible.
- (2) A request for statement, the response to which is readily available in ordinary works of reference or official publications, shall not be made.
- (3) A request for statement shall not-

- (a) be made the pretext for debate;
- (b) be framed so as to give information or suggest its own response;
- (c) convey a particular point of view;
- (d) contain any argument, inference, opinion, imputation or ironical or offensive expression;
- (e) repeat in substance any matter covered in a prior request for statement or already responded to, either as a statement or in the course of a debate during the same Session;
- (f) seek an expression of opinion;
- (g) ask whether any statement in the press or of a private individual or unofficial body, other than an official government report, is accurate;
- (h) refer to more than one subject matter;
- (i) be of excessive length;
- (j) include the name of any person nor any statement not strictly necessary to render the request intelligible; or
- (k) refer to proceedings of a Select Committee before that Committee has made its report to the House.

46E. Statements by Committee Chairpersons

(1) A Committee Chairperson-

- (a) may make a statement relating to a matter for which the Committee is responsible;
- (b) shall, at least once in every three months, on such day as shall be assigned by the Senate Business Committee, and at any other time if so required by the Speaker, make a statement relating to the activities of the Committee; and
- (c) who wishes to raise a matter under paragraph (a) shall at least three hours before the Senate meets on the day on which the statement is proposed to be made, hand to the Clerk a written notification of the matter signed by the Chairperson.

(2) A statement made under paragraph (1) (b) shall include-

- (a) the Bills, statements and petitions considered by the Committee and the status of each;
- (b) any inquiries undertaken by the Committee and the progress of any such inquiry;
- (c) any county visits undertaken by the Committee and the outcome of such visits; and

(d) the manner and extent to which the Committee met its public participation obligations in respect of the business of the Committee.

(3) The Speaker may allow comments or observations in relation to the report tabled under paragraph (1) (b), for not more than twenty minutes.

46F. Statements by Senate Majority Leader and Senate Minority Leader

(1) The Senate Majority Leader or, in his or her absence, a member of the Senate Business Committee designated by the Senate Majority Leader for that purpose shall, every Thursday or on the last sitting day of the week, present and lay on the Table, a statement informing the Senate of the business coming before the Senate in the following week.

(2) The Senate Majority Leader or the Senate Minority Leader, or their designees, may make a statement relating to their responsibilities in the Senate.

47. Personal Statements

During Statements Hour, a Senator may, by the indulgence of the Senate, explain matters of a personal nature although there is no question before the Senate, but such matter may not be debated.

6. COMMITTEE RECOMMENDATIONS

The Procedure and Rules Committee recommends-

- i) THAT, the Senate approves the proposed amendments to the Standing Orders of the Senate; and,
- ii) THAT, pursuant to the provisions of standing order 251, the Senate resolves that the proposed amendments to the Standing Orders take effect upon approval by the Senate.



**12TH PARLIAMENT
SECOND SESSION
PROCEDURE AND RULES COMMITTEE**

**MINUTES OF THE 4TH SITTING OF THE PROCEDURE AND RULES COMMITTEE
HELD IN DEPUTY SPEAKER'S OFFICE, FIRST FLOOR, MAIN PARLIAMENT
BUILDINGS ON THURSDAY, 2ND AUGUST, 2018 AT 12.20 P.M.**

PRESENT

- | | |
|--|---|
| 1. Sen. (Prof.) Kithure Kindiki, EGH, MP | -Deputy Speaker – Vice Chairperson |
| 2. Sen. Beth Mugo, EGH, MP | -Member |
| 3. Sen. (Prof.) Margaret Kamar, EGH, MP | -Member |
| 4. Sen. Steve Ltumbesi, MP | -Member |
| 5. Sen. Rose Nyamunga, MP | -Member |
| 6. Sen. Judith Pareno, MP | -Member |
| 7. Sen. (Dr.) Andrew Lang'at, MP | -Member |

ABSENT WITH APOLOGY

- | | |
|------------------------------------|---|
| 1. Sen. Kenneth M. Lusaka, EGH, MP | -Speaker of the Senate (Chairperson) |
| 2. Sen. (Dr.) Agnes Zani, MP | -Member |

SECRETARIAT

- | | |
|-----------------------|--|
| 1. Mr. Mohamed Ali | - Senior Deputy Clerk |
| 2. Mrs. Serah Kioko | - Director, Legislative & Procedural Services |
| 3. Ms. Mary Chesire | - Deputy Director, Committee Services |
| 4. Dr. Johnson Okello | - Ag. Director, Legal Services |
| 5. Innocent Mbaya | - First Clerk Assistant |
| 6. Amos K. Sikweya | - Second Clerk Assistant (Taking Minutes) |

PRC. MIN. NO. 017/2018 PRAYER

The sitting commenced with a prayer said by the Deputy Speaker.

PRC. MIN. NO. 018/2018 ADOPTION OF THE AGENDA

The Committee adopted the agenda of the Sitting, having been proposed by Sen. (Prof.) Margaret Kamar and seconded by Sen. Rose Nyamunga.

PRC. MIN. NO. 019/2018

CONFIRMATION OF MINUTES OF THE PREVIOUS MEETINGS

- Minutes of the 1st sitting of the Committee were confirmed to the true proceedings of the meeting, upon being proposed by Sen. Rose Nyamunga, MP and seconded by Sen. Judy Pareno, MP.
- Minutes of the 2nd sitting of the Committee were confirmed to the true proceedings of the meeting, upon being proposed by Sen. Beth Mugo, MP and seconded by Sen. Steve Lelegwe, MP

PRC. MIN. NO. 020/2018


CONSIDERATION AND ADOPTION OF THE REPORT ON THE PROPOSED AMENDMENTS TO THE SENATE STANDING ORDERS

The Committee considered and unanimously adopted the report on the proposed amendments to the Senate Standing Orders.

PRC. MIN. NO. 021/2018

ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at twenty-five minutes past twelve O'clock until a date to be notified.



SIGNED:

(CHAIRPERSON)

7/8/2018

DATE:



**12TH PARLIAMENT
SECOND SESSION
PROCEDURE AND RULES COMMITTEE**

**MINUTES OF THE 3RD SITTING OF THE PROCEDURE AND RULES
COMMITTEE HELD IN COMMITTEE ROOM 4, FIRST FLOOR, MAIN
PARLIAMENT BUILDINGS ON THURSDAY, 5TH JULY, 2018 AT 12.20 P.M.**

PRESENT

- | | | | | |
|------------------------------------|----------|----|-----|--------|
| 1. Sen. Kenneth M. Lusaka, EGH, MP | -Speaker | of | the | Senate |
| (Chairperson) | | | | |
| 2. Sen. Judith Pareno, MP | -Member | | | |
| 3. Sen. (Dr.) Agnes Zani, MP | -Member | | | |
| 4. Sen. (Dr.) Andrew Lang'at, MP | -Member | | | |

ABSENT WITH APOLOGIES

- | | |
|--|------------------------------------|
| 1. Sen. (Prof.) Kithure Kindiki, EGH, MP | -Deputy Speaker – Vice Chairperson |
| 2. Sen. (Prof.) Margaret Kamar, EGH, MP | -Member |
| 3. Sen. Steve Ltumbesi, MP | -Member |
| 4. Sen. Rose Nyamunga, MP | -Member |
| 5. Sen. Beth Mugo, EGH, MP | -Member |

SECRETARIAT

- | | |
|-------------------------|--|
| 1. Mr. Mohamed Ali | - Senior Deputy Clerk |
| 2. Mrs. Serah Kioko | - Director, Legislative & Procedural Services |
| 3. Mr. Njenga Njuguna | - Director, Committee Services |
| 4. Mr. Njenga Ruge | - Ag. Director, SO/Deputy Director, LPS |
| 5. Dr. Johnson Okello | - Ag. Director, Legal Services |
| 6. Mr. Zakayo Mogere | - Deputy Director, Legislative & Procedural Services |
| 7. Mrs. Roselynn Omollo | - Chief of Staff, Speaker's Office |
| 8. Mr. Daniel Chania | - Principal Clerk Assistant |

PRC. MIN. NO. 012/2018 PRAYER

The sitting commenced with a prayer said by the Speaker.

PRC. MIN. NO. 013/2018

ADOPTION OF THE AGENDA

The Committee adopted the agenda of the Sitting, having been proposed by Sen. (Dr.) Agnes Zani and seconded by Sen. (Dr.) Andrew Lang'at.

PRC. MIN. NO. 014/2018

CONSIDERATION OF THE PROPOSAL FOR THE REVIEW OF THE SENATE STANDING ORDERS

The Committee noted that there had been some challenges in the processing of Statements by Committee Chairpersons due to the large number of Statements filed by Honourable Senators. In this regard, the Speaker had suspended Statements pursuant to Standing Order 46 (2) (b) to allow for the development of a mechanism on how to handle them.

Upon invitation by the Chairperson, the Secretariat took the Committee through the proposed review of the Senate Standing Orders relating to Statements as follows –

46. Statements Hour

Notwithstanding standing order 40 (*Sequence of proceedings*), there shall be time to be designated “Statements Hour”, every sitting day, commencing not later than 3:00 p.m. and ending not later than 4:00 p.m. during which a statement under standing orders 46A, 46B, 46C or 47 may be made.

46A. Senators' General Statements

- (1) A Senator may make a statement on a matter of county-wide, inter-county, national, regional or international concern or on a matter of general topical concern.
- (2) The Speaker may, where appropriate, refer a statement made under paragraph (1) to the relevant Committee for consideration.

46B. Statements by Senate Majority Leader and Senate Minority Leader

- (1) The Senate Majority Leader or, in his or her absence, a member of the Senate Business Committee designated by the Senate Majority Leader for that purpose shall, every Thursday or on the last sitting day of the week, present and lay on the Table, a statement informing the Senate of the business coming before the Senate in the following week.
- (2) The Senate Majority Leader or the Senate Minority Leader, or their designees, may make a statement relating to their responsibilities in the Senate.

46C. Statements by Committee Chairpersons

- (1) A Committee Chairperson-
 - (a) may make a statement relating to a matter for which the Committee is responsible; and

(b) shall, at least once in every three months, on such day as shall be assigned by the Senate Business Committee, and at any other time if so required by the Speaker, make a statement relating to the activities of the Committee.

(2) A statement made under paragraph (1)(b) shall include-

- (a) the Bills, statements and petitions considered by the Committee and the status of each;
- (b) any inquiries undertaken by the Committee and the progress of any such inquiry;
- (c) any county visits undertaken by the Committee and the outcome of such visits; and
- (d) the manner and extent to which the Committee met its public participation obligations in respect of the business of the Committee.

46D. Processing of Statements

- (1) A statement may not be made under standing orders 46A, 46B or 46C unless the statement has been approved by the Speaker and is listed on the Order Paper.
- (2) A Senator who wishes to make a statement under standing orders 46A, 46B or 46C shall speak for not more than ten minutes, unless with the permission of the Speaker.
- (3) A Senator who wishes to comment on a statement made under standing orders 46A, 46B or 46C shall speak for not more than three minutes, unless with the permission of the Speaker.

In deliberations, the Committee highlighted the following concerns-

- 1) That Statements are a necessary tool for oversight by the Senate and its Committees and there was need to retain it in the Standing Orders;
- 2) That there was need to consider allocate more time for Statements on Thursdays, with the possibility of having a morning sitting on Wednesdays to clear pending ones;
- 3) That the deadline for submission of Statements be increased from the current one hour to 6 or 12 hours to allow for adequate internal review and approval by the Speaker;
- 4) That the threshold for admissibility of a Statement be enhanced with a view to limit the number of Statements submitted in a Session;
- 5) That comments on individual Statements be limited to three or altogether prohibited in the Standing Orders, as a number of them distort the original Statement by Senators;

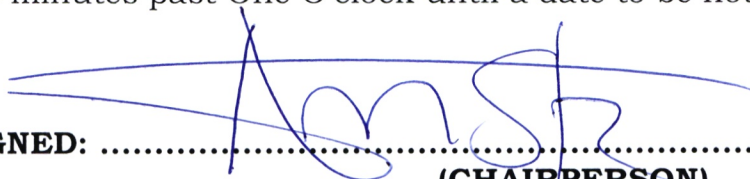
Upon conclusion of the deliberations, the Committee resolved that the Secretariat reviews the proposal for review of the Standing Orders, factoring the above comments and observations and submits the said review at the next Committee meeting.

PRC. MIN. NO. 015/2018 A.O.B

The Committee noted that a committee on implementation was necessary to the operations of Senate Committees and resolved that the Secretariat submits a proposal for the establishment of the committee and further that all proposed amendments to the Standing Orders be submitted at its next meeting with a view to comprehensively undertake a mid-term review of the Standing Orders.

PRC. MIN. NO. 016/2018 ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at forty-five minutes past One O'clock until a date to be notified.

SIGNED: 
(CHAIRPERSON)

DATE: