

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Tuesday, 12<sup>th</sup> February, 2019

*Twelfth Parliament - Third Session - First Sitting*

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

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

#### PRAYER

#### COMMUNICATION FROM THE CHAIR

WELCOME TO HON. SENATORS TO THE THIRD  
SESSION OF THE 12<sup>TH</sup> PARLIAMENT

**The Speaker** (Hon. Lusaka): Hon. Senators, Happy New Year.

**Hon. Senators:** Happy New Year!

**The Speaker** (Hon. Lusaka): It is my pleasure and privilege to welcome you back to the Senate for the Third Session of the Twelfth Parliament. I believe that you have had opportunity to spend quality time with your families and constituents over the long recess, and are re-energized for the Session that is ahead of us.

I wish to commend you for the tremendous amount of work you put in during the Second Session, which saw the Senate transact the highest volume of business in a single Session since its re-establishment in 2013. Just to mention a few highlights-

(1) The House and its committees considered a total of 60 Bills, 97 Motions, 216 Statements and 43 Petitions;

(2) The Senate registered its greatest participation at the annual Devolution Conference and annual Legislative Summit, in terms of planning, attendance and as facilitators in the various plenary and breakout sessions;

(3) The Senate and its committees organized a total of 67 workshops to consider critical business for the Senate and visited a total of 41 counties; and

(4) The Senate held its first ever plenary sittings outside Nairobi, in Uasin Gishu County, which by all standards was a tremendous success for the Senate in the discharge of its constitutional mandate.

The Senate further continued its close collaboration and partnership with county assemblies. The Senate hosted over 50 county assembly delegations on various capacity

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building engagements during the Session. This is a demonstration of the confidence that county assemblies have in the Senate to build their individual and collective capacities.

Hon. Senators, however, this is not to say that the Session was without its challenges. Some of the challenges included the procedure for consideration and passage of Bills in the two Houses, as well as the implementation and reporting by the National Executive on resolutions passed by the Senate.

Hon. Senators, as we commence this Third Session of the Twelfth Parliament, we have a full plate ahead of us, notably the consideration and disposal of 22 Bills that are pending at Committee of the Whole stage; 16 Bills at Second Reading stage; 31 Petitions, as well as Statements pending before committees and follow up on implementation of various resolutions adopted by the House during the last Session.

The Senate is also expected to consider proposals for and determine the second-generation criteria for sharing of revenue among counties. You will note that the existing formula has been in place since the onset of devolution. This is indeed one of the most important tasks that the Senate is called upon to discharge during this Session.

Hon. Senators, the annual Devolution Conference is scheduled to be held next month, in Kirinyaga County, while the annual Legislative Summit will be held in April, in Kisumu County. These two events accord the Senate the opportunity to interact with other key players on devolution, identify and deliberate on the critical aspects of devolution, celebrate the gains and successes accomplished, reflect on the challenges encountered and come up with resolutions and concrete plans of action on the way forward.

Further, as resolved by the House last year, planning has also commenced for the Senate to hold sittings outside Nairobi later in the year.

Hon. Senators, these events call upon each one of us to rededicate ourselves to execution of the assignments ahead of us. Having interacted with a majority of you, I am confident that this year, we can do even better than we did during the last Session.

As the leadership, we have invested in strengthening relations with our counterparts in the National Assembly, with the Ministry of Devolution and ASAL Areas, with the Council of Governors (CoG), the County Assemblies Forum (CAF) and other key stakeholders. We are confident that these will translate into a better working environment that will enable the Senate to robustly discharge its constitutional mandate of representation, legislation and oversight.

Hon. Senators, as I conclude, I wish to assure you of my deep commitment and passion to see this House succeed, and to support each one of you both individually and in the committees that you serve in, to reach the highest and achieve the best that we can during this Session and beyond.

I thank you.

*(Applause)*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I join you in welcoming our colleagues to the Third Session of the Twelfth Parliament. First of all, I would like to wish everybody a happy new year.

I agree with you that this year is very consequential in the calendar of the 12<sup>th</sup> Parliament because we have a very unique opportunity. Usually, the first two years are very important in Parliament because most of us are not so much focused on the elections

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but on delivering on the promises that we made just after elections. One of the important assignments that this House will have this year is to ensure that we provide a strong mechanism of implementing Article 96 of the Constitution in so far as the oversight of counties is concerned.

We have raised this issue in the House several times on how the County Public Accounts and Investments Committee (CPAIC) can go about it. I have also interacted with my colleagues from the Majority side and they have fantastic ideas on how to go forward in so far as oversight is concerned.

Mr. Speaker, Sir, the people of Kenya are happy that we have devolution. However, they are also frustrated that we are not providing the necessary oversight to ensure that there is proper accountability. With the pilferages and corruption that is going on in the counties, all fingers are pointed towards this House. I have had this discussion with the Senate Minority Leader and one of the greatest assignment that we must do is to have a two day retreat soon as a House to work out a proper framework and mechanism of implementing Article 96 in a manner that is effective and responsive to the challenges that the people of Kenya are going through in so far as corruption and pilferage of public resources in the counties is concerned.

If we crack that part, notwithstanding the resources that we are given for that responsibility, if we can demonstrate that we can innovatively come up with ways of implementing that oversight responsibility as a House, we will have succeeded.

Mr. Speaker, Sir, secondly, we must continue protecting our mandate and the counties. As we welcome our colleagues, I would like to use this opportunity to sound a warning to others who want to take advantage of the challenges that the doctors, nurses and counties are going through in the medical sector to announce that we can reverse the health function to Nairobi. I would like to assure the people of Kenya that we cannot return the health function to Nairobi. We have devolved that function and we will ensure that it succeeds. We will not tolerate those who are going to frustrate the resources that are going to the counties or the implementation of functions that have been devolved to the counties as an excuse of re-centralizing.

Mr. Speaker, Sir, this House shall perform the responsibility that it is required to do. As a second Chamber, it is meant to protect counties and ensure that Kenya remains a decentralized country with successful and working devolved governments. I would like to caution some governors, including a governor who comes from our region, who is talking about dissolving the county government and returning the functions back to Nairobi when they face challenges such as the nurses' strike. As we sit in this House and negotiate on the best formula on how to share resources among our counties, that will not be an excuse for dissolving our counties. Our counties have made this nation a better place than it was.

Lastly Mr. Speaker, Sir, as a House, we also have a responsibility to rise to the constitutional moment; if it presents itself - that we have to relook at the Constitution, whether as a suggestion or an actual referendum. I want to notify the people of Kenya that this House already has its draft on how to strengthen devolution and the Senate. I chaired a Committee and was deputized by Sen. Mutula Kilonzo Jnr. We have a report which was passed on the Floor of this House. That Committee had eminent lawyers like Sen. Orengo, who is the Senate Minority Leader, people like Governor Kiraitu, among others.

We have an opportunity to make sure that we clean that document and present it to the people of Kenya. Sen. Haji and Sen. Wako are in the middle of this conversation. The Senate must be at the center of any conversation that goes towards tweaking and re-looking at the architecture and design of our Constitution and the governance structure of this nation. We can only be at the center of that conversation, if at the early stage we demonstrate that our capacity and capability to ensure issues of oversight are done in a manner that will benefit the people of Kenya.

Mr. Speaker, Sir, I support your Communication. Thank you.

**The Speaker** (Hon. Lusaka): Leader of the Minority, Sen. James Orengo.

**The Senate Minority Leader** (Sen. Orengo): I wish to support your Communication, and I go on record in appreciating what you have said about the businesses that we had in the House during the last session and what awaits us.

Mr. Speaker, Sir, I was reading in the media and normally the media is not all the time very positive about the Senate, but at least they acknowledged that the Senate generated the highest number of Bills of the two Houses.

*(Applause)*

I also saw a commentary that denoted that the Bills were not just high in number but also the quality of the Bills found favor with the people in the media. I think we deserve a pat on the back for that recognition.

Secondly, I think we should also not take it for granted that during this initiative, “the Building of Bridges Initiative” that a senior member of this House is the Chair and I think that is not an accident. Maybe you might be getting more tit bits than any other person because the Chair of that Initiative is here together with the Attorney-General *Emeritus*, Sen. Amos Wako.

Having said that, I want to say something which is very critical because of the ongoing exercise to clean up in the Government. One of the most important roles that we have that the Leader of the Majority has talked about is oversight. The governors and counties must realize that we, as the Senate, do not want to become morticians; we do not want to be surgeons. We better be talking about that money when it is still there than when it is already stolen. The governors and everybody must begin to realize that when they are called here, it is for their own good because probably they will not end up in courts if they came here, we hear and guide them in the expenditure of the money which has been allocated to them under this new constitutional dispensation. Actually, what gets in the courts might be a very small fraction of what is lost. What is lost is never really gotten hold of.

I think in this new Session, we must intensify our oversight role. We will talk with the Majority Leader on how this will be done and the framework, because there looks like there will be resources to that effect although we could do with a little bit more resources.

The Executive must also realize that in order for us to perform that role to help the Government not to have this constant leakage of funds and resources, this oversight will help the Government save resources and make sure that we do not go after citizens or public officers after the horse has bolted.

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Finally, Kenya is now in a very important position because no country which has gone through a constitutional process misses an opportunity to review that Constitution. Be it India, which, two years after the making of their Constitution, they had to review that Constitution to look at the flaws and lacuna in the constitutional framework. In the United States of America (USA), we normally talk about how great that Constitution is but very few years after the convention, there was a review, and there has been constant review. That is why there have been so many amendments. So, we should never be afraid to review the Constitution.

I join the Majority Leader in saying that at least, we foresaw this in advance and the draft that we had was not only to enhance the authority of the Senate but to protect devolution and make governance more effective even in the area of appointing public officers.

Right now, we are beginning to realize that when people are brought before us to be vetted, it is a very important function. When you look at the mistakes that have been made by some of the people who have been approved by Parliament, we begin to realize that we should be more fastidious when they are brought before us for purposes of vetting. Unfortunately, the Senate probably vets only the Inspector General (IG) of the National Police Service.

I think part of the new constitutional dispensation, we should borrow from the Americans that the smaller House, normally is better for purposes of vetting public officers, but if you take somebody before a panel of 100 people, that is not an interview, that is a *baraza*. So, I hope there will be support to make sure that public officers who occupy independent offices and commissions should be brought before the Senate and the others can go to the National Assembly.

With those remarks, I thank you, Mr. Speaker, Sir.

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

**Sen. Mutula Kilonzo Jnr:** Thank you, Mr. Speaker, Sir. I also want to support your sentiments about the work that we have ahead of us. At the first instance, I thought that we would observe a moment of silence for the so many Kenyans who lost their lives in Dusit D2 to the terrorists who once in a while come to disturb our peace, take advantage of our weaknesses and use very bad methods to send messages to the wrong people.

Mr. Speaker, Sir, this is a very unique year because of the work that Sen. Haji is doing. I am of the view that the work that Sen. Murkomen and the Committee where I also served as a Vice Chair should book an appointment with one Senator 007, Sen. Haji, so that we can present that document officially to him. The Senate will not wait for every Kenyan to think about what they want, we did. We have a document we presented, let the discussions start; let them start talking about the document we have presented when the document is with them.

Similarly, Mr. Speaker, Sir, Parliament will play a big role in the constitutional amendment, everybody must know, if you want a Prime Minister, you will need 42 Senators to agree; that is a fact.

*(Laughter)*

If you need a Deputy Prime Minister, you will need 42 Senators. This is the time we are going to negotiate for the Senate to become what it was meant to be. This is the time, *hakuna siku nyingine!*

*(Applause)*

So, I am happy that one of us sits here and because we are going to cut a deal, and that deal will be to make devolution stronger and better because it is not by accident somebody has said that Senator 007, Sen. Haji sits there. You are just 007, James Bond! So, we are counting in on you.

*(Laughter)*

We are counting on you to ensure that the legacy we leave this second Senate is to leave devolution a little stronger than it was.

I spoke to Sen. Murkomen yesterday and there is something we did that will affect our work. The year 2019 is set for boundaries review.

We sat here and argued until midnight that we took away our power as the Senate to participate in boundaries of wards and constituencies. So, the past is going to haunt us but we must relook those issues because there is no way wards and other boundaries can be altered without the input of the Senate.

I am aware that the draft Budget Policy Statement (BPS) of this year wants us to reduce the allocation to counties by Kshs9 billion. If there is time we have to stand up as a Senate, and not as politicians from different political parties, it is now. The minute we begin the trend of reducing the money that goes to counties, that will continue and it will be the claw back on devolution. I am afraid – forget about doing the audits – we will be the undertakers of the devolution the minute we agree that simply because the country is facing whatever challenges it is facing, the first victim should be counties.

Although governors have misbehaved, and I agree with Sen. Murkomen, there are two things I propose that we should do this year. First, the Chairman of the Committee on Finance and Budget can propose that although we agree with the work that Sen. M. Kajwang' is doing, which is very good, it comes at the tail end. Can we find a method of dealing with the reports of the Controller of Budget and budget implementation so that if a certain governor in Samburu or Isiolo misbehaves in the first or second quarter, we apply Article 225 together with Articles 93, 94, 95 and 96 to stop the release of funds? We cannot continue digging holes in counties where we are supposed to oversight.

Let me say this about oversight. I know that Sen. Murkomen, who is the Senate Majority Leader and a few Members of this House, did a good job in trying to get Senate funding but that will be our downfall. It will be our downfall if we behave like the governors. Unless this Senate comes up with a proper method of how we are going to audit these funds, we are going to become the laughing stock yet we have been given very little money.

So, Mr. Speaker, Sir, call us quickly so that we can find a good method of using that Fund properly. When we ask for more funds, then we must show by action through counties that we have utilised that function well.

I do not know what the leadership will resolve regarding the Implementation Committee. However, it pained me when I saw the poor people of Solai being teargased because they had a meeting with Mr. George Kegoro but we passed resolutions for them

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to be resettled. Is it not time we relooked at the Implementation Committee over our resolutions? It becomes very academic when the committee chaired by Sen. M. Kajwang' and other *ad hoc* committees make resolutions but nothing happens.

The last time we had the Committee on Implementation, we made a difference. KQ recommendations were implemented because we followed up.

Mr. Speaker, Sir, I thank you.

**Sen. Mwaura:** Mr. Speaker, Sir, I rise to support your statement. For sure, being the second year of this Senate, I think it is very clear that we have made a lot of progress to establish ourselves as the “Upper House”. Just recently, we were wondering whether the Senate is also becoming the academy of Parliament because when you see the kind of discussions that we have, the in-depth analysis and the insights, you can for sure tell that the *crème de la crème* of this society is resident in this august House.

We owe it to Kenyans and indeed the whole country that when we talk about matters of referendum, we have to insist and ensure that the Senate becomes the House of revision and reason where people come to look at what is happening because the National Assembly is nothing more than a three-streamed high school classroom in my opinion. There is nothing much that can happen when there is a lot of capricious behaviour as to capture the attention of the media for the sake of it. It is just playing to the gallery. It is here that we look at the interests of the country.

I am saying this because some of the legislations that were passed in the Eleventh Parliament are coming home to roost. A case in point is the Insurance Law that we passed that puts Kshs3 million as the amount to be compensated by insurance companies if your vehicle causes an accident that leads to death. That means that the courts can award more than Kshs3 million. So, it is the owner of the vehicle that is supposed to compensate the victim. If that were to be properly canvassed in this august House, it would not have seen the light of day.

Mr. Speaker, Sir, we owe it unto ourselves to ensure that we push the agenda of the country. We have to exercise our mandate because if you look at the architecture of bicameralism, we have a lot of opportunity in terms of ensuring that we oversight the counties. Nothing precludes us from making our matters heard and known on all that concerns the national Government and national policy because the national policy must also be implemented by county governments by virtue of that shared role.

It will be important also to ensure that whatever resolutions we make in this House as we go forward are not seen to be an exercise in futility. It is important to ensure that we follow through them so that we do not just become a House where we make resolutions – like croaking frogs – where we just talk but nothing happens. We have an opportunity to debate and look at how we have governed ourselves so far and provide proper solutions going forward.

Mr. Speaker, Sir, I want to say that going forward, we must ensure that whatever counties that we represent, including special interest groups, they should truly find their residence within this Senate, so that they are properly defined by the way in which we allocate resources and ensure that those mandates are felt by the person on the ground.

I support.

**Sen. Wetangula:** Happy new year to you, Mr. Speaker, Sir, and all colleagues in the House and welcome back.

Mr. Speaker, Sir, I support your statement in reflecting on what we have done previously, the challenges ahead of us and above all your robust defence on devolution and this House. I will just touch on one or two things. First, as we look to the new session, I encourage our colleagues who chair two critical committees of Health and Agriculture, Livestock and Fisheries... The country is facing very serious challenges in these sectors.

Today as I speak, farmers in the western part of Kenya, the Rift Valley- both south and north - are getting ready to give the country the desired food security. However, the usual subsidy on fertilizer is no more. There is a push and pull between the Ministries of Agriculture, Livestock and Fisheries and National Treasury and Planning. I encourage our colleague, Sen. Ndwiga, who is the Chairperson of the Committee on Agriculture - a man with wide experience who served very well as the Minister for Co-operatives in this country - to move quickly and engage the two Ministries and see that farmers get subsidy in fertilizer to give the country the desired food security.

Mr. Speaker, Sir, again, health is going through a very difficult and turbulent time yet we know that both agriculture and health are the most devolved functions in this country. Again, I encourage my young colleague from Trans-Nzoia, the Chairpersons of the Committee on Health, to also engage as quickly as is practically possible with the Ministry concerned and find a solution to the nurses' crisis and lack of drugs in public health facilities in all the counties. It is a pity that people are dying from very preventable ailments. This is a terrible indictment to all of us. This is something that we can and must do.

Thirdly, as the Sen. Yusuf Haji and Sen. Amos Wako Committee continues gathering views from various sectors and sections of Kenyans, we encourage them to make sure, as colleagues before me have said, that this House is restored and given its rightful position in a devolved system. Equally important, the challenges of the counties today, apart from lack of accountability which we have already taken responsibility from what my colleagues have said, is also inadequacy of resources.

I have argued many times, and I would want to convince this House, that as we move on to the future, sharable resources should be based on annual budgets and not on historical accounts. When resources go to the counties, as the national Government spends, the counties must also have corresponding resources for functions assigned to them. However, that does not mean that this House or Kenyans are giving a blank cheque to county managers who have engaged themselves in obscene behaviour in terms of unaccountability.

Mr. Speaker, Sir, looking at Article 96 of the Constitution, there is no provision there that this House only waits to look at what has been spent. There is none. We must adopt the American style of budget tracking; that you give money and at every stage it is spent, you are there to see and check whether it is being spent properly or not. Otherwise, we will continue lamenting, carrying out postmortems and calling each other names. You call somebody names, after a short while, he is out of office, a new one comes, you forget the past and you move on. This is not the way to go. We have seen governors who walk into office without a second shirt and in a year, they are billionaires.

*(Laughter)*



Everybody is watching this and we must stop this because those are not their resources. Those are resources of the people of Kenya.

Finally, Mr. Speaker, Sir, I urge this House to remain above board, avoid politics of hatred, vindictiveness and of dividing the country so that even where our colleagues in the “Lower” House engage in errant behaviour, let us rise and stand above them so that Kenyans know that we are truly a House of reference wrongly described and we are truly a House of revision and truly the “Upper” House that can give direction and be able to help restore political sanity in the country.

It is not for nothing that the new Constitution gave this House the authority as the Trial Chamber if a President is being impeached. It is because they knew that the huge number of the Members in the “lower” House is unlikely to pursue anything in a reasonable manner when it comes to such sensitive issue. That is why this House is what it is and we must be what we are meant to be.

**The Speaker** (Hon. Lusaka): Hon. Senators, you know we have a Motion to approve Senators who will serve in the House Business Committee (HBC) and thereafter, it has to meet. Those who are remaining, I will give you three minutes so that we are able to have the Motion.

**Sen. Cheruiyot:** Thank you, Mr. Speaker, Sir. Happy New Year to my colleagues. I was about to complain, but then I remembered it is a new year, that when it is just about to get to me, then the time gets reduced.

*(Laughter)*

I was hoping it might be different this year, but it appears that old habits die hard as they say.

Thank you, for your Statement. It is very refreshing to us, Senators, as we come back. The thing that continues to prick my mind and a few of my colleagues have addressed themselves to it, is the issue of Article 96 of the Constitution. Unlike before, citizens of this country are becoming alive to the fact that there are people called Senators who are responsible for the success or failure of devolution in this country.

If you study the psychology and the psyche of Kenya as a Republic, Kenyans have become accustomed to the pilfering habits of county governments. Therefore, we are now getting to a point where citizens are pointing fingers at us. They are saying: “Yes, these people are looters, but I thought on the ballot paper also, there was a gentleman or lady, that we elected who we were told his or her main responsibility is to check on the operations of the county governments.”

Mr. Speaker, Sir, if we do not do our responsibility as is expected of us, then we will sink this House. This is a moment in our country where people are beginning to have discussions on what needs to be changed in our Constitution. If you are a regular user of social media, the other day, there was a very telling photo of our colleague, the good Senator for Marsabit County, Sen. (Eng.) Hargura. It was being graphically explained that they were at a public function and the citizens served them muddy water. This was to hammer the point home that “if you leaders cannot provide us with water, then drink what we are drinking.”

Ideally, it is Sen. (Eng.) Mahamud, I think I forget the exact name of his governor. It is his governor who is supposed to be asked that question because the good

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engineer has done his bit. He has passed the County Allocation of Revenue Act (CARA) and Division of Revenue Act (DORA) and ensured that there are resources in Marsabit County. If the good governor and the governor who served before, did not ensure that the citizens of Marsabit County have clean and accessible water, how is it the Senator's problem? Is it the Senator's problem right now? It is like citizens have given up on county governments and are now beginning to point fingers at us. They are asking: "You fellows that are supposed to be oversighting these county governments, what are you doing about it?"

Therefore, it is really important---

*(Sen. Cheruiyot's microphone went off)*

**Sen. Olekina:** Thank you, Mr. Speaker, Sir. I support your Communication. This is a very interesting year for us because there will be many discussions concerning changes in our Constitution. As my colleagues have said, it is important for us to remind us of our responsibility as a Senate in this country.

During the last Session, we deliberated on various issues that touched on common mwananchi. One of them, and which is dear to me, is on the price of maize in this country. Over the weekend, I travelled to Kitale. I visited a gentleman by the name of Mr. Silas who had two big storage facilities with over 20,000 bags of maize, but no market for them.

Mr. Speaker, Sir, over the weekend, I travelled to Trans Mara in Narok County where farmers are crying that the price of sugar cane has dropped because of a surplus of imported illegal sugar in the country.

Mr. Speaker, Sir, I believe that the Senate is the only one which will bring sanity to these two industries; the maize and sugar importation. It behooves us to come up with policies and look at the existing legislations that encourage the mopping-up of what our farmers can grow before any maize or sugar is imported into the country. I hope that The Warehouse Receipt System Bill that we passed will come in handy.

Mr. Speaker, Sir, I would like to encourage all my colleagues that it is now time for us to fight corruption.

Mr. Speaker, Sir, in 1968, the Government pledged to deal with corruption and it is still pledging. Therefore, the only way we can do this is to back it up with proper legislation. There is no reason as to why any legislation should be discriminatory. If a State or public officer is charged with any economic crime, they should step aside so that this country can begin to believe that we really mean what we say.

Mr. Speaker, Sir, recently, a constituent from Narok County died in one of the local hospitals and just because he was in a private hospital, the maximum amount of money that National Hospital Insurance Fund (NHIF) could pay for the deceased person was only Kshs500,000 after I intervened. Therefore, it is necessary for us to relook at all these legislations so that we can continue to support our citizens.

**Sen. (Prof.) Kamar:** Thank you, Mr. Speaker, Sir, for the opportunity. First, I start by supporting your very detailed Communication and thank you for giving us a summary of what we did previously because it makes us reflect and realise how much we did in the last session.

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As we start this session, Mr. Speaker, Sir, our agenda is cut out. There are two main events that will further shape what we will do. We will have the Devolution Conference and the Legislative Summit. However, we hope that before that, we will have a retreat to shape how this session will be. This will be very important so that the Devolution Conference will be result-oriented. I know that we have had two Devolution Conferences as a House in a friendlier manner. However, we need to ask ourselves what we delivered at the end of the Conference.

It is important for us to make sure that before we hold our second event which is the Legislative Summit, we strike a relationship with the Members of the County Assemblies (MCAs) so that the future of protecting the interests of the counties and their governments is outlined properly. This is another event that requires that we come up with results.

Mr. Speaker, Sir, devolution is only seven years old. However, we need to ask ourselves how much we have gained out of it. In particular, I support colleagues who have talked about Article 96 of the Constitution. We need to protect the interests of counties and their governments because counties, *per se*, include the public and the communities within the counties.

When we were on recess, people kept saying that they know little about our job. They kept on asking what we have protected in the last two years. Therefore, we really need to breakdown that protection and properly address the oversight agenda. I, therefore, support that our oversight agenda must be the real issue that we will leave after the end of this Session.

Mr. Speaker, Sir, because of time, I will not go far. However, we also need to be clear about whether our resources are followed---

*(The red timer was switched on)*

**Sen. (Dr.) Musuruve:** Thank you, Mr. Speaker, Sir, for your remarks. Most importantly, I thank you for your assurance that you will support us at individual and committee level. It is very encouraging and assuring to know that you will support whatever agenda that we will front with regards to the counties. I thank you for the commitment that you have given us.

Mr. Speaker, Sir, the long break was reassuring because it was possible for us to meet and engage our constituents. We have come back refreshed and ready to work. I support the need to strengthen devolution in the counties so that the common man benefits from it.

Mr. Speaker, Sir, Article 1 of the Constitution states clearly that power belongs to the people of this nation. However, there is no way power can belong to the people of this nation if they are not involved in decision-making. Therefore, we need to strengthen it. I also agree that there is more need to remit money to the counties because it is supposed to ensure that *Wanjiku* benefits from the process of devolution. Devolution is no longer a baby; it must work. For it to work, the Senate need to work on the tripartite relationship of the Senate, governors and MCAs which is important in ensuring that devolution works.

Mr. Speaker, Sir, I agree with the fact that there is a lacuna in the Constitution. There is nothing wrong with reviewing it because it is the law of the land that is supposed

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to benefit the people of this country and act as a guide. Therefore, there is need to review it so that people enjoy the benefits of independence, for example, women and persons with disabilities. The Senate represents the interests of the counties. Therefore, we need to protect our farmers by all means. Farmers play a major role in the country and we have a duty to protect them because they do not have any factor of production. They only have land as a factor of production to help them in many ways. If we do not--

*(The red timer was switched on)*

**Sen. Seneta:** Thank you, Mr. Speaker, Sir, for giving me a chance to support your Communication. From the onset, I wish you and my colleagues a Happy New Year.

As I support your Communication, I remind this House about the issue of nurses. We are aware that nurses all over our counties have been on strike although they have not done so in my county. Therefore, we need to harmonize their salaries. Why are nurses who graduated from the same schools and have the same qualifications being paid differently in different counties? The Committee on Health needs to harmonize the nurses' salaries in all counties. They also need to mediate in a discussion between the Salaries and Remuneration Commission (SRC), county governments and the Ministry of Health so that our nurses can go back to work and deliver services to our people.

We also have an issue with resources that go to our counties. We need to look at them versus development.

During the recess, there was a report indicating that many of our counties were spending a lot of money on recurrent expenditure rather than development. We need to look at how we can spend more money on development rather than spending it on salaries and travel allowances, among other expenditure items.

As a House, we also need to look at those important Bills that are still pending and can go a long way in helping our counties. These Bills are supposed to look at the framework on how our roads should be made and how employment should be created in our counties.

We need to look at the law so that we have a framework on how we can operate in our counties. We, therefore, need to look at the extremely important Bills that are pending before this House.

I support.

**The Speaker** (Hon. Lusaka): Sen. Khaniri.

**Sen. Khaniri:** Thank you, Mr. Speaker, Sir, for the opportunity. At the very outset, I join you in welcoming my colleagues to this Third Session of the 12<sup>th</sup> Parliament. I wish them a happy new year and fruitful deliberations in the course of the year.

As contained in your address, the 12<sup>th</sup> Parliament has made a lot of progress and we all agree with that. In addition to the numerous Bills that you enumerated, there was another milestone that we cannot afford to forget; taking the Senate to sit out of Nairobi. That was a milestone.

I would like to state that the sitting in Uasin Gishu County was a success story. We must pick up from there and ensure that this year, we do not just do one county or two, but must target to do even many more.

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Mr. Speaker, Sir, having included the programme of visiting projects after the debates in the Chamber, to see what the monies that we send to the counties has done so far up to now, has sent shivers down the spines of so many county governors.

I dare say this here without fear of contradiction that some counties such as Vihiga County have nothing that they can show for devolution for the last five years. There are no major flagship projects that one can say; this is what we achieved in the last six years of devolution. However, after our sitting in Uasin Gishu County, I went and told them that when the Senate goes to sit in Vihiga, after the Sessions, the Speaker will lead a team of Senators so that the county governments can go and show them the physical projects that they have achieved since inception of devolution. People are now running helter-skelter in Vihiga County to try and put up things that they can show the Senate when it goes there.

Mr. Speaker, Sir, I am telling you; it is working magic. We must increase the frequency of visiting the counties so that we have more sittings outside Nairobi than we did last year. Last year was a trial and a success. We must build on that and ensure that we visit more counties this year.

The second issue is on the Oversight Fund. I disagree with my Whip on the Oversight Fund and state here categorically that the Fund is critical for Senators and a matter that we are not going to negotiate on. We must have the Oversight Fund for us to be effective in our oversight role in our counties.

**Sen. (Dr.) Zani:** Thank you, Mr. Speaker, Sir and Happy New Year to all our colleagues. I appreciate the communication that you have made which was direct. I think it sets the pace in terms of our legislative agenda about what we should be looking at.

I think the first phase of devolution has been set and issues have been articulated. However, I think the time for action, implementation and going back to find out what has gone wrong and addressing it, is paramount for this Senate.

There is a raft of some of these issues that I want to go through. If we go through a process where we come up with legislation that targets to address each and every one of these issues, then we will catapult the development in the counties. This is because as it is, counties seem to be in a sort of siege. There is revenue that is being allocated and work meant to be done within the counties. The output is there but it has not yet been maximised.

Mr. Speaker, Sir, I acknowledge the role that you have played in leading from the front even in terms of the media and your media engagements this morning, where you articulated issues about the Senate and answered the questions very well. I think that sort of visibility is extremely important for us.

We must address the issue of low revenue collection from the local sources. This is because the reports coming through are that the defunct local authorities collected much more than we are doing now. We need to address the issues of disbursed funds to counties and why there is a delay and how we can will address it. A suggestion has been made, for example, of not disbursing funds to counties that have not quite well adjudicated the funds they have received.

Mr. Speaker, Sir, we need to find a solution and apply it because that is what Kenyans are waiting for and looking at. We need to find ways of coordinating, planning and executing within counties and dealing with the issues of stalled projects within the counties.

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We know that counties have development plans, but they have sometimes not had very clear operationalization indicators and results. We must have a result-oriented framework in terms of what goes out.

We must deal with the issue of bank overdrafts that many counties are taking and how they handle them. That also brings in the issue of bloated wage bills. We must deal with human resource management, bloated wage bill, financial resource mobilization and accountability at all levels.

**The Speaker** (Hon. Lusaka): Hon. Senators, as I told you, since the Senate Business Committee (SBC) has to meet, we will have to stop there and call for the next order.

### MESSAGES FROM THE NATIONAL ASSEMBLY

#### PASSAGE OF THE COUNTY ALLOCATION OF REVENUE BILL (SENATE BILLS NO. 29 OF 2018)

**The Speaker** (Hon. Lusaka): Hon. Senators, I wish to bring to the attention of the Senate that pursuant to Standing Order No.41 (4)), the Clerk of the Senate delivered to me a Message from the National Assembly regarding the County Allocation of Revenue Bill (Senate Bills No. 29 of 2018).

The Message which is dated 10<sup>th</sup> December, 2018, was transmitted to all Senators on 21<sup>st</sup> December, 2018, pursuant to Standing Order No.41 (5). Further, pursuant to the said Standing Order, I now report the Message-

“Pursuant to the provisions of Standing Order 41 (1) and 144 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly:

WHEREAS the County Allocation of Revenue Bill (Senate Bills No. 29 of 2018). was published vide Kenya Gazette Supplement No.128 of 12<sup>th</sup> October, 2018 as a Bill concerning county governments seeking to amend the county allocation of revenue act No. 8 of 2018;

WHEREAS, the said Bill was passed by the Senate on Wednesday, 21<sup>st</sup> November, 2018 and referred it to the National Assembly for consideration;

AND WHEREAS, the National Assembly passed the said Bill on Thursday, 6<sup>th</sup> December, 2018, without amendments and in the form passed by the Senate;

NOW, THEREFORE, in accordance with the provision of Article 110 of the Constitution and Standing Order 41 (1) and 144 of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly to the Senate.”

Honourable Senators, Article 110(5) of the Constitution states as follows:

“If both Houses pass a Bill in the same form, the Speaker of the House in which the Bill originated shall within seven days refer the bill to the President for assent.”

In the circumstances, I wish to inform the House that I presented the said Bill to His Excellency the President for assent, who thereafter, assented to it on 31<sup>st</sup> December, 2018.

I thank you.

PASSAGE OF THE WAREHOUSE RECEIPT SYSTEM BILL  
(SENATE BILLS NO. 10 OF 2017)

Hon. Senators, I also wish to bring to the attention of the Senate that pursuant to Standing Order No. 41(3), the Clerk delivered to me a Message from the National Assembly regarding the Warehouse Receipt System Bill (Senate Bill No.10 of 2017). The Message which is dated 19<sup>th</sup> December, 2018, was transmitted to all Senators on 21<sup>st</sup> December, 2018, pursuant to Standing Order No.41 (5). Further, pursuant to the said Standing Order, I now report the Message-

“Pursuant to the provisions of Standing Order No. 41(1) and 144 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly:-

Whereas, the Warehouse Receipt System Bill (Senate Bill No.10 of 2017) was passed by the Senate on Thursday, 29<sup>th</sup> March, 2018 with amendments and referred to the National Assembly for consideration;

And whereas, the National Assembly also passed the said Bill on Tuesday, 27<sup>th</sup> November, 2018 with further amendments attached herewith;

Now, I, therefore, in accordance with the provisions of Article 110 of the Constitution and Standing Order No. 41(1) and 144 of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly to the Senate and seek concurrence of the Senate to the National Assembly amendments.”

Hon. Senators, Article 112(1)(b) of the Constitution provides that:-

‘If one House passes an ordinary Bill concerning counties, and the second House passes the Bill in an amended form, it shall be referred back to the originating House for reconsideration’.

Hon. Senators, in this regard, I direct the Standing Committee on Agriculture, Livestock and Fisheries to deliberate on the National Assembly amendments and report to the Senate. Further, pursuant to Standing Order No. 159(1) of the Senate Standing Orders, I direct that the National Assembly amendments to the Warehouse Receipt System Bill (Senate Bill No.10 of 2017) be circulated to all Senators and be listed in the Order Paper for consideration on Thursday, 21<sup>st</sup> February, 2018.

I thank you.

PASSAGE OF THE ASSUMPTION OF THE OFFICE  
OF COUNTY GOVERNOR BILL (SENATE BILLS NO. 1 OF 2018)

Hon. Senators, I wish to bring to the attention of the Senate that pursuant to Standing Order No.41 (3), the Clerk delivered to me a Message from the National Assembly regarding the Assumption of the Office of County Governor Bill (Senate Bill No.1 of 2018). The Message which is dated 19<sup>th</sup> December, 2018, was transmitted to all Senators on 21<sup>st</sup> December, 2018, pursuant to Standing Order No.41(5). Pursuant to the said Standing Order, I now report the Message.

“Pursuant to the provisions of Standing Order No. 41(1) and 144 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly:-

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Whereas, the Assumption of the Office of County Governor Bill (Senate Bill No.1 of 2018) was published vide Kenya Gazette Supplement No.1 of 12<sup>th</sup> January, 2018, as a Bill concerning county governments seeking to provide for the procedure and ceremony for the assumption of the Office of the County Governor by the Governor-elect and for connected purposes, and was thereafter passed by the Senate on Thursday, 21<sup>st</sup> June, 2018, and referred to the National Assembly for consideration;

And whereas, the National Assembly also passed the said Bill on Thursday, 6<sup>th</sup> December, 2018, with amendments to Clause 2,5,6,16,21 and 23 in the form attached herewith;

Now, therefore, in accordance with the provisions of Article 110 of the Constitution and Standing Order No. 41(1) and 144 of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly to the Senate and seek concurrence of the Senate to the National Assembly amendments.”

Hon. Senators, Article 112(1)(b) of the Constitution provides that;-

‘If one House passes an ordinary Bill concerning counties and the second House passes the Bill in an amended form, it shall be referred back to the originating House for reconsideration’.

Hon. Senators, in this regard, I direct the Standing Committee on Devolution and Intergovernmental Relations to deliberate on the National Assembly amendments and report to the Senate.

Further, pursuant to Standing Order No. 159(1) of the Senate Standing Orders, I direct that the National Assembly amendments to the Assumption of the Office of County Governor Bill (Senate Bill No.1 of 2018) be circulated to all Senators and be listed in the Order Paper for consideration on Thursday, 21<sup>st</sup> February, 2018.

I thank you.

PASSAGE OF THE GOVERNMENT CONTRACTS BILL  
(NATIONAL ASSEMBLY BILL NO. 9 OF 2018)

Hon. Senators, I wish to bring to the attention of the Senate that pursuant to Standing Order No. 41(3), the Clerk delivered to me a Message from the National Assembly regarding the Government Contracts Bill (National Assembly Bill No.9 of 2018). The Message which is dated 19<sup>th</sup> December, 2018, was transmitted to all Senators on 21<sup>st</sup> December, 2018, pursuant to Standing Order No.41(5).

Further, pursuant to the said Standing Order, I now report the Message.

“Pursuant to the provisions of Standing Order No. 41(1) and 144 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly:-

Whereas the Government Contracts Bill (National Assembly Bill No.9 of 2018) was published vide Kenya Gazette Supplement No.32 of 10<sup>th</sup> April, 2018, as a Bill concerning county governments seeking to repeal and re-enact the Government Contracts Act and to provide for the powers for the Government to enter into contracts;

And whereas, the National Assembly passed the said Bill on Wednesday, 5<sup>th</sup> December, 2018, with amendments in the form attached herewith;



Now, therefore, in accordance with the provision of Article 110 of the Constitution and Standing Order No. 41(1) and 144 of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly to the Senate.”

Hon. Senators, Standing Order No.157 requires that a Bill which originates in the National Assembly be proceeded with by the Senate in the same manner as a Bill introduced in the Senate by way of First Reading in accordance with Standing Order No.139. I, therefore, direct that the Bill be listed for First Reading in the Order Paper for tomorrow, Wednesday, 13<sup>th</sup> February, 2019.

I thank you.

Next Order.

### NOTICE OF MOTION

#### APPROVAL OF SENATORS TO SERVE IN THE SENATE BUSINESS COMMITTEE

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, pursuant to Standing Orders 184 and 189(3), the Senate approves the following Senators nominated to serve in the Senate Business Committee, in addition to the Speaker of the Senate, who, pursuant to Standing Order 184(1), shall be the Chairperson of the Committee, the Senate Majority Leader, the Senate Minority Leader, the Senate Majority Whip and the Senate Minority Whip: -

1. Sen. Fatuma Dullo, CBS, MP;
2. Sen. Cleophas Malalah, MP;
3. Sen. Beatrice Kwamboka, MP;
4. Sen. Paul Githiomi Mwangi, MP;
5. Sen. (Eng.) Mohamed M. Mahamud, CBS, MP;
6. Sen. (Dr.) Christopher Andrew Langat, MP; and
7. Sen. Ledama Olekina, MP.

### MOTION

#### APPROVAL OF SENATORS TO SERVE IN THE SENATE BUSINESS COMMITTEE

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, pursuant to Standing Orders 184 and 189(3), the Senate approves the following Senators nominated to serve in the Senate Business Committee, in addition to the Speaker of the Senate, who, pursuant to Standing Order 184(1), shall be the Chairperson of the Committee, the Senate Majority Leader, the Senate Minority Leader, the Senate Majority Whip and the Senate Minority Whip:-

1. Sen. Fatuma Dullo, CBS, MP;
2. Sen. Cleophas Malalah, MP;
3. Sen. Beatrice Kwamboka, MP;
4. Sen. Paul Githiomi Mwangi, MP;

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5. Sen. (Eng.) Mohamed M. Mahamud, CBS, MP;
6. Sen. (Dr.) Christopher Andrew Langat, MP; and
7. Sen. Ledama Olekina, MP.

I call the Senate Minority Leader to second.

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, I am enthusiastically seconding this. However, the next time the Senate Majority Leader wants to call me across the Floor, he should not whistle.

*(Laughter)*

This is a procedural Motion and I hope that it finds favour with the House. I Second.

*(Question proposed)*

**Sen. (Dr.) Zani:** Thank you, Mr. Speaker, Sir. I stand to support this Procedural Motion, especially going by the face that Sen. Murkomen is giving to me. But it is also good to acknowledge that, that Committee has most of the Members who form the leadership within this House, including the other Members who are also very competent Senators. That Committee is actually very critical in setting the pace for the Senate.

Therefore, the shape that this Senate will take in this Session will be determined by the work that is going to be done by this Committee. It is, therefore, very critical that they fast track on the legislative agenda. They should also ensure that the Order Paper reads very differently from one week to another so that Business that is coming in is quickly processed. They should also prioritise the issue of the retreat that has also been mentioned by other Members.

I beg to support.

**Sen. Shiyonga:** Thank you, Mr. Speaker, Sir, for giving me this opportunity. I wish you all a Happy New Year. I wish to congratulate the Members who have been nominated to serve in this Committee and urge them to perform their duties without fear of contradiction because we trust them.

I also wish to urge them to deliberate on the Committee on Implementation, which is missing in this House. It is this Committee on Implementation that will inform us on what we have achieved so far, so that we get the yardstick and the scorecard of what this House is all about in this particular period.

Mr. Speaker, Sir, much has been done through the committees in this House, including even *ad hoc* committees and conferences, and we need to see this being implemented. I, therefore, urge the Members to speed up and work with other Members so that we can see it being implemented.

Thank you, Mr. Speaker, Sir.

**Sen. M. Kajwang’:** Thank you Mr. Speaker, Sir. I rise to support this Motion; which is a fairly straightforward one.

There are two other Sessional Committees that are yet to be constituted; that is, the Public Accounts and Investments Committee (CPAIC) and the Committee on Delegated Legislation. I want to encourage the House Business Committee to engage the House so that we can also find a way of ensuring that there is a better continuity of some of these select Committees. While we were out on recess, we saw that our brothers in the

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Public Accounts Committee of the National Assembly were continuing with their sittings. The Delegated Legislation Committee had called stakeholders and business was going on.

Mr. Speaker, Sir, allow me to also thank and congratulate those who served in this Committee in the last Session. I have seen that there could be one or two names that were there in the last Session that have not been included in this Session – that is Sen. Sakaja and Sen. Poghiso – but I believe that they did a good job in the first year. I am sure that those---

**Hon. Senators:** And Sen. Were.

**Sen. M. Kajwang’:** Yes; and Sen. Were. I believe that those who are taking over those positions are going to do a better job.

Finally, Mr. Speaker, Sir I pray that the Senate Business Committee shall prioritise the things that make sense to the common man. In the earlier discussions, we appeared as if this Session will be about referendum, politics, funds and the comfort of the leadership class. We went on recess before we got the report from the Maize Taskforce. I hope that this report will receive the highest priority in this House. Similarly, the Tea Sector Taskforce that was ably chaired by the Senator for Kericho, Sen. Cheruiyot; we hope that, that report will be brought to this House within the first month.

Mr. Speaker, Sir, we must put the Cabinet Secretary (CS) for Agriculture, Livestock and Fisheries on the spot because the President promised in October last year that the cane farmers from our regions will be paid immediately. However, to date, they have not been paid and we are getting all sorts of different stories. I hope that the Senate Business Committee will put those issues that touch on the common man at the centre of its focus and agenda of this House. This is because seek ye first that kingdom and then the rest of the peace, cohesion and prosperity shall be added unto you.

Thank you, Mr. Speaker, Sir.

**Sen. (Rev.) Waqo:** Thank you, Mr. Speaker, Sir. I want to wish everyone a Happy New Year. I am glad that we are all back. I stand to support this Motion on the listed hon. Members. These are Members who are well known to us; Sen. Fatuma Dulo and many of the others have already demonstrated their good leadership.

I stand to support and also say that a lot of our work depends on this team. A lot of our work and performance will depend on what they give priority to, and the guidance they will give us. In any decision making, they need to consider what needs to be done first and also prioritise Bills. They already know their work, and I have a lot of faith in them. I stand to support the Motion and say that they all qualify to be Members of this Committee and to guide us.

Thank you, Mr. Speaker, Sir.

**Sen. (Prof.) Ongeri:** Thank you, Mr. Speaker, Sir. Let me also add my voice by supporting this very important Motion on the Senate Business Committee. This Committee is, by far, the most important committee in any chamber, particularly at the Senate level. This is an area where you are able to prioritise issues and areas that affect *mwananchi* directly. Without prioritising those areas, we will be left in limbo, not knowing how to handle some of the issues that come for our attention.

I am vividly reminded of one such issue – the one of health – and there is a nurses’ strike going on right now. I believe that the Senate Business Committee will not turn a blind eye to the suffering of a majority of Kenyans who are not receiving

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healthcare. This matter must be resolved in one way or the other. There is always squabbling on the sharing of resources between the national Government and the county governments. We must strike a balance to know what kind of resources are required for a devolved government function like health in the county governments so that we do not leave the governors struggling to try and pay these nurses in one form or the other.

Secondly, Mr. Speaker, Sir, I hope that this Senate Business Committee, in its own wisdom and deliberations, will tackle the issue of food security in this country. There are many issues that are pending in the Committee on Agriculture, Livestock and Fisheries that need to be fast tracked. One such issue is about maize and the fertiliser. I read a very sad story in one of our dailies today about a group that is offering farmers to buy their maize for Kshs1,900 for a 90 kilogramme bag and in exchange, selling them fertiliser for Kshs3,000. That is the biggest joke with all the best intentions they may have in trying to relieve the farmers from getting this maize.

The Senate Business Committee should prioritise such business that touch on the daily lives of people on an everyday basis. There were some Sessional Committees that were also dealing with tea and coffee, and we would like to see that kind of business fast tracked so that we can debate and come to a conclusion on how to help our farmers and citizens of this country.

Finally, Mr. Speaker, Sir, I hope that the Senate Business Committee will seriously now prioritise the events of the revenue allocation from the national Government to the county governments. There is this mischief that we have noted continuously of the delayed release of resources from the Exchequer to the county governments. These resources are always released during the last moments; either in the last quarter or towards the end of the financial year. I would plead with the Senate Business Committee to prioritise such issues so that we can deal with them in a timely manner.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Sen. Lusaka): Proceed, Sen. Wario Golich Juma.

**Sen. Wario:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to add my voice. I rise to support this important Motion. We have no doubt on the proposed names. These are persons of high calibre and will work diligently. This time round, things will not be as usual. Very important issues will be discussed such as the referendum, oversight and sitting outside Nairobi. Therefore, it requires a committee to sit and deliberate on the issues before they are brought to the House. We have no doubt that these people will work diligently.

Mr. Speaker, Sir, I support.

**Sen. Ochillo-Ayacko:** Mr. Speaker, Sir, thank you very much for giving me an opportunity to make a few remarks regarding this Motion. First, I would like to congratulate the nominees to this Committee, and I wish to add my voice to those who have underscored the importance of this Committee. I urge the Committee to consider, besides matters of importance to *wananchi*, matters that touch on oversight by the Senate.

When we were discussing the previous agenda, it came to the attention of Members that we are not doing very well on matters oversight. We have become a House that is known for lamenting and a House that many institutions want to ignore. So, I plead with Members who have been nominated to this Committee to prioritise reports that pertain to the function of the Senate, which is oversight.

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In the previous session, I observed that there was a particular report relating to Ruaraka Land that did not come to the Floor of the House in good time. I am sure there are many such reports that need prioritisation so that we do not become a House that just laments but we become a House that deals with issues of oversight and bring weight to bear on errand institutions or officers.

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

**Sen. (Prof.) Kamar:** Thank you, Mr. Speaker, Sir. I wish to support this Motion and congratulate our very able team that has been put before us today. There is no doubt that the team will perform, deliver and guide the House appropriately. As they do that, they should look at how to prioritise issues that have been haunting us for a while. In particular, I want to raise the issue of maize because we have a report that is before the House. That report should be tabled before the House for deliberations and adoption.

Mr. Speaker, Sir, I almost called to request you to recall the House because we know that farmers are having a rough time at the moment. The maize they harvested in 2017 was not taken and we are told what they harvested in 2018 will be taken in minimum numbers. In fact, when I was in my county, I realised that some farmers will not deliver more than 10 bags according to the allocation to the county. It is therefore important that we get those reports, so that Senators can see the magnitude of the problem that farmers are facing at the moment.

The issue of fertilisers is also becoming another critical one. Our worry is that any businessman may take advantage of the same.

As we do prioritisation, we know that we are in a bad situation currently because of the number of counties whose nurses are on strike. It is important that we start looking at those issues as urgent topics that this House must address, so that this Senate can express itself on what should be done. We hoped that by devolving health, we were actually taking services closer to the people. No governor would dare allow their people to go without nurses or doctors. In fact, the absence of nurses means that doctors and pharmacists cannot perform their duties. We must ensure that governors do what they must do because not devolving health is not an option. We must have health services devolved for purposes of ensuring that there is proper accounting at that level.

We also hope that the House Business Committee (HBC) will look at topical issues that need to be addressed by committees. We should also make our committees more accountable, both to the House and the House Business Committee HBC.

There is also the issue of whether all the functions that were required to be devolved were devolved. I am raising this because we are almost in our third year and we need to have a lasting impact on devolution itself. For us to have a lasting impact on devolution, we must look at accountability of resources in various dockets; agriculture and health being the key ministries that we need to study. If devolution was done, how much of the resources that we spent in 2012 followed the functions that were taken down? We need to answer that question so that we are not left guessing how to manage yet, maybe, our governors are not receiving the resources that are required.

With that, Mr. Speaker, Sir, I congratulate the team again. It is them who will guide and lead us. We know that they have the ability. I thank you.

**Sen. Omogeni:** Mr. Speaker, Sir, I also rise to support the Motion on the nomination of Members who will serve in the SBC. First, I thank the Almighty God that

we had a recess of two months and we are now back and ready to serve the people who elected us to this esteemed august House.

We are approving the nomination of Members to serve in the SBC in very defining moments in the history of this country. This is a year that the country is pregnant with the expectations that we will review the Constitution that was enacted by the people of Kenya in 2010. As Members of the Senate, unless we put the agenda of strengthening this Senate on the forefront, the referendum will not be of any benefit to this House.

As we all know, the people of Kenya who spoke in Bomas envisaged that this Senate will be the “Upper House”. However, when the 27 Members of the National Assembly retreated to Naivasha to fine-tune the Bomas Draft – let us be truthful – the changes that were done to the Bomas Draft reduced this House to what it is today. We are more or less like the “Lower House” but let us learn from history.

When the Americans passed their Constitution in 1787, the Senate in America was not the Upper House. It was also modeled in a fashion that made it to look like it was the “weaker House” but with time the Americans amended the Constitution and strengthened the Senate and made it the Upper House.

Until the 17<sup>th</sup> amendment which was done in 1913, it is the Congress that used to pick Senators. Senators never used to be elected in the United States of America (USA) but after the 17<sup>th</sup> amendment, Senators were and are now elected directly by the people and are Members of the Upper House. They veto Bills from the United States (US) Congress. That should also be done here. That is in recognition of the fact that unlike congressmen who represent averagely about 700,000 people, people who serve in the Senate represent millions of people of various states.

In fact, the Senator for California represents over 17 million people. Therefore, as we endorse the list of people who will serve in the Senate Business Committee, let us have it in the back of our mind that it is a task. We want to take it as a challenge; that we, as Members of this Senate, must fight hard to strengthen the power of the Senate.

Mr. Speaker, Sir, I hope that the people who will serve in the Senate Business Committee will be reflecting on what is happening in this country. If you listen to the voices from Rift Valley, farmers are complaining because they are not able to deliver their maize to the National Cereals and Produce Board (NCPB). They are not even guaranteed of getting fertilizer and yet, that is the basket that should serve all Kenyans. So, we should prioritize the issues that are key to the interest of this country.

Mr. Speaker, Sir, talking about security, I read about a human rights activist who dropped her daughter to school last week on Thursday, and she has never been found to date. We are talking about a woman who boarded a taxi from her home in Dandora and her body was found in a mortuary. These are our daughters and we must care about them. So, as the Senate Business Committee brings business for deliberation, let us remember the security of Kenyans.

Mr. Speaker, Sir, where we come from, the *boda boda* operators are harassed by the policemen day in, day out. Poor people whose profit is less than Kshs500 are facing extortion from policemen who collect Kshs200 from every motorcyclist every day. These people are trying to eke out a living for themselves. They are not thieves but people in genuine business. So, as we resume business, let us listen to the voices of the common *mwananchi* that we represent.

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I saw a story yesterday of a poor old woman who went to hospital with a baby suffering from meningitis, and she could not get any services from our hospitals because our nurses are on strike. These are the cries of our people and we must speak for them. How can we live in a country where nurses go on strike and do not care about people who are dying because they cannot receive services and yet, we are the representatives of these people? Therefore, I hope that this very able team that we will approve today to serve in the Senate Business Committee will prioritize issues that are dear to the people that we serve.

Mr. Speaker, Sir, with those few remarks, I support.

**The Speaker** (Sen. Lusaka): Sen. (Eng.) Hargura

**Sen. (Eng.) Hargura:** Thank you, Mr. Speaker, Sir. I would like to support this Motion on the approval of Senators to serve in the Senate Business Committee, which is a very important Sessional Committee because it prioritizes the business of this House.

Mr. Speaker, Sir, all the Members proposed to serve in the Committee are capable and can drive the business of this House. I would just like to urge Senators, and especially the leadership of the House, that we have to take the business of this House seriously. We have had incidences where we had to postpone voting on Bills due to lack of quorum. We are starting a new Session and we should be different this time round. There are many issues that are now on the table, for instance, the issue of the possibility of a referendum, constitutional review and all that. I would like to urge the leadership of the House, especially the whips, to take it seriously upon themselves.

The Committees which are the vehicles by which the Senate processes its business have been experiencing lack of quorum. I would like to urge Members to be serious, so that we are seen to be taking our work seriously. More so, the Senate Business Committee needs to take business seriously and focus on our function of ensuring that devolution works.

Mr. Speaker Sir, one area that we need to focus on is the issue of resources to the counties. We have been having challenges with regard to disbursement of funds to the counties. We are always told: “We have not received funds and that is why we do not have drugs in the hospitals and health centers.” That requires us to take our business seriously and follow-up with the necessary Government institutions to make sure that adequate funds are released to the counties on a timely basis.

There is the incident that Sen. Cheruiyot referred to today. Yesterday, I was in one of the wards in Saku Constituency where we were discussing land issues with the community. We were discussing the issue of the former municipality and land that the Kenya Defence Forces (KDF) requires to establish a brigade in Northern Kenya, and the issue of water came up. That shows that people still have not realized service delivery through devolution. Therefore, we have to make sure that more funds go the counties.

Mr. Speaker, Sir, much as we know that there is the problem of usage of funds by the counties, it is still our responsibility to oversight them. While ensuring that more funds go to the counties, we should also enhance our oversight capabilities.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Sen. Lusaka): Sen. Wambua

**Sen. Wambua:** Thank you, Mr. Speaker, Sir, for the opportunity to also join my colleagues in supporting the Motion to approve Senators to serve in the Senate Business Committee.

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Mr. Speaker, Sir, as I wish the Senators proposed to serve in this Committee well, the best way of doing business anywhere in the world is to begin with the end in mind. As we begin this Third Session of the 12<sup>th</sup> Parliament and constitute the Senate Business Committee, I would want to challenge the Members of that Committee, as my colleagues have said, to give priority to business that seeks to entrench devolution and address the needs and aspirations of the people we represent in this Senate.

Mr. Speaker, Sir, the fight against corruption is a matter that we need to mainstream in this Session of the Senate. The Senate Business Committee would do us proud if any business that has got to do with Petitions, Statements, Motions or Bills on corrupt practices in the counties are given priority, so that we stop the blatant theft of resources in almost every county in this country.

Mr. Speaker, Sir, many of my colleagues have alluded to a retreat of the Senators to plan our business going forward. I would also want to add my voice to that proposal, that at the soonest time possible, this Senate needs to find time and reason to go on a retreat to talk about issues that affect us as we transact the Business of the Senate in this Session.

With those few remarks, I beg to support.

**The Speaker** (Hon. Lusaka): Sen. Mwaura.

*(Sen. Mwaura consulted Sen. Mugo)*

You are seemingly absent!

**Sen. Mwaura:** I am sorry, Mr. Speaker, Sir. I was making some silent consultations with Sen. Mugo.

Mr. Speaker, Sir, I rise to support the Members of this Committee. Because this is a Sessional Committee, it would also have been good, in the future, to look at a broader spectrum when it comes to the constitution of the Senate Business Committee (HBC). This is because it is this Committee that determines what comes to the Floor of the House and what, of course, goes on record in terms of prioritisation. This is something that we need to be quite careful about.

I do not know the basis upon which Sen. Sakaja, Sen. Poghio and Sen. Were ceded their positions. Maybe it is because a change is as good as a rest; but obviously, I would have loved to see more women in that Committee than the numbers that are there now. Clearly, there are more men in the HBC; but you need to make sure that the agenda for women also gets priority. In fact, I must say that most of the people who give quorum to this House and the committees are women Senators; that is a matter of fact and not a matter of conjecture.

Mr. Speaker, Sir, there is something that we also need to address ourselves to, as a House. We need to be a little more serious with our Order Paper because our Order Paper sometimes changes according to the mood of the House. That, for me, is a bit discouraging. Let us have an Order Paper that is predictable, because we sometimes jump over agenda and we move from this Order to the other one simply because maybe a Member is not around to prosecute the matter. Sometimes, as a member, you are ambushed and told, "Can you now be ready to present---" Then when you are just about to be ready, the one who was just before you in the Order Paper just walks in. That is a bit demoralizing; let us say the truth.

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There was a time when I had a Motion here on anti-corruption and the moment, I was ready to speak to the nation, the other Member who was absent came in. Then the next time, the Clerk-at-the-Table will look for you asking if you will be there tomorrow. That is something that we need to agree on as Members, so that we do not give a difficult time to the Table Office. When you have an agenda that is on the Floor, please, be available so that if then you are not available, you can cede the ground so that your agenda can come at a time and date when you are available. That is something that we need to properly coordinate so that we do not look like we just change agendas based on who is available, and that kind of thing.

Mr. Speaker, Sir, I hope that this House and, in this Session, – now that we have learnt the ropes; whether we are first time Members in Parliament and all of that – we make sure that we do not have this rather interesting behaviour of extending debate so much on an issue. This is done to the point that now, maybe you were sitting here anticipating debate on a matter that you have an interest in, but sometimes we prolong debate so much to the point that, that agenda is not attained. We, therefore, need to have proper controls on how then debate then is executed. If time is given as is, let it be, so that we are able to prosecute as many agenda as much as possible.

Mr. Speaker, Sir, I think we are slowly but surely earning our place in the Legislature and we must continue to ensure that that is the case. That is to mean that even when we engage on this issue of the referendum, we must be clear on what we want. I do not feel that we have canvassed enough in the court of public opinion on what needs to be done with regards to the Senate. What we are seeing are Members of the National Assembly – who are still lagging behind in unicameralism – suggesting that the Senate is irrelevant and useless. We have some of the best debaters here and we need to argue our case over there to show what we can do. I sometimes wonder whether one individual can oversight a whole county with so many billions. That is something that we need to look at in terms of mechanisms.

Similarly, Mr. Speaker, Sir, this issue of saying that the Senate has delegates; there are no delegations in the Senate, let us say the truth! If I happen to be nominated from Kiambu County, I am not a delegate of Kiambu County; and that is the truth. What then happens to a county which does not have somebody who is nominated from that county? This is an issue of equality of delegation. If you are elected as the Senator and you are the one who went out there, looked out for votes and you are the right Senator for that county.

I am, therefore, not your substitute so that when you do not appear in the House, I am called by my Whip to come and vote on your behalf. That is a misnomer; it is a carry-over from the National Council of Provinces of the South African Parliament. It does not apply to our case. For those of us who represent special interest groups, we end up being abused as second-class citizens in this House. We must ensure that you, as an elected Senator, are always here to vote and you should not delegate your vote. That is a matter of principle.

Mr. Speaker, Sir, in this debate of the referendum, let us have the first runners-up of the presidency becoming an automatic Senator.

**The Speaker** (Hon. Lusaka): Hon. Member, which referendum are you talking about?

**Sen. Mwaura:** The one that we are anticipating!

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*(Laughter)*

The first runners-up of the presidential election should be automatic Members of the Senate; and then the other one should go to the National Assembly. Another thing that should also give status to this office of the Senator and the Senate is that all retiring Presidents, when they finish their two terms should automatically become ex-officio members of the Senate. They should become Senators. By the way, I am against doing away with term limits. That way, we will be aping what is happening in the House of Lords in the United Kingdom (UK) and even near home in the Democratic Republic of Congo (DRC), where Hon. Kabila is going to be a Member of the Senate. That way, there is perpetuation and we can see statesmen who can give authentic wisdom and guidance to this House of revision. That way, we shall then ensure that, indeed, we do not have the misnomer where we are a Senate that is undermined by the National Assembly.

Mr. Speaker, Sir, the word “Senate” comes from the word *sénior* in French, which means senior. In fact, even God is called *Sénior* or senior. We cannot have a situation where you have a Senator and then somebody there calling himself Member of Parliament (MP), which then gives him the impetus to think that we are a lower House. Of course, what has happened is a situation where you have had the advantage of an existing institution. Therefore, this institutional memory, procedures and practices then push this agenda forward for the National Assembly.

However, the drafters of the Constitution were very clear; and that is why, for example, we must ensure for all intents and purposes that the position of the Clerk of the Senate remains to be the administrative heartbeat of Parliament. That one, we must not negotiate for whatever reason. We need to seek a situation where our own Speaker is also a Member of the Parliamentary Service Commission (PSC). Is it not a misnomer that a whole Speaker of the Senate does not sit in the PSC? We must address some of these things without fear of doubt and without any apology to anyone anywhere.

I beg to support.

**Sen. (Dr.) Kabaka:** Thank you, Mr. Speaker, Sir; and happy New Year to you all. I do not want to sound like the distinguished Sen. Mwaura; he spoke like he is fighting someone in the Senate.

I have just looked at the provision which established the select Committee – the Senate Business Committee – pursuant to Standing Order 184 which specifically gives the number of the membership. I realise that the membership is supposed to be nine, if I am not misconstruing the Standing Orders. However, the list which has been given of the nominees is seven. Therefore, if there is any---

*(Sen. Mugo consulted the Speaker)*

Mr. Speaker, Sir, I do not know if you got it, because you were conversing. I am saying that if you look at Standing Order 184---

Mr. Speaker, Sir, I stand to support these eminent persons of Senators who have been nominated to serve in the HBC.

If you look at the calibre of the Senators nominated here, they are persons of wide experience from different professional latitudes. Therefore, I have no doubt that they will guide the Senate to achieve its mandate. I congratulate and wish them the best.

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The other issue I observed it during the CPAIC meetings---. I would want them to give our report first priority so that it can be adopted by this House.

There are issues with regard to the Auditor-General's reports. We have reports on issues of misappropriation of funds by many governors. They have not been able to explain themselves before CPAIC. We have cases where officers from the Auditor-General's Office purport to defend some governors. This has really taken me aback. Those are some of the issues I want the entire Senate to interrogate so that we fulfil our mandate of oversight.

I support, Mr. Speaker Sir.

**Sen (Dr.) Milgo:** Thank you very much, Mr. Speaker, Sir, for the opportunity. Happy New Year to you and to my colleagues.

I stand to support the Motion and the Members who have been nominated to serve in the HBC. This is a special Committee that deals with the business of this House. The Senators listed here are equal to the task because they have a wide range of experience.

As has been mentioned by some of our colleagues, women Senators have been given a raw deal to serve in this SBC. Even if we, as a country, has not achieved the two-thirds gender rule, it would have been better if many of us were nominated so that we advance issues affecting women of this country.

Mr. Speaker, Sir, I have no doubt that this Committee will put the entire Senate on its toes, so that when we come to the close of business this year, we shall have achieved more than we have done in the previous years. This Committee has a lot to do to assist us achieve the success of devolution in this country. I urge them in their deliberations to prioritise all issues touching on devolution.

Many people have talked about the issue of maize farmers. However, even the issues of tea farmers are equally important. Before we went to recess, we had had the *ad hoc* Committee on Tea. One of the Senators here called for the establishment of Implementation Committee to follow up on the recommendations of that Committee. As I speak, I do not know what happened to the resolutions by the *ad hoc* Committee on Tea. Tea farmers have continued to earn very little money from their tea for a long time. Currently, we cannot differentiate between the tea farmers and their workers. We need to come up with strong policies that will guarantee farmers good earnings from their farm produce.

We all know health sector is in a crisis as results of nurses downing their tools. One of the four agenda of our Government is Universal Health Care (UHC). I am sure there will be more issues in terms of medical provisions and services that we will be called upon to deliberate. We, as the Committee on Labour and Social Welfare, when we were looking at the crisis in the health sector, we realised that many of the counties have diverted money meant to pay nurses to other things. For example, they have used some of it to do roads and other activities at the expense of the health of the people of this country. I am sure this is an area that needs a lot of attention.

For us to achieve universal health care in this country, we need to ease the burden of nurses. Currently, one nurse is attending to more than 800 patients per day. We need to do something to address problems bedevilling this sector. Maybe the Committee on Labour and Social Welfare can be strengthened through various ways. This morning, this Committee was accused of not taking its mandate seriously. I believe this Committee we

have established today, will be able to assist the Committee on Health and Social Welfare to address the pertinent issues in the health sector.

Another issue is with regard to school registration in this country. I remember seeking a statement on school registration some time back here. This problem of registration schools in this country has never been streamlined. It is a pity that some schools have students in form two, three and four and are yet to be registered. Last time, I complained that students in such schools will not only lose out on the actual manpower, but also on the Government capitation that would have given them the best education.

I support Members nominated to serve in this very important Committee of this House.

**Sen (Dr.) Langat:** Thank you very much, Mr. Speaker, Sir, for giving me this time to add my voice to this very important Committee. First all, I am happy for being nominated to serve in it. I want to thank the panel that nominated me to serve in this Committee. I also would like to congratulate my colleagues whom we have been given this mandate together. I promise that we are going to deliver.

This House has a lot that it is supposed to do for the citizens of this country. At the moment, our country is in total confusion. I believe the issues that we will deliberate in this House will bring some order and normalcy in our country. During the recess, we visited some projects and saw what is going on in our counties. I do not know whether it is my county alone, but I know some counties are facing the same challenges.

Currently, we are talking about achieving the Vision 2030. This is a guideline to our development projects in this country. However, in the middle, we also introduced the Agenda Four. In counties, every governor has a manifesto. Right now, most of the counties do not know where to place the agenda on housing within the development projects of the counties. Are they supposed to buy land so that the national Government can build houses for them? As I said, there is a lot of confusion.

Reading the newspapers, you can see the kind of confusion I am talking about. Today while I was reading a newspaper, I saw confusion even in the Ministry that falls under the Committee which I Chair. The Cabinet Secretary (CS) has mentioned that we should have 100 per cent transition and whoever is going out of that is at his or her own peril.

When we visit our schools, we appreciated 100 per cent transition. However, our counties are busy investing a lot of money in village polytechnics. When we talk of 100 per cent transition to secondary schools, who will go to those local polytechnics?

Sen (Prof.) Kamar, you will remember when we were sitting in Uasin Gishu, we visited many vocational training centres in your county. We saw some of them had very few students.

We are talking of 100 per cent transition to secondary schools. However, our biggest concern is quality. Are our children getting quality education? We know many of our schools are understaffed. Let us stop cheating ourselves that we have 100 per cent transition. Last week, I went to a school and I saw a Form One Class with 102 students with only one teacher.

The SBC should prioritise many things so that we achieve the Big Four Agenda which is confusing because we do not know how it will be cascaded down to our counties. This is because some governors are so busy while others want to retire and

make sure that their manifestos and promises are fulfilled yet the Big Four Agenda has to be in place. There is a lot of confusion.

Mr. Speaker, Sir, I beg that this important House will bring order to our society so that we may realise our goals.

I support this Committee and as a Member, I promise to prioritize the most important issues that are affecting our counties so that we move forward.

**Sen. Pareno:** Thank you, Mr. Speaker, Sir, for giving me this opportunity and for steering the Senate to where we are today. In the last session, we are reported to have done quite well. If it were not for the good leadership, we would have had problems.

Mr. Speaker, Sir, inclusive of the leaders that we are asked to approve, I would like to talk about the two ladies that are in this list. I sit in the Committee on National Security, Defence and Foreign Relations with Sen. Fatuma Dullo and Sen. Beatrice Kwamboka and I attest to their commitment to duty. We are always among the first to form quorum and are always present at all times to transact the business of the Committee on National Security, Defence and Foreign Relations. Therefore, they are more than able. I have worked with them and they will definitely give their best to this particular Committee.

With regard to the gentlemen who are to be approved today, by now, we all know contributes and performs in the House. These people have shown commitment and we all know that they can perform. I, therefore, urge the Senate to approve them so that they can serve in the Senate Business Committee (SBC).

Mr. Speaker, Sir, from where you sit as the Speaker, you know that the SBC does its work by prioritising and listing business in the Order Paper for us as a House. However, there is business that is placed and prioritized in the Order Paper but the Movers and prosecutors are not there. We should improve as a House and ensure that what is listed and prioritized by the SBC is actually transacted as urgent business.

Mr. Speaker, Sir, many times we sit in that seat where you are seated and we find a long list of business that is meant to be transacted. I remember sitting there three or so times and adjourning earlier than scheduled, not because there is no business in the Order Paper but because the people to transact that business are missing. Therefore, I urge that the business that is listed and given priority be treated as such so that we deliver to the people.

Mr. Speaker, Sir, I remember a ruling which was made by the Deputy Speaker, whom I am happy to see and wish a Happy New Year, that if business is listed in the Order Paper and the responsible persons are not there to transact it and they did not state in writing who handles their business, then the item is put off so that they struggle to bring it back to the Order Paper.

Mr. Speaker, Sir, I urge that we stick to this ruling because most of the time, business is listed on the Order Paper but Senators are not present to transact it.

I am definitely sure that this team, led by none other than you and the Senate Majority and Minority Leaders, who have been serious with their work, will go places if only business is transacted as it is listed on the Order Paper.

I support.

**The Speaker** (Hon. Lusaka): Senate Deputy Majority Leader, reply.

**Sen. Dullo:** Thank you, Mr. Speaker, Sir. I wish to take this opportunity to reply.

There are a lot of important issues of concern raised by Members regarding the responsibility of the Committee and matters that they need to consider when they deliberate on the Order Paper of the House. I hope that under your leadership, the Committee will look into those issues and make sure that they are implemented. I do not want to take a lot of time, I wish to thank Members for their contribution.

I beg to reply.

*(Question put and agreed to)*

**The Speaker** (Hon. Lusaka): Hon. Senators, following adoption of the Motion approving nomination of Members to the SBC, I am pleased to invite the said Members to the first sitting of the Committee to be held in Committee Room 4 at the rise of the House. The main agenda of the meeting is to approve the business for consideration by the House tomorrow and Thursday.

I, thank you.

### ADJOURNMENT

**The Speaker** (Hon. Lusaka): Hon. Senators, having concluded the business of the day, it is now time to adjourn the House. The Senate, therefore, stands adjourned until Wednesday, 13<sup>th</sup> February, 2019 at 2.30 p.m.

The Senate rose at 4.40 p.m.