

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Thursday, 13<sup>th</sup> February, 2020

*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  
FOURTH SESSION OF THE 12<sup>TH</sup> PARLIAMENT

**The Speaker** (Hon. Lusaka): Hon. Senators, it is my pleasure and privilege to welcome you to the Fourth Session of the Senate. In accordance with the Standing Orders of the Senate, this Session begins today and will run until 3<sup>rd</sup> December, 2020. It is my hope that during the recess and festive season, you had an opportunity to spend time with your families, constituents and friends and that you are re-energized for the Session that is ahead of us.

Hon. Senators, I wish to commend you for the tremendous work you did in the Third Session. The Senate introduced a total of 34 Bills; comprising 24 Bills originating from the Senate and 10 Bills from the National Assembly. In total, the Senate considered 77 Bills during that Session.

The Senate also passed 83 Motions touching on various issues of public concern and considered 33 Petitions admitted by citizens pursuant to Article 119 of the Constitution and Standing Order Nos. 225 and 226 of the Senate. You will recall that a total of 275 Statements were processed and considered by the Senate and where necessary, referred to the concerned Standing Committee for further consideration.

Hon. Senators, as we commence this Fourth Session of the Twelfth Parliament, we find ourselves with a full plate. There is urgent outstanding business relating to Bills at various stages; with 16 Bills due for the Committee of the Whole stage, 12 Bills at the Second Reading stage and five Bills which are due for First Reading. We have 45 Petitions which are yet to be reported on by respective Standing Committees and require immediate action while Statements referred to respective Committees require to be addressed pursuant to the Standing Orders.

Hon. Senators, regarding the Budget Process, the Senate will very shortly receive and consider the Budget Policy Statement (BPS), the Division of Revenue Bill as well as the County Allocation of Revenue Bill. The resolution of the Senate in these legislative

instruments is key in safeguarding devolution. I urge all hon. Senators to be available in order to approve this particular business within the required timelines for our counties to receive the necessary funding for critical projects and programmes.

In keeping with its mandate of protecting devolution and the interests of counties and their governments, the Senate will participate in two major events in our Annual Calendar of events that continue to demonstrate its resolve in this regard namely; the Devolution Conference and the Legislative Summit. These two events afford us not only a platform for the Senate to be heard but also to interact with other key players in 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.

As one Senator said, these events should not be talking shops but an opportunity for the Senate to influence and change Government policy with regard to devolution.

I am delighted that during the Third Session, the Senate introduced the following legislations, among others, as direct outcomes of the two events –

(a) The Lifestyle Audit Bill which seeks to provide a comprehensive framework for the conduct of lifestyle audits in Kenya;

(b) The County Resource Development Bill which provides a framework for the establishment of Regional Economic Blocs;

(c) The Public Finance Management (Amendment) Bill, 2019, which seeks to establish a revenue collection system by county governments; and,

(d) The Street Vendors (Protection of Livelihood) Bill (Senate Bills No. 10 of 2019) which seeks to provide a legal framework for the recognition, protection and regulation of street vending in Kenya.

Hon. Senators, Kenya being a primarily agricultural economy, necessary protection and safeguards against exploitative and monopolistic tendencies is paramount for the attainment of the Big Four Agenda on food security and the realization of Vision 2030.

Highlights of some of the legislative proposals which may form part of the legislative agenda for this Session include; the Potato Produce and Marketing Bill; the Mung Bean Bill; the Fisheries Management Bill and the Kenya Meat Commission Bill. These Bills will make significant contributions to food security. I urge the respective Standing Committees to expedite their introduction in the Senate.

Hon. Senators, in keeping with a new but quickly strengthening tradition of this parliamentary term, the Senate held its Second Plenary Sittings outside Nairobi, in Kitui County. This tradition, by all standards, has proved that the Senate has responded to the call by the public for a much closer engagement with their elected representatives; to listen to their everyday challenges and provide policy and legislative interventions to address them. Through this initiative, the Senate has brought the Legislature closer to the people both symbolically and functionally. Planning for the next sitting of the Senate outside Nairobi has begun and further communication regarding this event will be made in the coming weeks.

Hon. Senators, as I conclude, you are aware that Sessional Committees namely; the County Public Accounts and Investments Committee (CPAIC) and the Committee on Delegated Legislation are

re-constituted at the commencement of a new session. I wish to inform Senators that consultations are ongoing with the majority and minority parties on the membership to the two committees, after which the Senate Business Committee (SBC) will present the names to the House for approval.

Finally, I urge you to remain committed and focused, to rededicate ourselves to the execution of our constitutional mandate and to undertake the task ahead of us with utmost integrity in service to our great country.

I thank you and wish you all a fruitful Session.

**Sen. M. Kajwang'**: Mr. Speaker, Sir, I know that today's business is going to be very brief, which is the Motion that is in the Order Paper. However, just to take the note that you have adopted, you indicated that you expect that we rested well after that recess, but a lot of things happened during the recess.

The Senators around me are saying they are as exhausted as they were when they were going for recess. However, there are many reasons for that. As you welcome us back, I want to take this opportunity to thank you and to thank this House because it was during the recess that I was bereaved and you led a delegation to my village to lay my mother to rest. I wish to go on record as having expressed my thanks to this House.

It was also during that time that my brother, Sen. (Dr.) Kabaka lost his father. Again, the Chair who is indefatigable led another delegation to bury *mzee* Kabaka. It is just yesterday that you led another delegation to Kabarak to lay to rest the second President of the Republic of Kenya. I hope that despite all those challenges, we will be back sharp and ready to do our work for the nation.

My substantive observation is that you mentioned a number of Bills that this House has processed, but the ultimate question is how many of them have gone through the National Assembly and how many of them have been assented to by the Head of State besides the ones that are constitutional; the County Allocation of Revenue and Division of Revenue Bills?

Maybe in a subsequent update, you could help Members understand how many of our Bills originating from this House have been processed and have received presidential assent. This is because the last time we checked, we found that the Budget Committee of the National Assembly had declared most of our Bills as money Bills and so they are lying somewhere; they are not making any progress.

Finally, another substantive observation is that I would have expected today in the Order Paper to see the laying of the Budget Policy Statement which has a statutory time limit. I believe it should be by 15<sup>th</sup>.

**The Speaker** (Hon. Lusaka): I think we are going to do it. It is there today.

**Sen. M. Kajwang'**: Okay, I just did not see it in the Order Paper. However, if it is there, then I lay my fears to rest.

Thank you, Mr. Speaker, Sir. Let me join you in welcoming the Members back, as tired as they are.

**The Speaker** (Hon. Lusaka): Thank you, Sen. M. Kajwang', and thank you for the compliments.

**Sen. (Dr.) Musuruve**: Thank you, Mr. Speaker, Sir, for giving me this opportunity. First of all, I want to thank you for the busy schedule you have had and the delegations you have been sending to represent us.

I also want to thank you for what the Senate did, to come up with a recording of condolences for the late President Moi. It was something good because we will always be on record and anyone can always flashback to see that we stood with our fellow Senator.

I also want to thank you for the Communication you have made right now concerning the Devolution Conference and the Legislative Summit that are yet to come. I think it is a good thing for us, as a Senate, because it will help us impact people on the ground. This is because anytime we go to the ground; it impacts positively on people, especially economically.

When we went to Kitui, the economic impact was felt and most counties always look forward to the Senate going there so that they can improve the economy of the place. Apart from improving the economy of the place, there are so many people in *mashinani* who have not come into close contact with their Senators, so it is a good thing.

Lastly, kindly allow me a second to say that on the Bills that you have talked about, it is something commendable for the Senate to have come up with the Bills but they should not just be on the shelves. The Bills should have actionable impact on our society so that we are able to achieve as the Senate.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Those I am going to give an opportunity, please, keep it short because this was just a Communication.

Reading from the mood of the House, we will go to the Motion.

Next Order.

### PAPER LAID

**The Senate Majority Leader** (Sen. Murkomen): Thank you, Mr. Speaker, Sir. I beg to lay the following Paper on the Table of the Senate this afternoon.

#### THE BUDGET POLICY STATEMENT FOR FY 2020/2021

The 2020 Budget Policy Statement as submitted by the National Treasury and Planning. The Paper is titled: Harnessing the Big Four for Job Creation and Economic Prosperity.

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

**The Speaker** (Hon. Lusaka): Order, Senator.

### COMMUNICATION FROM THE CHAIR

#### PROCESSING OF THE BUDGET POLICY STATEMENT FOR FY 2020/2021

**The Speaker** (Hon. Lusaka): I have a Communication on the processing of the Budget Policy Statement 2020.

(1) Hon. Senators, as you may have noted, the Senate Majority Leader has tabled the Budget Policy Statement for the Financial Year 2020/2021.

(2) Section 25 of the Public Finance Management Act and Standing Order No.180 of the Senate requires the National Treasury to prepare and submit the Budget Policy Statement to Parliament by 15<sup>th</sup> of February each year.

(3) Hon. Senators, by a letter Ref. No. Conf.MOF83/02TY.5/(45) dated 13<sup>th</sup> February, 2020, and received in the office of the Clerk on 13<sup>th</sup> February, 2020, the Cabinet Secretary for the National Treasury submitted the following documents for consideration and approval by Parliament-

- (a) The Budget Policy Statement, 2020;
- (b) The Medium-Term Debt Management Strategy, 2020;
- (c) The Draft Division of Revenue Bill, 2020; and,
- (d) The Draft County Allocation of Revenue Bill, 2020.

(4) Hon. Senators, the Budget Policy Statement is an important tool as it sets out the broad strategic priorities and policy goals that will guide the national Government and county governments in preparing their budgets both for the following financial year and over the medium-term. It contains, among other things-

- (i) an assessment of the current state of the economy and the financial outlook over the medium-term, including the macro-economic forecasts;
- (ii) the financial outlook with respect to Government revenue, expenditures and borrowing for the next financial year and over the medium term;
- (iii) the proposed expenditure limits for the national Government, including those of Parliament and the Judiciary and indicative transfers to county governments;
- (iv) the fiscal responsibility principles and financial objectives over the medium-term including limits on total annual debt; and,
- (v) the proposed division of revenue, including proposed conditional grants, if any.

(5) In a nutshell, it means that any proposal that Senators have regarding the Division of Revenue Bill and the County Allocation of Revenue Bill, including funds for conditional allocations to the counties, should be canvassed and forwarded to the National Treasury for possible factoring in the Budget Policy Statement, failure to which, it will be difficult for changes to be accommodated later on.

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

“25 (7) Parliament shall, not later than 14 days after the Budget Policy Statement is submitted to Parliament, table and discuss a report containing its recommendations and pass a resolution to adopt it with or without amendments.”

(7) Further Standing Order 180(4) requires the Standing Committee on Finance and Budget to deliberate upon and table a report containing its recommendations on the Budget Policy Statement within 12 days.

(8) Based on the importance of the Budget Policy Statement and the above timelines, I direct that once tabled, the Budget Policy Statement be considered by all Standing Committees each concentrating on its mandate. The Standing Committees will then forward their recommendations to the Standing Committee on Finance and Budget for consideration and tabling of the report, not later than Tuesday, 25<sup>th</sup> February, 2020. The Senate should then debate and approve the report by Thursday, 27<sup>th</sup> February, 2020.

(9) Please, note that, pursuant to section 25(8) of the Public Finance Management Act and Standing Order 180(8) of the Senate, the Cabinet Secretary of the National

Treasury is expected to take into account resolutions passed by Parliament in financing the budget for the relevant financial year.

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

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 the following Notice of 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;
- (7) Sen. Ledama Olekina, MP.

**The Speaker** (Hon. Lusaka): Next Order.

### STATEMENT

#### BUSINESS FOR THE WEEK COMMENCING TUESDAY, 18<sup>TH</sup> FEBRUARY, 2020

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I will make a brief Statement because I will still have opportunity to say more when moving the Motion.

I rise to give a statement pursuant to standing order No. 52(1). Allow me at this juncture to join you in welcoming hon. Senators to the Fourth Session. It is my hope that you are refreshed and ready to transact business and discharge the mandate of the Senate as provided for in the Constitution.

Just to remind Members that we are now past the half of our term in the Twelfth Parliament. So, we are remaining with only two-and-a-half years to the next general election. Maybe its time we started taking stock of what we have been doing in the Senate. This should also remind us that time is running vey fast and we must pull together to ensure that we achieve much more in the remaining period.

In the Order Paper today, the only business to be transacted is a Motion on the approval of Members to the Senate Business Committee (SBC).

Upon the approval of the Committee, in accordance with the Senate Standing Orders, the Committee will hold its first meeting at the rise of the Senate to schedule the business of the House for the coming week.

Mr. Speaker, Sir, I take this opportunity to urge all Hon. Senators whose business will be listed on the Order Paper to be available in the House to execute it. Once, again, I welcome all Senators to the Fourth Session and wish you fruitful deliberations.

I thank you.

**The Speaker** (Hon. Lusaka): Next Order.

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

The business of the House is scheduled by the Senate Business Committee (SBC), so this is an important Committee in facilitating the business of the House. The hon. Senators who are in this Committee are persons of high integrity, commitment, and hard work. The SBC must meet every week without which nothing happens in the House.

Mr. Speaker, Sir, depending on the time, you could also call for another meeting but most of the time, we meet on Tuesdays before midday to ensure that we schedule business of the House.

Mr. Speaker, Sir, since these are Members who have served in this Committee, the Hon. Senators in this House know them and what they can do, I do not want to belabor myself in discussing the names. Suffice to note that this Fourth session is – in my opinion- an extremely important one.

First, this House must make a determination on what role we can play as Senate in this process of Building Bridges Initiative (BBI) particularly if it is going to be about changing laws and the Constitution.

I have said before that Sen. Haji and Sen. Wako are members of this Committee but without any fear of contradiction, I felt that their report was underwhelming when it came to the responsibility of this House. It was mentioned just in passing or footnote which would have been better. The role of this House was just mentioned somewhere hidden in passing. I have a bad feeling that there is a conspiracy somewhere to continue undermining the responsibility and role of this House.

We must sit down, and it is time we had a Senate retreat--- We have not had many of those retreats. We have to think as the Senate. Unfortunately, even the Senate that was robust in the past in raising national issues has now been whipped into political parties and sectorial political interests at the expense of what we shall account for here. If today the Lord called us to go to Heaven, nobody will ask us about anything else. They will start from, "I gave you the role of a Senator through my people. They voted for you; you came here. What did you do in the very most integral responsibility given to you?"

Mr. Speaker, Sir, I hope - and this is very passionate to my heart - that this House will rise above executive, political and political party interests and even above personal interests to provide leadership on matters devolution particularly when we are discussing amendments of laws and the Constitution. If we do not do that in this Fourth Session, we would as well be contributing to elimination and cleaning of this House.

I still ask myself--- we talk about 45 per cent of the national revenue going to counties, and I am sure this is the discussion with the Budget Policy Statement. It is the same question we have with the division of revenue and so forth. We are discussing all these things and saying we will give 45 per cent to counties. We are not even willing to reach the constitutional 20 per cent at the moment based on the parameters that we are using in amending. Will the Senate rise to the occasion to demonstrate that we are a House that can stand up when it comes to issues? That is the challenge that is before us.

As I said earlier, we are past our half term. This House has been denied responsibility to carry out, scrutinize and pass legislation that are consequential. The President signed Bills in December that were touching on functions of counties including roads, and this House was skipped. The responsibility of this House was ignored and yet, when issues come here that touch on the Senate, we are quick to be whipped to our political parties.

Part of the reason I have had very many difficulties with the Executive is because I am one of the people who stood firm and said we must go to court to define our responsibility. We are sitting somewhere in court, the case has not even started, meanwhile Bills are being expedited. They shall be signed and we shall be called. We will rubberstamp perhaps or just watch and bury our heads in the sand like the proverbial ostrich.

If there is a time the Senate must stand for what it was defined to do, it is in this Fourth Session or, as they say in weddings, "Forever keep silent."

Mr. Speaker, Sir, I do not even know why Sen. Mutula Kilonzo Jnr. is so enthusiastic with this Budget Policy Statement and Division of Revenue Bill. We will just pass what the President wants. I am just telling you. We are working so hard to look at the statements, scrutinize and disagree with the figures. We will pass what the President wants because that is what it is at the moment. That is what this House and all the Houses have been reduced to do.



Mr. Speaker, Sir, we do not want to lie to ourselves and expend energy that, ultimately, will be wasted in this House when all these things are going to be done. We have to make a determination. We will assist the Executive, the Judiciary and the country if we will stand for issues. However, we will be lying to ourselves if we say: "This group and the other have divided themselves to do this. We are assisting so and so." Let us not waste time for the citizens of this country.

If we will be the Senate that is expected to do its work, we must sit down and agree. I plead that we do this either at a retreat or a *kamukunji* here and make a determination whether we will be standing together or we will be destroyed severally. That is all I will say. Sometimes the burden you want to carry on behalf of an institution becomes too heavy, but you realise people are cutting political deals behind the scenes to undermine the very institution you want to stand for.

Mr. Speaker, Sir, I hope that when the Senate Business Committee (SBC) meets they will consider this serious issue. We need to ask ourselves: How can we be passing Bills here, send them to the National Assembly---Sen. Sakaja rose on a point of order and we shelved the Independent Electoral and Boundaries Commission (IEBC) Bill and two other Bills that we never completed in the last session because we asked ourselves: "Why are our Bills sitting there?" For how long will we be shelving those Bills? We will discuss them here. If the Executive wants them, we will pass them. That is unfortunately the reality that people do not want to face. We can sugarcoat it in all other languages, but ultimately when they want it, we will just come and pass it here.

Mr. Speaker, Sir, for how long will Members of this House, most of whom are nominated, work so hard to draft bills, come here and we speak a lot of English only for the Bills to be shelved in the National Assembly that they are money Bills? How did we end up debating the Bills here if they did not go through the normal constitutional procedure that requires all Bills to go through the two Speakers?

Mr. Speaker, Sir, we do not want to act in futility. The question I think Sen. M. Kajwang' asked and Sen. (Dr.) Musuruve tried to follow up on is valid. Your leadership and that of the SBC will be required to interrogate this issue so that we do not do things for the sake of it.

Sen. (Dr.) Zani has moved many Bills here. I was in the committee in the last term that dealt with the issue of natural resources. We did a fantastic job. They went up to Australia. We went for groundwork up to a place called Fluorspar. We visited Turkana and many other places. We came up with a fantastic Bill. It went to the National Assembly, they said it was a money Bill and it was shelved somewhere. A similar Bill was brought and passed.

Mr. Speaker, Sir, if this House wants to restore its former glory--- I know that in the last term on several occasions we stood for what we believed in. We are living in this town. I can see we are sliding to some small corners or cocoons of small political interests. If we go there in this session, we will achieve nothing at the end of the term. We would rather as well allow other people to do things out there, they bring them here and we just send them like a conveyer belt and go home for the next election which is in less than two and a half years.

Mr. Speaker, Sir, the choice is for this House to sit down and ensure that the business of this House and our contributions will be so consequential that they will be

read many years down the line; that there were men and women who stood for the right thing.

Mr. Speaker, Sir, I beg to move and ask the Senate Minority Leader, Sen. Orenge to second.

**The Senate Minority Leader** (Sen. Orenge): Mr. Speaker, Sir, this is really like a procedural Motion. I stand to second the Motion and urge the House that the Motion be passed. In accordance with Standing Order No.184, the membership of the Committee is provided for in the Standing Order save for the Senators who do not occupy leadership positions.

On account of some Members who are on the list who are not in the leadership positions, I want to give some information. There are some Members like the Senator for Narok County, Sen. Olekina and Sen. Kwamboka. They have hardly served for a full year because of the changes that were in the leadership on the Minority side. I hope that when we look at the committees, we will look at them globally. Even in some of the departmental committees, probably a closer scrutiny needs to be undertaken so that the membership of the Senate at the end of the day will have had a full experience of the business of the House especially through the committees.

Mr. Speaker, Sir, having said that, I wish to comment on the views of the Senate Majority Leader which are very fundamental. I agree with him fully except for what he said that there were glorious days for the Senate. The Senate has always been cursed. The very first Senate went through even worse experiences although when they were dissolved they were taken to the National Assembly and given some constituencies.

In case the Senate Majority Leader forgot, even when we were first assembled and convened, the premises where we were taken was a garage somewhere in the Kenyatta International Convention Centre (KICC). In terms of office space, it took a lot of time for Senators to get facilities and officers. Even now, I do not think we have full facilities to work as a legislature. This goes across to the entire Parliament. There is a provision in the Constitution that requires Members of Parliament to be facilitated to make sure that they can do their work.

Mr. Speaker, Sir, in the United States of America (USA), there is consideration of membership in the House of Representatives and the Senate as nearly a full time occupation. To that extent, when they look at those responsibilities and what Senators and Members of the House of Representatives are required to do, it is in a sense at the level that makes them do the work more effectively. I agree that as a Senate we must find a way of coming together and fighting this battle. I want to assure the Senate Majority Leader that it can be won.

Even when the Executive at one time did not want to have a legislative framework and give financial allocation to the Constituencies Development Fund (CDF), for example, the National Assembly stood very firm. They said without consideration of the CDF, no legislation would be passed including the budget. In the history of Parliament, there have been constant battles to make Parliament what it should be. There was a time when nearly all the committees of Parliament were abolished and it took another battle to make sure that the committee system was restored.

Mr. Speaker, Sir, therefore, I am prepared on this one to ensure we are all together without exception. It involves fighting other institutions of Government. The Executive is

not going to just agree. They want a simple way to do things and to pass them without opposition and scrutiny. I have lived through a one party system.

Sometimes, we are more robust. We scrutinise Government business and look at budgets effectively although some people suffer for it. However, for this particular Senate, hardly any legislation that we pass goes anywhere at all. That is a bad deal for the people of Kenya who thought that we should have a Senate.

The Supreme Court had spoken on this and said that there is no business that the Senate should not deal with. If there is respect for courts of law and directions that they give, especially when it is an advisory opinion like the one we had, the Executive should listen.

I say without fear of contradiction that having a strong Parliament is for the good of the Executive. This is because there are things which happen in Government that the President, as he sits up there, may never know. By the time he realizes, he starts a campaign. For example, the campaign against corruption should not have been there in the first place if the processes within the Executive, for example, the internal audit processes were done properly. All these ills emanate from the Executive. In fact, courts and Parliaments were created because of the Executive which is the most rogue institution of Government.

When there was absolute rule, for example, the monarchy, Parliaments or judicial institutions were not important. We are created to make sure that the Executive is brought to check. So, I agree with the Senate Majority Leader that we have to come together.

The Senate Majority Leader and Sen. Mutula Kilonzo Jnr. headed a Committee which came up with a good document. Unfortunately, in the Building Bridges Initiative (BBI) report, it was not mentioned.

One of these days, we should have a session with Sen. Haji and Sen. Wako to tell us what happened. We cannot just be sitting with them here and there is a critical issue which we had looked at, both now and in the previous Senate and there is no word about it. I do not know whether they were overwhelmed. However, if they do not feel comfortable, they should give some explanation as to why that happened. Obviously, now that we have only two and a half years left, it is important that we come together. We need to create that committee again. Although we have a Committee of Justice, Legal Affairs and Human Rights, it may help this process crystallize the issues of governance.

We should come up with a clear document, for example, on whether we want a parliamentary system. The Senate may guide this conversation. Instead of waiting for the BBI validated report, we could have a report of our own on the pros and cons of a parliamentary system.

There was a time when people said that we cannot create two centres of power. However, in my belief, the more centres of power that exist, the better for democracy. We have just seen that where there is one centre of power, sometimes you cannot sleep because you do not know what will happen to you the next day. So, I fully support this. The Senate can come together on this issue.

This time, we should not pass anything in the budget process that we have to deal with. I am absolutely committed to this because I may never come to the Senate again. I want a strong Senate. If it is not done now, it may never be done. So, let us have our gloves off. It is either we have a Senate or not.

If you look at Sen. Murkomen and Sen. Mutula Kilonzo Jnr.'s report, some of the ideas are good. The Senate in the United States of America (USA) when dealing with issues in committee, they are handled with decorum but with the seriousness it deserves. Sometimes, when I look at how appointments are dealt with in the other House, I believe that they should come to the Senate because this House will deal with them more effectively.

Mr. Speaker, Sir, with those remarks, I beg to second.

*(Question proposed)*

**Sen. Farhiya:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to contribute. I support the Motion. The Senators in the list are capable.

Before I go to the substance of this Motion, allow me to pass my heartfelt condolences to Sen. Gideon Moi and his family on the passing of his father. I wish them fast healing and acceptance of what God has ordained.

I also want to speak about the issue of corruption in the counties which continues to be unabated. This time, the Committee needs to prioritize Bills that deal with issues of corruption because we need to save this country from its jaws.

Mr. Speaker, Sir, for this country to move forward, we need to slay the dragon of corruption. If we do not do that, we will watch our country die slowly. President Uhuru Kenyatta has emphasised many times how much he wants corruption to end as part of his legacy.

The idea of fighting corruption is good for this country, its economy and the future generation. I feel that this year is the defining moment for the Senate. Towards the end of next year, people will be on election mode. Therefore, we should pass more Bills that are life-changing to the *wananchi* whose taxes we are spending in this House and who elected us. We need to make sure that they get value for money from this House by passing Bills that will eradicate poverty. Every shilling that goes to somebody's pocket is equivalent to health services denied to a poor person. It is also another shilling that is wasted, yet it could have been used to educate someone and gotten them out of the shackles of poverty.

I agree with the Senate Majority Leader that we should be united for a purpose that ensures that we enhance the lives of Kenyans who elected us to these positions. With regards to Bills being passed, let us have a system or a log such that Bills are passed according to the needs of the country and in the order in which they are received; first in, first out. There should be a fair way of generating Bills, and they should be passed on time, so that people do not feel that their Bills are stuck.

One of the Bills - I am not sure if it was published - which I think will be a game changer for Small and Medium-size Enterprises (SMEs) is co-sponsored by Sen. Sakaja and I. It deals with prompt payment. I talked about that Bill during the meeting with the Kenya Private Sector Association (KEPSA). We need to pass it. However, a question still arises. The Speaker and the leadership of this House need to go and have a serious discussion with the National Assembly, to ensure that the Bills that we pass in this House see the light of day. We should not waste our time debating Bills and it ends up being an exercise in futility.

We have lawyers in this House and others in the other House who support us. The legal officers in this House, who I respect a lot, do a lot in terms of preparation of the Bills and support to Senators, to ensure that we come up with quality Bills. Unfortunately, those Bills die a natural death in the National Assembly, and I think that is a bad taste in the mouth. We should make it different this year.

Thank you, Mr. Speaker, Sir, for this opportunity.

**The Speaker** (Hon. Lusaka): I see a lot of interest, and so, I will give you five minutes each.

Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo (Jnr)**: Thank you, Mr. Speaker, Sir. I rise to support the Motion on the constitution of this Committee. However, it crossed my mind that towards the end of the year or before the end of our term, perhaps, we should amend the Standing Orders on the Sessional Committees. This is because we are just reconstituting three Committees. A Committee like the County Public Accounts and Investments Committee (CPAIC) is a very serious one. I think that we need to sit somewhere and think about what we are doing, particularly on this Committee and the other one.

I am of the view that we should reshuffle other Committees. However, while we are doing so, I agree with those who say that we should have a very good session somewhere quietly because, other than this Committee, we want to discuss the effectiveness of other Committees of this House. We need to have a candid discussion with you as the Chairman of the Liaison Committee, the Senate Majority Leader and the Chairpersons, who he is in charge of. Are you satisfied as the Chairman of the Liaison Committee that the Chairpersons are doing what they are supposed to do? That is something that we can discuss somewhere where we will put you as their Chair to task.

We have to discuss the issue of concurrence. I get the very eerie feeling that although you exercise this mandate somewhere in your office, we, the Senate of this Republic under Article 110 should get a communication when you issue a concurrence. That is what is contemplated in the Bill that we prepared with Sen. Sakaja.

I witnessed a few things in the last few days showing that we are soon going to become irrelevant. First, you as the Speaker, will become irrelevant followed by all of us. The country does not have an Auditor General. This Senate should pronounce itself about this because it affects our counties. While we are discussing the Building Bridges Initiative (BBI), which might propose the increase of money to counties, how can we sit around and the Auditor General has not been appointed?

The Controller of Budget has issued yet another directive, a small circular, to the counties that she will not allow withdrawal of funds without disclosure of three items. The governors now want to go to court. Ideally, the governors should have come to the Senate. We are becoming irrelevant every day.

Mr. Speaker, Sir, I am told, and my Chairman is here, that the issue of pending Bills is being dealt with at the Treasury. They are the ones who are approving who should be paid. Is that not usurping of the work of the Senate and the county governments? Who are we protecting? This is because I do not feel as if we are protecting anybody.

Last but not least, Sen. Orengo and former Senator and the now Gov. Kiraitu Murungi did something significant and very historical on our elections. We cannot allow the preparation of elections to be done without our input. The way things are going and we are just getting one small paragraph in the reports of the BBI and others, sooner rather

than later, and from my reading of what is going on, that Election Law amendments or anything touching on elections, which is a special jurisdiction of the Senate under Article 110, we are going to be by-passed.

Call us quickly, spare some money and a budget, let us go and ventilate. This is because, first, we need to protect you because like I have told you, you are going to become irrelevant. We go to functions, and like yesterday - I am extremely curious as a Leader of this House - you only got a bare recognition. I should not have raised it, but those are the things that bother me. As the head of this institution, you should not be overlooked. This is because, if you are overlooked, the Senate will be overlooked. Sen. Kipchumba, Sen. Olekina and I can be overlooked, but you should not be overlooked in our presence; it sounds bad.

Since we are good people, we do not throw stones. In fact, the way some of our legislators were treated yesterday by even protocol officers begins to tell me that there is somebody who thinks that we, the legislators, are useless people.

*(Applause)*

For the Senator for Makeni with 320,000 votes to get third row treatment from a person who does not have a single vote even from a villager is wrong. If you are not going to defend us, one time we will go to a village, and we will be told to sit at the back.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): In fact, yesterday was very unfortunate. We even decided with my colleague that we would not go to the burial site, until they called us on our way when we were coming back.

**Sen. Mutula Kilonzo** (Jnr): Is that why you came back?

**The Speaker** (Hon. Lusaka): That is why we went back. I was almost reaching Nakuru on my way back. It was very unfair because Sen. Gideon Moi is a Member of this House and hon. Raymond Moi is a Member of the National Assembly, and yet we were not given an opportunity as their leaders to condole. We protested and even raised it with the Head of State. That is why they called us back; it was very wrong.

Sen. Halake.

**Sen. Halake**: Thank you, Mr. Speaker, Sir. I rise to support the Motion on the constitution of the Senate Business Committee. Looking at this list I think it is a very good one with people who are very experienced. They have qualifications and capabilities to do justice to the business of our House.

Let me also take this opportunity to congratulate Senators and welcome them to the Fourth Session, as has been said before. I look forward to this team making sure that the programmes of the Senate, as per our Standing Order No.184, are executed smoothly and above board.

When we came to the Senate, we were told that in the 11<sup>th</sup> Parliament this House passed five Bills. I was appalled and was wondering how that could ever happen. However, looking at the amount of time that has passed so far - we are halfway through our term - we might even do worse than we did last time, which is really a shame given that many Bills and House business had been transacted, and it is not for lack of work from the Senators. I believe that each of the Senators has spared their time to come up with Bills. We have to decide how we will deal with the issue of Bills just getting stuck

and similar Bills coming up while it is in the pipeline at the National Assembly. This is something that we need House leadership to look at and see how we will unlock the bottlenecks that are happening.

The only thing that I can say about this list though is that we may need more women going forward. As you know, the two-thirds gender rule starts with us. As much as the two-thirds gender rule in terms of the Act of Parliament has not been passed, the efforts that happen on the Floor of this House, and even in our little ways in these Committees, should actually start to be in practice to make sure that women are involved.

I know that perhaps two women are quite 'many,' but so to speak, as we go forward, we need to make sure that even in the Committees no one gender is overly represented. That one gender does not have to be the women always being the lower threshold.

Mr. Speaker, Sir, thank you for alerting us and pointing out the salient issues around the Budget Policy Statement that you have talked about. I know there are Senators who have spoken about this. As the Senate, because of our responsibility of oversight, what are we overlooking? We are overlooking resources. It is about time that we took this Budget Policy Statement very seriously. We should scrutinize and influence it in ways that we will make sure that we do not start to question issues that we pass at the Budget Policy Statement stage, without scrutiny and then we start singing our voices hoarse later on, on things that we passed.

Sometimes it is very easy for certain items to be budgeted for, including corruption. As we have said before, and this is where we stand to be counted as the Senate - the oversight body that protects counties - we not only look at allocation of revenue to the counties, but also look at specific provisions within our budget, so that certain items are not passed without us looking at them.

Mr. Speaker, Sir, during this Session you have advised that we should be above partisan lineups to make sure that this House executes its work in an objective manner. My challenge is actually to the House leadership. When a boat is wavering; when something is happening, let us look at our role in ensuring that this did not happen. In fact, this is something that has seeped into our DNA as the Senate. Let us look at our role. Each Senator should uphold the integrity of the Senate, and we also protect not just counties, because who can we protect if we cannot protect the existential and integrity issues of this House? If we cannot stand to be counted - if we just observe - then this House is reduced to an irrelevant body that does not have any impact in this country.

I support and look forward to this team working very well to ensure that some of these issues and challenges that have been highlighted by the Senators are looked into, both at the level of the programmes that this House is going to tackle and also in terms of providing leadership and prioritizing what is important in the remaining time.

Thank you. I support.

**The Speaker** (Hon. Lusaka): Sen. (Dr.) Zani, you have the Floor.

**Sen. (Dr.) Zani:** Thank you, Mr. Speaker, Sir. Thank you for welcoming us back. We hope we have come back rejuvenated and---

*(Technical hitch)*

The figures stood up for themselves; 77 Bills that have been processed, almost half of them coming from the National Assembly. Our Bills going to the National Assembly and not being processed is beginning to sound like a song in this House. There is nothing else we have spoken about apart from that. We know that the evaluation of our House is going to be on the basis of how many Motions and Statements they have produced.

Mr. Speaker, not because---

*(Technical hitch)*

We should be able to address that. I do not even think that the Bill is going to pass in the first case; it is probably one of the ones that will be termed a Money Bill. It really puts us in a quagmire because apart from issues like petitions, just to note that we have about 47 petitions that still need to be processed--- This means that we need to come up with a different strategy on how to fast-track them. I would think that if we formed sub-committees within Committees to address specific petitions, then we will move faster. This is because that is an area in terms of evaluation where we need to look across and see how best we can improve.

On the issue of Article 113 (3) of the Constitution and its progression, we are held up. This is an issue that started with the 11<sup>th</sup> Parliament, and I remember it has been commented about. The Committee that was set up - and I think Sen. Murkomen was the Chair and Sen. Mutula Kilonzo Jnr a Member--- I remember we went and met for a whole morning at the New Stanley Hotel. We spoke about the issue of making sure that the Senate becomes the Upper House, at least giving it the teeth to bite as a legislative House. We came up with that Committee that was to come up with specific recommendations.

I have learnt today that those recommendations were actually given out. I wish we had met again as a whole House to go through specific recommendations and figure out how to push that agenda. The agenda for the Senate has been lost. It is not being driven from the Senate itself, but from outside the Senate, for example, the issue of allocation. It is not because we have not spoken about it in this House; we have done so over and over time again. We need to come up with a strategy of pushing this to be heard very clearly. We need to come up with ways of ensuring that whatever we start---

*(Technical hitch)*

Some of the Members have stated that these Bills take a very long time to process. By the time they are out of this House to the other House--- One of the Bills that is coming up very shortly is the Community Health Bill, which is very key in addressing health concerns for the communities. It is because of that reason and the fact that we are here that we should be processing these Bills and helping communities that we really need to understand what it is that these Bills have stagnated. I do not know what we are going to do at the end of the Senate term when we go *Sine die* in terms of projecting. We cannot just say that these were the Bills that we proposed as the Senate; where are these Bills now in the form of Acts?

Mr. Speaker, Sir, it is time to pick it up from where we left it with Sen. Murkomen and Sen. Mutula Kilonzo Jnr., and just meet all together as a House. Most of



the time when we meet as separate Committees to do things, and we are quite a number of Committees, we do not read from the same script. We need to have a one day where we have no other business but to prosecute the way forward. Looking at the environment as it is now, the background and issues that have come up, we need to address some of the issues that Sen. Mutula Kilonzo Jnr., spoke about. It was clear for everybody to see.

This spells out a lot of concern even for this particular body. By the time you see the responses that Members are being given from the various other branches, you begin to get worried and yet, the legislative role is very key and important. People are elected and nominated into it. We need to find a way to implement those laws and empower the Senate, we can do it all together.

**The Speaker** (Hon. Lusaka): You have one minute.

**Sen. (Dr.) Zani:** Mr. Speaker, Sir, I get worried because we have too many contradictions. We speak through the microphone and say we should approach this in one way, but in action we do exactly the opposite. We are all seized of this and know exactly what it is that we tend to move in a direction where we do not move together. We need to make that decision, move together and actualize the dream and the position of the Senate as envisaged in the Constitution.

I support the Motion.

**The Speaker** (Hon. Lusaka): Sen. (Prof.) Kamar, you have the Floor.

**Sen. (Prof.) Kamar:** Thank you, Mr. Speaker, Sir for giving me the opportunity. I rise to support this Motion. The Members listed here have performed before and there is no doubt they are going to perform again.

As I support this, I want to emphasize what the Senate Majority Leader said about Members who have business. Sitting at your Chair, sometimes it is a bit frustrating when Members who have business in the Order Paper do not turn up.

By the time the business is already listed in the Order Paper, it is very important that we execute it. If we do not execute whatever is in the Order Paper every day, then we will have a lot of backlog. This backlog is really causing a lot of congestion in the “pipe”.

Mr. Speaker, Sir, we are already midway in our term. Therefore, we must start counting the number of success stories that we have had, look at what we must do before we finish, as individuals or as a Senate.

I would like to congratulate some of our colleagues who have done us very proud with Bills and Motions. I do not want to hide the fact that we are very proud of the women’s participation in this House; they have done extremely well. They have also done very well in maintaining the quorum in this House. I am appealing that we go on in that spirit and make sure that we deliver in this Session.

Mr. Speaker, Sir, when it comes to the issue of the relevance of Senate, I see another opportunity through the document that we received in Bomas of Kenya the other day called the Building Bridges Initiative (BBI). Today, as women leaders, we sat down to look at it under the umbrella of Common Women Agenda (COWA). We were concerned with the issues of women. How can this document benefit women in this country? I was also looking at the devolution aspects of that document to see how we, as a Senate, can benefit.

It is true that there was a document that was done by Sen. Murkomen and Sen. Mutula Kilonzo Jnr. that we need to really look at. I think we have requested this before

and we are still requesting that we sit down and look at it. This is because I can see a great opportunity in it. The BBI document that we unveiled in Bomas of Kenya clearly stated that there is a problem as far as oversight is concerned and how resources are being spent between the two governments and also within the counties.

Mr. Speaker, Sir, we, as a Senate need to look at it and have our own input to this document; whichever way it will go. Let us be very clear on what we want this Senate to be. What I like about the document that we looked at as women and the proposals that we came up with, is the fact that the womenfolk in this country strongly support a very strong Senate. The Senate must be the Upper House.

To me, that is was a very good proposal, especially today being the first day of the validation of the document of Bomas of Kenya. Even as we validate it through other fora, we need to emphasize the fact that there is need to really have a clearly structured governance system in this country. The Upper House which was envisaged when Senate was formed, must be completely realized.

Mr. Speaker, Sir, we need to have a retreat for three days to interrogate this document. I believe that if we look at it together, we will be able to come up with something that will enable us to complete well. Beyond completing well in this Session, we will also be able to help the future Senates to do as well as this Constitution requires them to be.

With those remarks, I support the nomination of the Members.

**Sen. Omogeni:** Thank you, Mr. Speaker, Sir. I also rise to first support the Motion. We, as a House, agree that the men and women who have been chosen to serve us have been tested. All we are asking of them is to try and elevate this House to the level that it should be, that is the Upper House.

Mr. Speaker, Sir, over lunch hour, I was speaking to a Member of the National Assembly from the Committee on Health. He told me that next week, they are making a trip supported by the Ministry of Health to Japan on Universal Health issue. There is no Senator involved. You can imagine how seriously the other House is taken and how we are playing a very pedestrian role as a Senate.

If there is a function that is fully devolved, that is the function for counties, a matter that really lies squarely on the mandate of the Senate, then it should be health issues. However, we have reached a situation where the Cabinet Secretary (CS), Ministry of Health, can have the courage to write to the Clerk of Parliament, seek representation to take people to Japan to do a study on Universal Health Coverage (UHC), and the Senate is not involved, then, there is a serious problem.

Last year, we made some amendments to the Roads Bill. The Committee that was chosen to do mediation did a fantastic job. We were not able to agree and that Bill was shelved. We expected that after six months it would have found its way back to the Senate. What did the National Assembly in collusion with the Executive do? They brought in the amendments to the National Assembly and they were quickly passed. The Bill was rushed to State House and assented to by the President.

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

*[The Temporary Speaker (Sen. (Prof.) Kamar) in the Chair]*

Madam Temporary Speaker, honestly, what sign do we need to see as Senators to know that we are a House that is slowly being pushed away from legislation? If that trend continues, we really have no business to sit as Senators. In countries where Senators occupy their positions by virtue of popular votes, they are never treated casually the way the Senate is treated here.

If you go to Australia, for example, anytime there is a disagreement between the Senate and the House of Representatives, that becomes a serious issue. The consequence of the two Houses disagreeing in Australia leads to them being dissolved. Since 1901, in Australia, Congress and the Senate has been dissolved five times simply because there have not been able to agree on Bills coming from the Lower House to the Senate. If we continue with this trend, where we reject a Bill, it goes back to the National Assembly, and the next time it is enacted, assented to by the President; we are being rendered irrelevant by the day. There is no way we can expect somebody outside this House to find a solution for this crisis.

Madam Temporary Speaker, we are 67 Senators here if we take into account our colleagues who represent some special constituencies. What is so difficult in us agreeing that we sponsor a Bill under Article 255 through popular initiative, we get support of 24 county assemblies and we push it to referendum, so that we elevate this House to the level that it is supposed to be? Historically, we know that our problems started in Naivasha; the people who sat in Naivasha were purely Members of the National Assembly. There is no way they could have looked at the interest of the Senate.

Madam Temporary Speaker, the point I am making is that, this year, 2020, should be a wakeup call to us, as Senators. We need to look for solutions from the Floor of this House on how we can elevate the stature of the Senate so that it can truly be the Upper House.

With those remarks, I support.

**Sen. Omanga:** Thank you Madam Temporary Speaker, I want to congratulate the Members who have been nominated to this Committee, which is the Committee which is steering the House business. They are up to task.

Madam Temporary Speaker, I want to talk about the Petition I brought in the House in the last Session. It is the second Petition because my colleague, Sen. Seneta had also petitioned the House during last Session to request the HBC to put in place an Implementation Committee. It is important that we have it in this House to follow through the implementation of resolutions, Motions and Statements from this House. Most of the work from the County Public Accounts and Investments Committee (CPAIC) where I sit, normally gathers dust on the shelves. No one is there to follow through. Most of the resolutions just “hung on the way”. We do not know what happens after we have finished or tabled reports in this House.

Madam Temporary Speaker, I also want to emphasize what Sen. Mutula Kilonzo Jnr. said about the Liaison Committee because we need a conversation around it. You need to call a meeting of the Liaison Committee or the leadership of the House to look at the performance of chairpersons of Committees and their competency and effectiveness.

The leadership of the Liaison Committee is always absent. When we bring Petitions and Statements in this House and they are directed to some specific committees which I do not want to mention, you will never get results.

It is high time we had a conversation with the Liaison Committee and found out how we can either change the leadership of committees or revamp them so that we can work.

I support this Motion.

**Sen. (Dr.) Musuruve:** Thank you, Madam Temporary Speaker, for giving me this opportunity to support this Motion.

The Members that have been nominated to the Committee are up to the task. I like the composition because it has the face of Kenya. If you look at it keenly, you will realise that the Members come from different parts of this country. I also like the composition in the sense that it is gender sensitive. The fact that we have Sen. Dullo and Sen. Kwamboka is a plus to the women in leadership.

Sen. Farhiya talked about increasing the number of women in such committees. In as much as we are talking about increasing the number of women in the committees, this is lopsided. We need to be inclusive because we also need to have a Person with Disability (PWD) in this Committee. Since we are talking about inclusivity, there is no way we can ignore issues of disability. Right now the Building Bridges Initiative (BBI) conversation is going on.

Madam Temporary “peaker”, I like the passion that you have for PWDs. It is a passion that everyone should have. We should always ask ourselves where PWDs such as Sen. Mwaura, Sen. (Dr.) Musuruve, or any other PWD are in such committees.

I am saying this because the BBI is a serious national conversation. It is a group that we cannot leave behind.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Order, Sen. (Dr.) Musuruve; there is no “peaker” in the House. There is a “Speaker” in the House.

**Sen. (Dr.) Musuruve:** I think it is this microphone, Madam Temporary Speaker.

*(Laughter)*

Madam Temporary Speaker, you know I am a linguist. When I talk of “Speaker”, it comes from my mouth as “Speaker”. I think there is need to check the microphone.

*(Laughter)*

Madam Temporary Speaker, I also like the composition of these Members because the blending is okay. In this House, we have Members who are experienced and those who are young in politics and leadership. So, they will learn from the experienced ones. That is important.

Let me also talk about an issue that Sen. Orenge mentioned. We all know about the BBI and the conversation on whether to have a parliamentary system or not. There is also need for the Senate to come out strongly with regard to what kind of system we want. It should not just be that these are the propositions to be validated. The Senate needs to add its voice so that it has its glory as the “upper House”. If we are to support devolution, there is no way we can keep quiet as the Senate. We must add our voice and talk about issues of women.

Madam Temporary Speaker, I also like your contribution on the issue of women and the BBI. This is a conversation that should continue so that the women, the youth, and the PWDs are also effectively represented from the Senate angle. This time around, the Senate must have a voice.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Sen. Cherargei, you have the Floor.

**Sen. Cherargei:** Thank you, Madam Temporary Speaker, for this opportunity. I thank you for welcoming all of us from the long holiday and recess. We had the opportunity to interact with our constituents and families.

From the outset, I support the Motion that is before the House. As Committee Chairs, we work closely with the Members of the SBC. We hope that as we move forward, the House leadership led by Sen. Mutula Kilonzo Jnr. will assist committee chairpersons in processing some of the issues for approval, so that we can fast-track some of the Petitions, Statements, Bills and many other issues of concern.

Madam Temporary Speaker, there are a few points that I would like to bring to the attention of the Senate as we begin this new session. I am happy that during the previous session, you led the Committee on Justice, Legal Affairs and Human Rights to process the Petition that is before the High Court. We are now waiting for directions from the High Court and the Office of the Chief Justice on the issue of Bills that were passed unprocedurally and without the concurrence of the Senate. We hope this matter will be put to rest.

In 2013, the Supreme Court made its pronouncement on this matter but it seems the National Assembly has not been keen. As Members have complained, most Bills have been “killed” in the name of being Money Bills according to Article 114 of the Constitution. We hope the courts will make pronouncements on this matter so as to allow us to work seamlessly and serve Kenyans. Most of the Bills we pass are not for the benefit of the Senate or the National Assembly. We only have one client, which is the people of Kenya.

When we were drafting the pleadings, as the Committee Chairperson, it was my prayer that this matter be handled by your office and also the country’s leadership, including the President himself, so that we do not have petty fights. I know we have more critical issues that this country needs to address.

Secondly is the issue of budget-making process. Of course, the decision on that matter will be made by the Supreme Court and the process has started. In the previous session, we fought very hard to increase the money meant for counties. Unfortunately, we did not succeed. Going forward, in terms of protecting counties as provided under Article 96, I hope we will push and ensure that we increase shareable revenue to our counties to ensure they are well resourced.

Madam Temporary Speaker, I think Members are forgetting that we should also deal with this animal where the National Treasury strategically delays cash disbursement to counties. This has led to near collapse or stopping of services being delivered by county governments. As the Senate, we must have a position and ensure that the cash disbursements to the counties by the National Treasury are done timely.

There is also the issue of corruption in our counties. Members of the CPAIC should be issuing summonses to counties that do not follow the law. Counties now burn procurement offices. It happened in Kitui and Busia counties and the other day it

happened in Kisumu County. Why are county governments burning down their procurement and finance offices? What are they hiding?

These are some of the issues that the CPAIC must address, so that we do not have counties burning down their finance and procurement departments. Why is it strategic that it is procurement and finance departments that are burning down? Is the fire allergic to other departments that we have in our counties?

Finally, Madam Temporary Speaker, we should have a consultative meeting. What happened yesterday was sad. Both our Speakers were never given an opportunity to eulogize the late *Mzee* Moi. We should come up with the law of pecking order because most of the state functions should be carried out in an orderly manner. It is never about parties or individuals. State functions should not be about individuals or parties.

During a state function like the one we had yesterday, the Speaker of the Senate, the Speaker of the National Assembly and the Chief Justice should have been given an opportunity to speak and eulogise with the family. It is my hope that future State functions will be handled in stately manner. State functions should not give people political expediency. I am happy that the Ford-Kenya leader, Sen. Wetangula, was given an opportunity to speak and he spoke eloquently as he eulogised with the family.

Kindly add me one minute.

**The Temporary Speaker** (Sen. (Prof.) Kamar): You will have an extra one minute.

**Sen. Cherargei:** Thank you, Madam Temporary Speaker. My Committee presented an amendment Bill that would help strengthen the Senate. I do agree with the Senate Minority Leader that we need to have a meeting with the Building Bridges Initiative (BBI) team that is led by Sen. Haji for us to discuss with them ways of strengthening the Senate. This House should be given veto powers and the necessary powers for it to be the 'upper House' in order for us to discharge our mandate. I do hope that Sen. Haji and Sen. Wako will factor in that. I hope that we will agree on this during our consultative meeting.

I wish all the Members a fruitful Session. I am looking forward to serving Kenyans.

**Sen. Shiyonga:** Thank you, Madam Temporary Speaker, for giving me this opportunity to contribute to this Motion. I support this Motion.

At the end of five years, I would be proud to be associated with the positive things that this House will have achieved. We can only achieve that success if the Bills, Motions, Petitions and Statements discussed here are implemented. There is need for us to have an Implementation Committee that will complement the SBC. That Committee will evaluate and follow through what has been discussed here.

This is the best time for us to have a retreat because there are so many things that are pending in this House. The National Assembly has passed Bills and they have been assented to yet nobody considers the Bills that we pass here. We should not pass Bills that come from the National Assembly. If those Bills are assented to, we should not consider them as Acts that govern this House.

The Senate is facing so many challenges. Hon. Senators are recognised by the Constitution, but they do not get any special treatment yet the unelected people such as the Cabinet Administrative Secretaries get Government vehicles. What we witnessed yesterday was so sad. We should rise up and oppose what we are seeing. The three arms

of Government should be respected. If that does not happen this time, then it should happen today.

Many Bills have been moved and passed in this House, but they get dumped when they get to the National Assembly. We need to go for a retreat to discuss this. We should give attention to ourselves. We should act if no one allows us to speak and we should act now.

I support the Motion and that Committee should work. If they fail to do so, we will relook at it.

**Sen. (Dr.) Langat:** Thank you, Madam Temporary Speaker, for giving me this opportunity to add my voice on this important Motion.

I felt that it is high time that the SBC agrees on coming up with an Implementation Committee when I heard of the backlog of Bills that have stagnated in the other House. We need an Implementation Committee that will follow up on the issues and recommendations that this particular Senate makes in various Committees. We made recommendations on the *ad hoc* Committee on maize. I am sure that those recommendations are lying idle on the shelves. If we have such a committee, it will help this House achieve its objectives.

Sen. Murkomen said that we still have two and a half years for serious business. However, I know that we will not do much during the last year of our term. We do serious businesses in this House and our resolutions should be implemented. This Committee should consider having the formation of an Implementation Committee as one of its first serious businesses.

The strength of this Senate depends on all of us. We are fortunate to have Sen. Haji and Sen. Wako as members of the BBI taskforce. It is a shame that issues to do with the Senate were not given prominence in the BBI. Sen. Cherargei has said that we do have BBI one and BBI two. However, I believe that we still have BBI one, the Bomas Draft. That is what we will follow to the letter. We need to have a retreat or a '*kamukunji*' for us to discuss our share, as a Senate, in the BBI. Otherwise, we shall be cooks who will prepare food, but have no share of it at the end of the day. The SBC should consider those two issues.

I support.

**The Temporary Speaker** (Sen. (Dr.) Kamar): Thank you, Sen. (Dr.) Langat.

**Sen. (Dr. Milgo):** Thank you, Madam Temporary Speaker. I also support this Motion because these Senators are equal to the task. However, the only challenge with it although we are saying it has the face of Kenya, is that it did not consider the two-thirds gender rule we have been talking about. All the time we have really tried to take into consideration the two-thirds gender rule. Even in the formation of committees in this House we should always consider this rule. For example, in this list, female Senators are only two. What is the one third of seven members? We need more female Senators in this list. However, the two female Senators that we have should represent us there.

I wish to challenge this Committee to ensure that they find a way of ensuring most of the Bills that have been stagnating in various stages pass through. Stagnation is not only occurring in the National Assembly. We have had many other Bills that go to various Committees and it takes almost one year before they are concluded.

We have had Members complaining about Petitions and a number of Bills that they put forward some months ago. I remember two Bills that I presented in the year

2018. Up to now, they are still stuck in a Committee that I do not want to mention. However, it is my prayer that this Committee as they promised, will ensure that there is an Implementation Committee that shall be formed. That Committee will go a long way to ensure that they follow up this process.

Madam Temporary Speaker, last time we tried forming this Committee, we went round getting signatures to ensure that we put in place an Implementation Committee. There are very many things that we have done in this House. We have Motions, Bills, and Petitions. In this case, if we had an Implementation Committee, we would be asking them to account for what has happened.

I support the Senate Majority Leader in terms of the unity of this House. Very many times we tried to obtain a facilitation fund to carry out oversight, but we failed a lot. We heard that the National Assembly was able to retain their Constituency Development Fund (CDF) because of the fact that they are united. In our case, we failed because we are divided all the time. This is the reason we have not been able to carry out our oversight role effectively. That is why there is a lot of corruption cases in the counties. We have been complaining about corruption. We only get to read about corruption cases in the newspapers. This is because we do not have facilitation fund to be able to go round our counties fighting this vice. It is high time that we came together so that we are able to stamp our authority.

More importantly, we are in a period where we are talking about the BBI report. If we do not come together as a Senate, we will suffer the same fate. We are being told that the reason why the Senate looks very weak is because when the 2010 Constitution was being discussed in Naivasha, nobody cared about the Senate being an upper House. That is why it seems to be a weaker House. The Senate should be the Upper House just like it is in other countries such the United States of America (USA) and Australia. This Senate must have some teeth to bite.

Madam Temporary Speaker, I hope that this time we will be able to stamp our authority so that we are able to determine whether we need a presidential or a parliamentary system in the BBI so that we are not left behind.

I want to encourage my colleagues to continue working hard and bring more Bills and Motions so that Kenyans may judge us as a House that has done a lot for them. In any case, we have shown a lot of sanity and we have---

**The Temporary Speaker** (Sen. (Dr.) Kamar): Thank you. Your time is up.

**Sen. Pareno:** Thank you, Madam Temporary Speaker, for giving me this opportunity to also support this Motion. I support it, but with reservations. First of all, I want to say that all the Members that are listed there did well. I would not want to say that they did not do well. I remember that we always had a full Order Paper at all times. They have approved business and done their job.

Madam Temporary Speaker, what was lacking in the last Session, is that the movers of the Motions and Bills sometimes were not present to move them. I want us all to improve on this. It does not serve any purpose for us to always have the same business listed in the Order Paper for almost two months, just because the person who is supposed to have moved it, is never present. You have bothered the SBC to consider your business and they have left others. However, at the end of the day, you are not there to process it.

Madam Temporary Speaker, remember that you and I sit on that Chair. Sometimes we adjourn before time, not because of the SBC not doing their job of putting



the business on the Order Paper, but those that are supposed to move are not present to do so. Therefore, I am begging that we improve on this, so that we help them to ensure that the business is there in the Order Paper every day.

Madam Temporary Speaker, my reservation is on the gender balance. We cannot keep on speaking here about affirmative action and how we should be balanced; and then here we are talking about BBI and bringing people together and yet we continue to leave out each other when it comes to positions. We have seven Members of the SBC. Out of the seven Members, we only have two ladies. Surely, we have the ones that are more or less automatic like the Senate leaders, and we respect that they should be there. However, I am not saying that the ones that we added do not have capacity. Far from that, they have capacity. Each and every Member in this House has the capacity to serve in any Committee.

Madam Temporary Speaker, when it came to adding those other Members, we should have considered gender balance and ensured that, at the end of the day, we have a Committee that has everybody on board. Maybe we cannot undo what we have already done, because we have already done it, but we want to see an improvement in the next formation when we have to reconstitute this Committee.

This House has only one female Member who is a Chair out of all the Committees of this House. The rest are just either deputies - which is also a good position - but it is also good for men as well. Why do we assume that ladies cannot chair? I blame this on the formation as it was then. For some reason, it was felt that the ladies should not be there. We actually struggled at that time to ask; why do we not have ladies? At the moment, all the chairs are male Senators, and only one who we just picked in the Committee on National Cohesion, Equal Opportunity and Regional Integration, because she is able and she was acting as the Chair almost throughout. Sen. Naomi Waqo is the only female who is now a Chair of a Committee.

To me, this is not a good indication. As a Senate, we cannot say that others are not looking at the provisions of the law in as far as the mandate of the Senate is concerned and, at the same time, ignore something as important as gender balance and affirmative action when we form these Committees.

I want to applaud the Members that had served earlier on and say that they did well. At all times, we had business, but I call upon that business to be processed.

Madam Temporary Speaker, we cannot keep complaining throughout that our Bills do not go through and that the National Assembly is doing the usual things that they do to derail whatever processes that we are undertaking. We should take a step further. I was thinking of how to solve this problem. We are going to name and shame all of those who go to derail our programmes and then they reintroduce them.

It is a shame for Members to work so hard and put all that input in a Bill then one derails it only to go and reintroduce it. To me, the next thing we should do is to name and shame all of these people.

What happened to our case? We went to court to ensure that all the Bills that have bypassed the mandate of the Senate should be nullified. I think that this is something that we need to pick up---

**The Temporary Speaker** (Sen. (Prof.) Kamar): One minute.

**Sen. Pareno:** I am saying that we should pick up from where we left on these cases, once and for all. We must put everybody in their place by ensuring our Bills go

through and that our efforts are not in vain. We should enforce our rights within the provisions of the law and in courts. I think this is the way to go.

Madam Temporary Speaker, BBI is all over and is the topic right now. Could the Senate find its space in whatever review that is being done? We cannot keep talking and saying that Senate has not been given prominence in that report and yet not do anything. Let us all walk there and ensure that we watch out for the final product to have and reinstate the Senate, as it should be according to the law.

Thank you, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Thank you, Senator.

Hon. Senators, there being no other request for contribution, I now put the question.

*(Question put and agreed to)*

Hon. Senators, following this approval, therefore, the SBC shall meet next week, Tuesday, 18<sup>th</sup> February, 2020, at noon.

### ADJOURNMENT

**The Temporary Speaker** (Sen. (Prof.) Kamar): Hon. Senators, there being no other business, it is now time to adjourn the House. The House, therefore, stands adjourned until, Tuesday, 18<sup>th</sup> February, 2020 at 2.30 p.m.

The Senate rose at 4.23 p.m.