

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Tuesday, 3<sup>rd</sup> March, 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

##### TRANSFER OF FUNCTIONS FROM THE NAIROBI CITY COUNTY GOVERNMENT TO THE NATIONAL GOVERNMENT

**The Speaker** (Hon. Lusaka): Hon. Senators, as you recall, on Thursday, 27<sup>th</sup> February, 2020, the Senate Minority Leader, Sen. Orenge, rose on a point of order seeking the clarification of the Speaker on the directions issued on Wednesday, 26<sup>th</sup> February, 2020, relating to a Motion for Adjournment on the transfer of functions from one level of government to another.

Hon. Senators, by way of background, you will recall that on Tuesday, 25<sup>th</sup> February, 2020, vide *Gazette* Notice No.1609, dated the same day, the Nairobi City County Government ceded some of its functions to the national Government through a deed of transfer of functions entered into between the national Government on one hand and the Nairobi City County Governor on the other.

Thereafter, by a letter reference No. Senate/ML/2020(3), dated 26<sup>th</sup> February, 2020, the Senate Majority Leader, Sen. Murkomen, notified the Speaker of his intentions to move a Motion for the Adjournment of the Senate pursuant to Standing Order No.34, aimed at definite matter of urgent national importance, namely, the transfer of functions from the Nairobi City County Government to the national Government.

At the sitting of the Senate held on Wednesday, 26<sup>th</sup> February, 2020, pursuant to Standing Order No.34(1), the Senate Majority Leader rose to seek leave to move the Adjournment for Motion. The request was supported by the requisite number of Senators under Standing Order No.34 (5). The Chair then appointed 3.30 p.m. as the time for moving of the Motion, at which time the Motion was moved, seconded, proposed and debated then ensued.

Hon. Senators, upon conclusion of debate on the Motion, the Chair observed that the Mover of the Motion, the Seconder and the Senators who had contributed to the Motion had raised various issues on the constitutionality, legality and procedure relating

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to the transfer of the functions of the Nairobi City County Government to the national Government.

Consequently, the directions were issued from the Chair that the Standing Committee on Devolution and Intergovernmental Relations jointly with the Standing Committee on Justice, Legal Affairs and Human Rights-

- (1) convene hearings on the matter and receive submission from the various constitutional and statutory office holders;
- (2) submits an interim report to the House within 21 days on the constitutional, legal and procedural issues arising, highlighting legal statutory or constitutional gaps;
- (3) conducts public participation on the matter after the submission of the interim report; and,
- (4) submits a comprehensive report to the Senate within 60 days with proposed legislative amendments to improve the existing legal framework on the transfer of functions between the two levels of government and to give clarity on the same.

Hon. Senators, it was on this basis that on Thursday, 27<sup>th</sup> February, 2020, The Senate Minority Leader rose on a point of order seeking clarification on, among others, the directions that referred the matter to the two Standing Committees. The Senate Minority Leader, while observing that these directions had been made in the exercise of the discretionary powers of the Chair under Standing Order No.1, stated that in the practice of the Senate, a Motion for Adjournment under Standing Order No.34 does not usually result in such directions.

He further stated that the Motion before the Senate was: “THAT the Senate do now adjourn.” Therefore, any resolution or direction made the Motion for Adjournment would go beyond the scope of an Adjournment Motion, which was to adjourn the House for the purpose of discussing a definite matter of urgent national importance. Sen. Poghiso and Sen. Olekina also rose in support of the point of order by the Senate Minority Leader.

Having listened to the request by the Senate Minority Leader and the contributions of the two Senators, I undertook to give a ruling today, Tuesday, 3<sup>rd</sup> March, 2020. I further directed that in the meantime, the Committees do not proceed in the manner directed on Wednesday, 26<sup>th</sup> February, 2020.

Hon. Senators, the question that requires my determination is whether any action or directions can ensue from a Motion for Adjournment. Hon. Senators, Standing Order No.34(1) provides that a Senator may at any time rise in his or her place and seek leave for reasons stated to move the adjournment of the Senate for the purpose of discussing a definite matter of urgent national importance.

Paragraph (2) further requires that a Senator who wishes to seek leave to move the Motion for Adjournment of the Senate to hand to the Speaker a written notification of the matter, after which the Speaker being satisfied that the matter is definite, urgent and of national importance, may approve the matter.

Paragraph (3) of the Standing Order No.34 states that the Motion to be moved shall be:

“THAT the Senate do now adjourn to discuss a definite matter of urgent national importance namely”---

Standing Order No.34 (4) further states that the Motion shall be seconded and proposed, but no question shall be put at the end of the debate.

Hon. Senators, Motions for Adjournment of the Senate pursuant to Standing Order No.34 have been used several times in the Senate. As an example, the Senate has at various times used the mechanism to discuss the taxation burden on Kenya, the security situation in Mt. Elgon Constituency, Bungoma County and the disaster in West Pokot County that had been occasioned by a landslide that claimed over 50 lives.

Motions for Adjournment are not unique to the Kenyan Senate or the Parliament of Kenya. They are legislative instruments that are a common feature in most Commonwealth legislatures, including Canada, India, Australia, New Zealand, Zambia and South Africa.

Hon. Senators, the provisions of the Standing Orders and practices and procedures of comparative jurisdictions in the Commonwealth reveal the following as some of the common principles that govern the use of Motions for Adjournment on urgent matters of national importance:

- (1) An Adjournment Motion may be sought for the purpose of discussing a definite or specific matter of urgent national or public importance.
- (2) Notice of an Adjournment Motion proposed to be moved on a particular day is to be given to the Speaker at an appointed hour prior to the sitting of that day.
- (3) In determining whether an Adjournment Motion should be allowed, the Speaker shall have regard to various matters including-
  - (a) not more than one such Motion shall be moved at the same sitting;
  - (b) not more than one matter shall be discussed on the same Adjournment Motion;
  - (c) the Motion should be restricted to a specific matter of recent occurrence.
  - (d) the Motion should not raise a question of privilege;
  - (e) the Motion should not revive discussion on a matter that has been discussed in the same sessions;
  - (f) the Motion should not anticipate a matter which has been previously appointed for consideration; and,
  - (g) the Motion should not raise any question which according to the Standing Orders, should be debated on distinct Motion for which notice has been given in writing.

Where the Speaker gives consent for an Adjournment Motion to be sought, the Speaker shall call the Member to rise in his or her place and ask for leave to move the adjournment of the House, which shall require the support of a designated number of Members.

If the request receives the requisite support, a time shall be appointed for moving of the Motion. At that appointed time, debate on the Motion shall proceed. When the debate is concluded, the Speaker is required to forthwith adjourn the House, and in effect, close debate on the Adjournment Motion. Different mechanisms can exist for this purpose.

In the Parliament of Canada, the Speaker is required, when satisfied that the debate has been concluded, to declare the Motion carried and forthwith adjourn the House until the next sitting day. In the case of India, India's Lower House of Parliament, the Lok Sabha, the Speaker may, if he is satisfied that there has been adequate debate, put the question.

In the Parliament of New Zealand, at the conclusion of the debate, the Motion lapses without any question being put. These provisions are similar to those provided in our Standing Orders.

Hon. Senators, you will observe that the Adjournment Motion, as a legislative instrument, varies in terms of its effect and outcome when compared to other legislative instruments provided for in our Standing Orders. For example, in the case of Motions provided for under Parts XII and XIII of the Standing Orders, once debate on such Motions is concluded, a question is put for the decision of the Senate. This constitutes the resolution of the Senate on the Motion. In the case of Bills as provided for under Parts XX and XXI of the Standing Orders, the eventual outcome after the legislative process is the enactment of legislation.

Statements as provided for under Part XI of the Standing Orders, may, depending the Standing Order under which they are made or sought, result in an inquiry to be undertaken by the relevant Committees. Petitions which are a significant method of which the public may bring matters of concern to the Senate, will usually result in an inquiry conducted by a relevant Committee, following which a report on the Petition that constitutes the response to the petitioner is tabled in the Senate.

Unlike these legislative instruments, the nature of an Adjournment Motion is that while it provides an opportunity for immediate discussion of a definite matter of urgent national importance, without reference to the usual notice periods required, it does not result in a resolution or a decision of the Senate. In nature, it is such that no action is required of the Senate at the conclusion of its debate. Indeed, this is the design of this legislative instrument.

Hon. Senators, Standing Order No.1(1), provides that in all cases where matters are not explicitly provided by this Standing Orders or by the other orders of the Statute of the Senate, any procedural question shall be decided by the Speaker. Standing Orders No.1 (1), therefore, provides for discretion on the part of the Chair, where there is a lacuna in the Standing Orders.

Where such lacuna exists, Standing Order 1(2) requires that discretion shall be applied with reference to the Constitution, Statute Law and usages, forms, precedents, customs, procedures and traditions of our Parliament and other jurisdictions where applicable.

In the case of an Adjournment Motion, Standing Order No.33 (4) provides that the Motion to be moved is, "That the Senate do now adjourn to discuss a definite matter of urgent national importance."

Standing Order No.3 (4) further provides that an Adjournment Motion shall be seconded and proposed, but no question shall be put at the end of the debate. There is, therefore, express provision to the effect that at the conclusion of debate on an Adjournment Motion, there is not resolution or further action required of the Senate. This would apply notwithstanding to the weight or gravity of the matter that has been raised

under an Adjournment Motion. It constraints the Senate to do no more even where a specific action or outcome would be desirable on account of the matter before the Senate.

It, therefore, behooves a Senator, who desires a specific outcome, to consider the use of the appropriate legislative instrument or tool rather than an Adjournment Motion. A Motion for adjournment cannot give rise to a decision by the Senate as contemplated under Article 123 of the Constitution.

Hon. Senators, in the circumstances, taking into account the provisions of Standing Order No.1 and No.34 of the Senate, and further taking into account relevant procedures of the comparative legislatures and having consulted within the presidium, I hereby find that no resolution or direction can ensue upon the conclusion of a debate on an Adjournment Motion on a definite matter of urgent national importance.

Accordingly, the directions issued on Wednesday, 26<sup>th</sup> February, 2020 on the matter of the transfer of functions of the Nairobi City County Government to the national Government are hereby vacated.

Thank you.

VISITING DELEGATION FROM TAITA-TAVETA  
COUNTY ASSEMBLY

**The Speaker** (Hon. Lusaka): Hon. Senators, I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, of visiting members of staff from Taita-Taveta County Assembly.

They are -

- |                          |   |                                  |
|--------------------------|---|----------------------------------|
| (1) Ms. Mwambere Phelis  | - | Hansard Editor                   |
| (2) Mr. Wilfred Msengeti | - | Audio Officer                    |
| (3) Mr. Kennedy Oyugi    | - | Hansard Reporter                 |
| (4) Mr. Cosmas Mesighana | - | Public Communications<br>Officer |
| (5) Mr. Godwin Machila   | - | ICT Officer                      |

On behalf of the Senate and my own behalf, I welcome them to the Senate. I wish them well for the remainder of their stay.

I thank you.

*(Applause)*

Sen. Mwaruma, you are not indicating that you want to welcome your---

**Sen. Mwaruma:** Thank you, Mr. Speaker, Sir, for this opportunity to join you in welcoming the staffers of Taita-Taveta County Assembly.

I would like to tell them to feel at home. They will have a lot to learn from here, especially for the ICT and audio officers. Welcome and go to Committees where you will have a lot to learn. When you go back to Taita-Taveta, please, do not forget to pass our greetings.

**The Speaker** (Hon. Lusaka): Sen. Kinyua, proceed.

**Sen. Kinyua:** Asante Bw. Spika. Ninaungana na wewe kuwakaribisha wageni wetu kutoka Kaunti ya Taita-Taveta. Tumekuwa hapa na Sen. Mwaruma ambaye tunamjua kama mfanyakazi hodari. Tena tunajua kuwa katika Kaunti ya Taita-Taveta

kulikuwa na mambo fulani. Mimi kama Mwenyekiti wa Kamati ya Ugatuzi ninawapongeza kwa sababu waliyatatua yale maswala sugu kwa njia ya amani na sasa tunajua mambo yanaendelea mbele. Hongera!

Mkifika nyumbani, mpeane salamu zetu na msememe tunaangalia kazi nzuri wanayoifanya baada ya misukosuko kidogo.

### STATEMENTS

#### STATUS OF THE LAPPSET PRESIDENTIAL SCHOLARSHIP PROGRAMME IN LAMU COUNTY

**The Speaker** (Hon. Lusaka): Is the Senator for Lamu County not here?

*(Statement deferred)*

Sen. (Dr.) Musuruve, proceed.

#### ESTABLISHMENT OF YOUTH DEVELOPMENT CENTERS IN THE 47 COUNTIES

**Sen. (Dr.) Musuruve:** Mr. Speaker, Sir, thank you for giving me this opportunity. I rise pursuant to Standing Order No.48 (1) to seek a Statement from the Standing Committee on Labour and Social Welfare concerning establishment of youth development centers in the 47 counties.

In the Statement the Committee should:

- (i) State how many youth development centres were established in the pilot phase of the sector plan for gender, youth and vulnerable groups in 2013 to 2017 by the then Ministry of Devolution and Planning in various counties.
- (ii) state whether Youth Development Centers were established in all the 47 counties as of 2017 as envisaged in the Sector Plan;
- (iii) state whether the Youth Development Centers are well equipped and functional to serve the purpose they are intended for;
- (iv) present audited information on the Youth Development Centers and success record since inception of the centers; and,
- (v) explain the interventions that the centers have come up with to reduce youth unemployment in the country.

Mr. Speaker, Sir, allow me to comment on this Statement. In quite a number of counties, it is possible to find a number of youth who are unemployed and idle. As a result of being idle, they get into activities that are not desirable for this nation. Some youth get into drugs and become drug addicts. Some of them have no mentors and end up killing each other. Because of the many psychosocial problems that youth go through, there is a need for the Committee on Labour and Social Welfare, where I sit, to investigate these centers and give a report.

**The Speaker** (Hon. Lusaka): Sen. (Dr.) Milgo:

**Sen. (Dr. Milgo):** Thank you, Mr. Speaker, Sir. I rise to support this Statement that will come to my Committee. This is a very important Statement, bearing in mind that in the just conducted census, the youth are well over 65 per cent of the population. These centers will serve as areas to engage our youth and prevent them from engaging in various activities that would otherwise affect them.

Very many of our youth engage in drug and substance abuse. Others have been lured into joining illegal groups such as *Al Shabaab* and many others. Others engage in thuggery and other bad activities. When this Statement comes to the Committee, we shall get into the nitty-gritties of this. We shall ensure that the youth, who constitute a large part of the population, will have centres to expend their energy.

**The Speaker** (Hon. Lusaka): Next Statement by Sen. Halake.

INCESSANT FIRE OUTBREAKS IN SEVERAL  
COUNTY FINANCE OFFICES

**Sen. Halake:** Thank you, Mr. Speaker Sir. I rise, pursuant to Standing Order 48 (1), to seek a Statement from the Standing Committee on Devolution and Intergovernmental Relations regarding the incessant fire outbreaks in several county offices, destroying official and crucial documents, mostly from the finance offices.

In the Statement, the Committee should -

- (1) Explain the circumstances that led to the fire outbreaks that burnt down offices holding financial records in Migori, Homa Bay, Kitui, Busia and Kisumu counties, destroying crucial documents that are used for audit purposes.

As the over sight body for counties, I have been wondering at what point we will have of these things looked into, with a view to identifying whether or not these fires were just an accident or there was certain mischief to it.

- (2) State the measures, if any, that the county governments have put in place to hold the persons responsible for the destruction accountable and ensure that such occurrences are not repeated.

Mr. Speaker, Sir, we need to look into these issues. I hope that we will get to the bottom of this.

I rest my case and I hope that this will be looked into.

**The Speaker** (Hon. Lusaka): Sen. Ndwiga, is that the Statement?

**Sen. Ndwiga:** Mr. Speaker, Sir, is it okay if I give the Statement from here?

**The Speaker** (Hon. Lusaka): I can see some interest on Sen. Halake's Statement. Sen. Iman, do you want to comment on the Statement?

**Sen. Iman:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to contribute to Sen. Halake's Statement. Is it a coincidence that it is only the finance offices that are being burnt in these counties? Is there mischief that only the finance offices are being burnt?

Secondly, if these counties have fire brigades, why have they not stopped these offices from being burnt down?

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

**Sen. Omogeni:** Mr. Speaker, Sir, the issue that has been raised by Sen. Halake is very important. This is an issue that needs to be escalated to the office of the Director of Criminal Investigations (DCI). This is because what happens in most of these counties is that any time there is a visit by the Ethics and Anti-Corruption Commission (EACC) or the DCI, there is a fire outbreak and often times it is in the finance offices.

The DCI should appear before this House and tell us whether investigations around the offences of arson have been done in any of these counties and there have been any recommendations to have the culprits arrested and charged in courts of law. This is just a scheme of some very unscrupulous people in counties to ensure that they destroy evidence, so that any attempt to nail them on corruption cases does not succeed.

It is a very serious matter, and I hope that the Committee will not just stop at meeting some 'small people' here and there. They should meet the Head of the DCI to tell us what he has done with regard to investigations around these fires.

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

**Sen. Farhiya:** Thank you, Mr. Speaker, Sir, for giving me an opportunity to contribute on this. This is arson and there should be no debate about the intention of this. It is very clear what the intentions are, given the fact that other documents and officers never get burnt. What is so important about the finance offices? This has to do with the corruption that exists in the counties. Very soon, you will probably hear of documents burning in Wajir County, because I think that county is also corrupt. Maybe I will be quoted for saying that in this House.

Mr. Speaker, Sir, there is need of coming up with a solution by having a virtual system of storing information that safeguards the financial documents. Other institutions that are serious about financial records already have that. This includes expanding the Integrated Financial Management (IFMIS) system in such a way that documents that related to payments are part of the storage system. That has been done in other institutions, and it is possible.

This is corruption, and there is no other explanation. Therefore, anybody who is found to be burning documents should be charged for that crime.

Mr. Speaker, Sir, I support.

**Sen. Ochillo-Ayacko:** Thank you Mr. Speaker, Sir. My county is one of the counties whose records were burnt sometime in 2017. I remember my governor appearing before the County Public Accounts and Investments Committee (CPAIC) and he was asked to avail the documents.

We know that fires do occur and in law, it is expected that a fire may burn anything. However, the Public Finance Management (PFM) Act is very specific that county financial records must be backed up. In fact, it is an offence not to back them up.

It is expected that somebody might even bomb the county offices, but it is not envisaged that the records would disappear. I want to ask those responsible for this to initiate or cause the responsible offices like the Directorate of Criminal Investigations (DCI) and the Ethics and Anti-Corruption Commission (EACC) to initiate prosecution against these executives for not backing up these documents.

We know that fires do happen; it could be accidental, willful or anything but, to say that records cannot be traced for public funds that were spent, is the height of joking or bad manners. These governors must be made to avail the records. If they did not back



them up, they should be put where they belong; where people who try to erase records or prevent investigations from going on are put.

Thank you, Mr. Speaker, Sir.

**Sen. Kinyua:** Thank you Mr. Speaker, Sir, for giving me this opportunity. I would want to thank Sen. Halake for bringing this Statement. I want to give an undertaking to this House that we will follow that matter seriously.

We will invite all the required officers, as Sen. Omogeni said, to this House so that the other Members can interrogate them seriously, and we can get to the bottom of the matter.

It cannot be coincidental that the only offices that are getting burnt are the ones that keep very serious records of finance. Therefore, it means that maybe there is cover-up and that is what we are going to unearth, so that Kenyans can know exactly what is happening or what happened.

Thank you, Mr. Speaker, Sir.

**Sen. Olekina:** Thank you, Mr. Speaker, Sir. Let me thank Sen. Halake for bringing up this matter since it should make us think about how we can avoid these things from happening.

The moment we treat public information as public information, is the day that we can ensure that we develop as a nation that is open. We talk about a cloud solution. Any person with a business will treat paper as secondary information.

I think it is an opportunity for us to look at the PFM Act and maybe amend the section that requires every county government to back up their financial records to make sure that we are very specific in terms of how records that are held by all the 47 counties should be kept.

I dare say that the best way, and the only way that we can ensure that we do not get into *pinky-ponky* games with governors, saying that there were fires in records offices, is by making sure that there is a public portal that all these governors post all the records for all the programmes that they fund. For example, if it is Narok County financial records, anyone in Kenya should be able to access them and say: "These tender documents were issued, these are the companies that applied and there is a clear status report on how each of the projects are progressing."

This is to ensure that in the event that there is a fire, we do not really care about the secondary documents which are kept under lock and key. When I hear people saying that they have lost all financial records and cannot trace them, it makes me wonder. This information is found at the Kenya Revenue Authority, the Central Bank, Office of the Controller of Budget and the Office of the Auditor-General, where you can recreate all those documents.

Instead of spending public money to recreate those documents, I think it is about time that we should find a solution. Even if we lament and raise these issues on the Floor of this House, unless we have a concrete solution or way forward, we cannot achieve anything.

I am happy that Sen. Kinyua has said that we will call all the governors involved, talk to them and find out what happened. However, instead of calling all those governors, the Committee should come up with a solution.

My suggestion to them is to look at the existing legislations. How do we make sure that it is watertight, so that when you are tasked with a fiduciary responsibility, you cannot come back and say that we cannot account to the Auditor-General because our documents were burnt down during the recent fire?

Mr. Speaker, Sir, the Committee that will be looking into this matter should not only come up with an explanation as to why these fires are occurring, but also come up with a solution as to how we will prevent these things or public money from being lost in such dubious activities.

Thank you, Mr. Speaker, Sir.

**Sen. Wetangula:** Mr. Speaker, Sir, I want to join the House in speaking to these very absurd incidences in the counties. Before we even talk about county offices burning, there was a wave of fires in schools. Every other school was going up in smoke and investigations showed that these were acts of arson.

It is unbelievable that the fires that have erupted and consumed finance offices in the four counties that have been mentioned. It happened in such a way that no records were left. Why did the fire not erupt, for example, in the office of public works? Why not in the office of public service? Why the finance office?

In each of the four counties, the fires are clearly an act of criminal culpability. I want to urge this House and the Committee Chair, Sen. Kinyua, to quickly look at the law and obligate each and every county not to store financial information in hard copies alone. Banks have vaults where they can go and keep their soft copies.

In fact, we should obligate each county to have a fireproof strong room where records of finance are kept. What would happen is that thieving governors will just organise and set the finance offices on fire and when they are called here to the CPAIC meeting or DCI, they say: "Our records were burnt; give us the benefit of doubt."

In fact, the DCI should start by dealing with those whose offices burned and proceed to investigate thoroughly to see whether those in very high places or subordinate to them have anything to do with this. I do not believe that a junior officer in the accounts department would commit such an act without conspiring with those who will get the highest level of benefit from such a fire.

This could go on and on. You remember when there was a bomb blast next to Central Bank of Kenya; we never heard of records disappearing. The headquarters of the Co-operative Bank was razed down, but we never heard of records disappearing or accounts being lost. Co-operative Bank quickly re-emerged and it is stronger than ever before.

Therefore, these acts of reckless arson to destroy records and conceal fraudulent activities in counties must be dealt with by this House and the sooner the better. *Kazi kwako Bwana* Chairman.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to add my voice to this Statement. I want to commend Sen. Halake for coming up with this Statement on the issue of fires, especially in the finance departments.

It is an issue that we must take seriously because it cannot just happen that in public offices, especially the finance departments, fires are occurring. My thinking is that probably these fires are manmade. It is not really an accident where you can say that there was an electrical fault. There is need to investigate the causes of the fires---

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order, Members! Let us consult in low tones. Proceed, Sen. (Dr.) Musuruve.

**Sen. (Dr.) Musuruve**: Thank you, Mr. Speaker, Sir. In investigating the causes of these fires, there is also need for stringent measures to be taken in that area where officers work. For example, if the fire erupted in the finance department, all the people in that department need to be brought on board to help in the investigations. This is because they may not be very far from the cause of the fire.

There is need for us, as the Senate, to find a way of ensuring that officers are accountable in the sense that they are not deliberately causing fires in offices. This is because in the event that fires occur in offices, then it means that the offices have to be repaired, refurbished and all that. All that takes away the taxpayers money, and we have to see how to protect the taxpayers, so that they do not pay for a deliberately caused of fire.

Thank you, Mr. Speaker, Sir, for the opportunity. I hope that the relevant Committee that will handle this matter will work diligently and with speed to ensure that these fires come to a stop.

**Sen. Mutula Kilonzo Jnr.**: Mr. Speaker, Sir, I wish to thank Sen. Halake for raising this concern. The fires in counties are like those in Gikomba Market; they will happen again and again, and promises will be made.

Mr. Speaker, Sir, somebody made a comment; that for some strange reason – and maybe when you were at the Council of Governors (CoG) something was agreed – that all finance departments will be housed in temporary structures that are not fireproof. Therefore, when any governor is being queried, all they need to do, as in the case of Kitui County, is to just burn the records.

Mr. Speaker, Sir, following what Sen. Wetangula said, there must be regulations. If we go to the court house, we find fireproof cabinets where all files are kept. In fact, they are not just fireproof; nobody can access them unless one has a code. Therefore, whichever Committee is going to deal with this issue, the better way is to have regulations and a framework where documents belonging to a county – particularly the finance department – will be kept in fireproofed rooms. The county must ensure that, that is done. That is the best way, so that we can ensure that other than keeping the hard copies, there must also be backup copies.

It is only in county governments where documents concerning finances are like papers that light charcoal burners. It is arson, and we must call it as it is. The county governments, through their governors, are burning these financial records to hide corruption, and they must take responsibility for it.

Mr. Speaker, Sir, you are aware that there is a governor who assumed office and found the documents scattered in somebody's house. That is why The Assumption of Office of the County Governor Act was supposed to ensure there was a framework for governors to hand over documents and schedules. It is deliberate. Let us call it the way it is. It is not a fire, but deliberate arson to conceal corruption.

Thank you, Mr. Speaker, Sir.

**Sen. M Kajwang'**: Mr. Speaker, Sir, I was discussing a similar subject in Kisumu County on Saturday when I had visited the Senator for Kisumu. The public was

concerned that financial records in Kisumu County had been burnt in a fire that was mysterious. What is disappointing about the Kisumu fire is that the distinguished Governor of Kisumu sat in this House as the Chairperson of the County Public Accounts and Investments Committee (CPAIC). It is very suspicious when fire decides to raze down financial records at a time when they are dealing with pending bills. The fire then starts and ends in the finance department, and does not burn the governor's office or other offices that are adjacent.

*(Laughter)*

It is not only in Kisumu County. I cite Kisumu County because it is a disappointment to this House, when a person who was an eminent and distinguished Member - a person whom we are very proud of - would have these things happening under his watch. It has happened in my own county of Homa Bay. It has also happened in Migori, Busia and Kitui counties. Therefore, I agree with Sen. Mutula Kilonzo Jnr. that these are deliberate cases of arson.

Mr. Speaker, Sir, we dealt with these issues last year when these counties came before the Senate. We insisted that each county government must, within three months, implement a risk management framework. That is a requirement in the law; it is in the Public Finance Management (PFM) Act. Some of these counties have fire engines that can respond to fires in markets, but not in finance departments.

*(Laughter)*

Mr. Speaker, Sir, when the Director of Criminal Investigations (DCI) comes in to investigate--- One comical case was the one for Migori County, where we even had a report from the DCI saying that investigations were underway. That was the beginning and end of the statement. In Homa Bay County it is the same story; that investigations are under way. The DCI is letting this country down. We know some of the shenanigans happening in counties between the DCI and the Ethics and Anti-Corruption Commission (EACC). We demand to be told the truth around these fires.

Finally, Mr. Speaker, Sir, in terms of responsibility and culpability on these fires, it lies squarely with the Chief Executive Officer (CEO) of the county, who happens to be the governor of the county. That is the position that the CPAIC has taken; that the governors, alongside the County Executive Committee (CEC) Members for Finance or Treasury, whom the PFM Act requires to put in place a risk management framework, must be directly responsible for the losses occasioned by these fires.

Mr. Speaker, Sir, the National Treasury must also help counties by making sure that the Integrated Financial Management Information System (IFMIS) becomes an alternative source of truth. In Migori County, they could not account for close to KShs1.5 billion. They went back to IFMIS, trying to justify from it, yet in every other county, they will tell you that IFMIS does not work properly to the last cent. Shame on the governors and the CECs for Finance from these counties who are burning records. This time round, as the Senate, we must hold some of these governors to account for those very heinous acts.

Thank you, Senator Halake, for bringing this Statement.

*(Applause)*

**Sen. (Dr.) Mwaura:** Thank you, Mr. Speaker, Sir. It is quite interesting to hear Sen. M Kajwang' speaking in a very comical manner, trying to demonstrate how fires are started. It is curious, of course, that these fires seem to only happen at the finance departments. However, this is not the first time that this is happening.

Mr. Speaker, Sir, I rise to support this Statement for investigation. You will remember that when Joe Aketch was the Mayor of Nairobi it also happened. The documents were burned. Actually, almost half of the City Hall burnt, but only around where the documents were kept. That means that it is a pre-conceived idea, so that people are able to cover up for misappropriations when audits are supposed to be done.

Therefore, Mr. Speaker, Sir, this statement is very important, because it also speaks to the issue of recordkeeping. We need to come up with a system, as country, where such documents are stored electronically. This is because when people know you can still retrieve such documents, where they are secured in the i-cloud, even if they are to destroy the physical evidence in terms of receipts and what have you, they would have already been scanned and we can still go ahead and carry out an audit.

Further to that – and I think Sen. M. Kajwang' can agree with me on this – is basically our preoccupation with what we call financial audits. It is also important for us to do performance audits, so that we do not just look at how money was spent, but also whether work was actually done. This is because even if one was to destroy documents and demonstrate that work was done, then it would be evidential. However, now that we are very much preoccupied with receipts, bank statements and what have you, we can see this kind of behaviour.

Mr. Speaker, Sir, this is a matter of concern, and it should be arrested now. This is because if it happened in the defunct local government, it is also happening with the new counties, which we expected would be more sophisticated. It could, therefore, also happen in future.

With those few remarks, I support.

**Sen. (Dr.) Zani:** Mr. Speaker, Sir, just to reiterate what Sen. Mwaura has said, this is not the first time we have had fires. In fact, we envisaged – I think it was in the Committee on Finance and Budget – that this might happen when we began to have sessions with governors due to lack of transparency, contrary to what we had expected. Somebody had imagined what might happen if records are burnt. That is when we thought of coming up with legislation on the same.

At that time, we thought it was going to be the most ridiculous thing that people would do. However, it is now happening regularly and that is frightening. It means that we do not even respect the fact that that it is taxpayers' money that goes to the counties. That money is meant to be used for social and economic benefits for the people of Kenya. Devolution did not come to enrich a few people. Devolution came so that *mwananchi* can actually feel the social and economic impact. It becomes dangerous when that money does not reach the people.

Some of the proposals to contain the situation were to come up with a heavy penalty for a fire setup in a county. By doing so, if someone thinks of setting up fire, they should know where to get the money.

The Committee on Finance and Budget should come up with serious legislation to ensure that this does not happen in the future. Like others have said, we need to have other systems that can back up the information and the data.

Mr. Speaker, Sir, so many questions have been raised in this House about the Integrated Financial Management Information System (IFMIS). We have never demystified and gotten the right answers regarding the IFMIS. We have had Motions and Statements on the Floor of this House, but we still do not understand where the delinking is. When we go to the counties, the governors say that they use the IFMIS but how do we get the money that disappears?

We are a signatory to Open Governance Partnership (OGP). Therefore, we need to have open governance systems and partnerships. That means that open and transparent systems must be real time, so that even if you have finance offices burnt, we can still have the data that every Kenyan can look at and understand what is going on. We are letting down Kenyans. The fires are an epitome of problems in the counties.

I thank you.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Outa.

**Sen. Outa:** Mr. Speaker, Sir, I also rise to add my voice on the issue of mysterious fires that have become fashionable in many counties in this Republic of Kenya. I condemn that habit that has denied many Kenyans services. In Kisumu County, a mysterious fire destroyed the finance office only. Other paperwork was intact, but only three computers with the IFMIS were the target. I urge this House to investigate and inquire why it is only finance offices being targeted by the criminals who are employed by the county governments to loot money.

As I speak, we cannot even trace the employees of Kisumu County Government. Kisumu County Government has stated that it does not have information or records of employees. They are now using cheques to pay their workers because of the fire that destroyed the finance office.

Mr. Speaker, Sir, the agencies that have been given the mandate, such as the Directorate of Criminal Investigations (DCI) and the Ethics and Anti-Corruption Commission (EACC), have become more friendly to the act of destroying offices. They do not take any action even if the fires destroyed all the financial information in some of the county government offices. Even if you report, they just tell you that action will be taken, but nothing happens. You will never see them coming back to interrogate or investigate why files are being destroyed.

Therefore, I urge this House to move with speed to save this country. Otherwise, we will be failing in our duties. I thank you.

*(Interruption of debate on Statements)*

**COMMUNICATION FROM THE CHAIR****INQUIRY INTO ALLEGED EXTRAJUDICIAL KILLINGS  
IN NAIROBI CITY COUNTY**

**The Speaker** (Hon. Lusaka): Hon. Senators, as you may recall, on Thursday, 20<sup>th</sup> February, 2020, the Senator for Nairobi City County issued a Statement under Standing Order No.47(1) on the alleged extrajudicial killings of young Kenyans in Nairobi City County. Several other Senators also spoke on the matter. The Chairperson of the Standing Committee on Justice, Legal Affairs and Human Rights informed the Senate that the Committee was undertaking an inquiry into the matter and would table an interim report thereon within two weeks.

Hon. Senators, the Committee has now scheduled a sitting to consider the matter tomorrow, Wednesday, 4<sup>th</sup> March, 2020, at the County Hall, Mini Chamber, from 11.00 a.m. Among the stakeholders scheduled to make submissions before the Committee are-

- (a) The Independent Policing Oversight Authority (IPOA);
- (b) The Directorate of Criminal Investigations (DCI);
- (c) The Director of Public Prosecutions (DPP);
- (d) The Kenya National Commission on Human Rights (KNCHR);
- (e) Amnesty International Kenya;
- (f) HAKI Africa;
- (g) Social Justice Centres Working Group (SJCWG);
- (h) Defender Coalition; and,
- (i) International Justice Mission (IJM).

The Committee extends an invitation to all hon. Senators to attend this important meeting.

I thank you.

*(Resumption of debate on Statements)*

Let us get a Statement from the Chairperson of the Committee on Agriculture, Livestock, and Fisheries on locusts.

**LOCUST INVASION IN VARIOUS PARTS OF THE COUNTRY**

**Sen. Ndwiga:** Mr. Speaker, Sir, Standing Order No.51 (1) provides that a committee Chairperson may make a Statement relating to a matter for which the committee is responsible. In fulfillment of this provision, I wish to make a Statement in regard to the locust invasion in parts of the country.

At a sitting of the Senate held on 18<sup>th</sup> February, 2020, Sen. Wambua made a Statement on the locust invasion in parts of the country, pursuant to Standing Order No.47(1) of the Senate Standing Orders. Noting that the locusts invasion was a matter of national importance threatening food security in the country, the Deputy Speaker directed that the Cabinet Secretary for Agriculture, Livestock and Fisheries be invited to a meeting of the Standing Committee on Agriculture, Livestock and Fisheries to which all Senators were invited.

The Committee met with the Cabinet Secretary on Thursday 27<sup>th</sup> February, 2020, where he admitted that the initial response to the invasion was indeed slow. He, however, assured the Committee that the Ministry was up to the task and briefed Senators on the Government's efforts to control and contain the locust threat in the country as follows-

- (1) That five aircrafts were spraying and four surveillance aircrafts have been deployed and have over the last one and a half months undertaken aerial control of several locust swarms in the affected regions;
- (2) That a total of 28,000 litres of control pesticides have been procured and distributed for use in the affected areas;
- (3) That control equipment has been distributed to the affected counties, including three Kenya Army Land Rovers for ground control, three vehicles mount and sprayers used by the army Land Rovers, 34 motorized sprayers, 70 handheld ultra low volume applicators, and 250 Personal Protective Equipment (PPE);
- (4) That a team of experts has been deployed to the affected areas to train and mobilize the county extension teams to support the locusts control efforts;
- (5) That a total of 240 extension officers from the affected counties have so far been trained in 21 counties and 500 National Youth Service (NYS) men have been identified and mobilized for training in locust ground control.

(6) That a locust disaster coordination centre supported by a team of locust management and communication experts from the Food and Agriculture Organization (FAO) has been established at Kilimo House to provide day-to-day information on the measures the Government is undertaking to eradicate the desert locusts.

(7) That, six control bases have been set up in all affected regions, that is Wajir, Marsabit, Isiolo, Masinga, Garissa and Lodwar.

(8) That, the Ministry has deployed a team of experts to carry out an impact assessment of the devastation caused by the locusts. The report of this assessment shall be used to reconstitute affected farmers.

(9) That, the Ministry is launching a public campaign to sensitize the public on the handling of the locusts.

In addition to the above mentioned efforts, the Cabinet Secretary (CS) informed the meeting that there are plans to increase the number of spray aircrafts to 20 with the support and collaboration of development partners including Food and Agriculture Organisation (FAO). That is, 10 for spraying and 10 for surveillance. Also, there are plans to acquire and deploy 20 vehicles equipped with suitable sprayers for ground control and mainly the hatching hoppers.

Mr. Speaker, Sir, to establish the extent of damage by the locust invasion and the measures taken to mitigate the effects of the invasion, the Committee undertook a county visit to Embu, Tharaka Nithi and Samburu counties on Friday, 28<sup>th</sup> February, 2020.

The Committee observed that the level of devastation in the counties was a grave concern and a serious threat to the food security of the nation. Noting that as result of the recent floods experienced in the various parts of the country and the current locust invasion, a looming famine is a reality. Whereas there has been some success in the control of the locusts by the county governments with the help of the national



Government, several challenges are evident. Among the challenges the Committee noted are-

(a) some counties were yet to receive the National Youth Service (NYS) officers to assist in the control of hoppers;

(b) there is a shortage of pesticides and protective gear in the counties. There is need for urgent and consistent supply of pesticides to the counties for the control measures to be successful;

(c) in areas such as Samburu North that are insecure, no measures have been taken to control the locusts whereas they continue to reproduce;

(d) serious danger is caused by the second generation of locusts that have hatched in various counties and neighbouring countries, for example, Somalia; and,

(e) going forward, there is need for consistent support from the Desert Locust Control Organisation for East Africa (DLCO-EA).

Mr. Speaker, Sir, the Committee is taking this matter seriously and shall compile and table a comprehensive report within the next two weeks.

Having said all that, the Committee noted that contrary to what the CS told us, we need four types of pesticides, at any one time, in places like Samburu, that is, for air control, motorized knapsacks and hand sprayers.

Mr. Speaker, Sir, when the Government supplies pesticides, most of the time, people on the ground find that those pesticides can only be used by aircrafts and, therefore, they cannot control hoppers on the ground. The situation is grave.

In Tharaka Nithi, we noted that it is the locals who have been deployed to spray the hoppers. If you see the hoppers you will understand where this country is headed to. If nothing is done urgently, the second generation of locusts will be a devastating situation in the country.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I attended a meeting between the Committee and the CS. I thank---

**The Speaker** (Hon. Lusaka): Sen. Mutula Kilonzo Jnr., I see a lot of interest. So, I give you three minutes so that everybody gets an opportunity.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, you should give me five minutes since I was the first one.

The matter was handled well. However, there are a lot of questions that have not been answered. I will highlight them so that the Committee can answer them.

First, it appears that the CS is tied to the procurement. This is because he has said that the procurement of this pesticide is done by private individuals sent by Government of Kenya. That left me with a question mark.

Second, while explaining why he was misquoted about the yellow locusts which were hanging around a tree and since they were on retirement, they were laying eggs, he said that the reason they could not spray this particular locusts is because they were next to human population. He also said that once they spray a particular area, people take off for one day. I wonder what happens to the air, does it remain stagnant or it disappears?

We need a comprehensive answer on the side effects of these pesticides. I am not persuaded that it can kill locusts and not kill bees or other insects. It does not add up or make sense logically, although I am not a veterinarian.

Third, the country relies on agriculture and it is our livelihood. We are talking about food security. Why is this not an emergency for purposes of procurement, deploying Kenya Defence Forces (KDF) or whoever is needed to be deployed? This is because the number of 50 NYS officers that are to be deployed per county is not enough. For example, Kitui County is suffering.

Mr. Speaker, Sir, is this not the time for the national Government, through the Contingency Fund, to start buying strategic grain reserve? We will have a famine.

Lastly, we need to pray for this country. This is a curse like it was in Egypt.

**The Speaker** (Hon. Lusaka): Before I give a chance to the next Senator, let me make a brief Communication.

*(Interruption of debate on the Statement)*

### COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM DAGORETTI  
NORTH CONSTITUENCY, NAIROBI COUNTY

I would like to acknowledge the presence in the Public Gallery, this afternoon, of visiting students and teachers from Dagoretti North Constituency in Nairobi County.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and my own behalf, I wish them a fruitful visit.

*(Applause)*

*(Resumption of debate on Statement)*

**Sen. Halake:** Thank you, Mr. Speaker, Sir. I thank Sen. Ndwiga for the effort he has made to give us answers on the locust invasion in our counties. Unfortunately, this is not being handled with the urgency it deserves. At what point will we deal with this issue as an emergency? I wonder what we will do if human beings are faced with the Corona Virus.

I was told that the locusts were already in Turkana before they spread to other counties. However, when it was highlighted, nobody took action.

It is good to take these measures but it will be a little bit too late because all the larvae in different places is going to hatch and we are going to have a vicious cycle if this is not done very well. This should be treated with the emergency that it deserves and we need to hear what emergency response actions that the Ministry is putting in place and if they are not able to do it themselves and need back-up, they should reach out. This is an emergency. Foot and mouth disease is also coming up and I have raised this issue. We have a disaster in waiting. We need action that is emergency-based and not what we are hearing here.

Thank you.

**The Speaker** (Hon. Lusaka): The Senator for Nairobi to acknowledge the students.

*(Interruption of debate on the Statement)*

### COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM DAGORETTI  
NORTH CONSTITUENCY, NAIROBI COUNTY

*(Comments on the communication by Senators)*

**Sen. Sakaja:** Thank you, Mr. Speaker, Sir. First of all, allow me to acknowledge on behalf of the Senate and to welcome this group from Dagoretti North Constituency. This is one of the 17 constituencies in Nairobi. These are not students and teachers but they are part of a cohort of young men and women who are part of a mentorship programme under the office of the Senator of Nairobi.

I want to thank your office because you have been gracious enough; this is the third lot from the 17 constituencies that have come here. They have been welcomed very well in the Senate and the National Assembly. They have been shown around and they have had lunch.

For many of them who are getting active in the political discourse in this country and in work within the community, coming here is a big thing and they really appreciate it. However, the one thing that they asked me to do after we had lunch is to make sure that one day, in future, their children will see their names on the HANSARD. I am aware that you did not have the list but I know them. I can see:

- (1) Ms. Fauzia
- (2) Mr. Simon Tiema
- (3) Mr. Eric Nyandiko
- (4) Mr. Dennis Kombo
- (5) Mr. Kirkstone (a nickname)
- (6) Ms. Pamela Liru
- (7) Mr. Patrick Sabula
- (8) Ms. Janet Mungina
- (9) Mr. Dennis Ogubi
- (10) Mr. Clinton Opalla
- (11) Ms. Christabel Ngoya
- (12) Mr. Justin Muli
- (13) Mr. Mwangi, from my office.

Thank you so much for accommodating them and allowing young Kenyans to be able to experience what it means for us as we legislate for them. I hope other Senators will also similarly invite people from their counties.

Allow me to point out from the Statement read out by Sen. Ndwiga---. I did not hear Senators applaud when I mentioned the names, maybe, just one round of applause.

*(Applause)*

Sen. Kwamboka is also here, she is in the Nairobi County delegation, including Sen. Omanga and Sen. Beth Mugo who was their Member of Parliament before and you can see that they are very happy.

*(Resumption of debate on the Statement)*

Let me go to the Statement by Sen. Ndwiga. I want to thank the Committee because we can hear the concerns from what they have gotten and they have given us a way forward. What is alarming is that the areas in which these locusts are now breeding; Samburu North, Baragoi, Baringo, Tiaty and Kapedo, I do not know whether it is fortunate, I had the privilege of leading a team from both the National Assembly and the Senate in the last Parliament when there were high cases of insecurity. Those are areas that even the security forces are afraid of accessing.

The Committee should let us know what is being done to make sure that that new breeding ground is either fully sprayed, not just aerial but something is being done there. These areas that are safer even as we protect them. The locusts that come from Baragoi, Kapedo, Tiaty, Nginyang and Loruk do not know that they are in a hardship area. They will still come to our farms in areas that are peaceful.

Apart from that, we just extend further support to the Committee to make sure that they truly get to the bottom of this matter because, just as Sen. Mutula Kilonzo Jr. has said, this is an impending disaster if not well managed.

Thank you.

**Sen. Wetangula:** Thank you, Mr. Speaker, Sir. I thank Sen. Ndwiga for the comprehensive Statement. We did not expect anything less because he is one of the very thorough Chairmen. I have had an opportunity to attend his Committee and I was quite impressed in the manner he runs it.

Like my colleagues have said, it is surprising that the Government has not declared this a national disaster. You may recall last year, when I asked for a Statement in this House on the security challenges in Turkana, the distinguished Hon. Senator for Turkana told the House that, in fact, part of the problem in Turkana was that locusts had ravaged the entire county of all green vegetation. Nobody appeared to have paid attention. Turkana being an Arid and Semi-Arid Land (ASAL) area, it is just an ideal ground for locusts to breed.

Today, more than half the county is under locust threat. They have ravaged crops, vegetation and like the Senator for Makueni asked; when you spray locusts, do you save bees? What about the animals that feed on the grass that you have sprayed? They will either be contaminated to pass on poison to those who will eat them or they will die. We need an emergency plan.

I saw somebody on TV, in some village in one of the counties crying aloud: 'These insects have not developed wings yet, they cannot fly, come and spray them and kill them before they fly off'. Nobody turned up. Sending National Youth Service (NYS) young boys and girls to battle locusts without the technical know-how does not help. It is like I saw some young man with a club on his shoulder, a whistle and a stick chasing locusts in Kitui. That is not the way to deal with locusts. We want an emergency plan. In

a situation like this, the President should actually deploy the military with equipment to go everywhere and spray these insects and kill them.

The World Health Organization (WHO), Food and Agricultural Organization (FAO) and the United Nations (UN) have already issued an alert, yet we who are affected are having business as usual. Cabinet Secretaries making very bizarre statements that they will just age and die and so on. We need urgent solutions.

I want to urge that you obligate the Chair of the Committee, as long as we have this menace, to give a fortnightly update to this House on what is going on with locust invasion in the country. It is not something that we should take lightly because it is hitting the poorest of the poor because food security is smashed and we must all stand up and be counted.

Lastly, I saw some clip, that counties must have emergency activities to fight locusts but we also know that they have very limited capacity in terms of finances. The Contingency Fund of the State, Kenya, is held at the national Government level. So, we also want the Chairman of the Committee on Agriculture, Livestock and Fisheries to tell this House what level of collaboration and cooperation is going on between counties and the national Government in the war against locusts. What equipment has been deployed and how much money is being sent to the counties with, of course, the usual protection against corruption that is ravaging each county.

Thank you.

**Sen. M. Kajwang’:** Mr. Speaker, Sir, I want to thank the Chair of the Committee on Agriculture, Livestock and Fisheries, he has really gone out of his way to get responses to this House.

The failure of this Presidential system that we have is that we are putting Sen. Ndwiga on the spot to answer to the inefficiencies and the laziness of a Ministry over which he has no control. I look forward to a day when Sen. Ndwiga will be the Cabinet Secretary for Agriculture, Livestock and Fisheries, answering questions from Members rather than acting as a conveyor to go to Kilimo House to bring half-baked answers.

*(Applause)*

The Cabinet Secretary of Agriculture, Livestock and Fisheries came here and it is clear that the Government has got no strategy. It has got many tactics and I think that their main strategy is to pray that God blows a wind that will take the locusts to another country, to pass the problem to another country.

I did not hear it in his Statement, but the Cabinet Secretary had agreed that he would bring to Parliament an economic and social impact analysis of the locust infestation and that should go on record so that in two weeks, that comes to the House.

Finally, there are those who have been eating grasshoppers as a delicacy. We are interested in these locusts but our worry is that we are being told not to eat them after they have been sprayed. My question is, if this pesticide is, indeed, safe as the Ministry says, why are we being stopped from eating those locusts? It means that the Ministry is lying to this Republic. Cabinet Secretary, Hon. Munya, must tell us the truth; is the pesticide safe or not? If it is safe, then let him allow us to eat the locusts when they venture into our regions.

Thank you.

**The Speaker** (Hon. Lusaka): Are you talking on behalf of all the people of Nyanza and Western Kenya?

**Sen. M. Kajwang'**: Mr. Speaker, Sir, Bungoma, included.

*(Laughter)*

**The Speaker** (Hon. Lusaka): Sen. (Eng.) Mahamud, you have the Floor.

**Sen. (Eng.) Mahamud**: Mr. Speaker, Sir, let me thank the Chair for this Statement. Kenyans are surviving by the Grace of God. We thank God to have made it to March, 2020. We have had many challenges from the locust invasion to Corona Virus (COVID-19), terrorist attacks, a bad economy, name it. The country is facing serious dangers.

Locusts, hitherto were called desert locusts and used to be known only in desert areas. We are told that what we are facing today last happened 70 years ago. Today, many parts of the world are seeing this as a weapon of mass destruction because it destroys your livelihood; crops, vegetation and everything. When this invasion first happened in Kenya, it was in the remote areas, but now it is everywhere. The former Cabinet Secretary told us to take pictures and send them if we see any insect that looked like locust. The current Cabinet Secretary said that they were not dangerous; that they were are old. Today the locusts have multiplied. Where they were before, they have left the larvae behind and they are going to metamorphosize and become a disaster. To date, there is no strategy in place, just like in many other things.

First of all, we need prayers in this country because we are also in a very confused political environment. This country must wake up to the reality and deal with the problems that Kenyans are facing, including the locusts menace. If not, very soon we might face a revolution from Kenyans.

I thank you.

**The Speaker** (Hon. Lusaka): Sen. (Prof.) Ongeru.

**Sen. (Prof.) Ongeru**: Thank you, Mr. Speaker, Sir, for allowing me to also weigh in on this matter of locusts. One of the things that have come out quite clearly is the effects of food security for this country. If you look at the major areas of concern for Kenyans, they are agriculture or food security and health. It is quite clear that there is need for us to have a concerted approach on how to handle these emergencies.

I was present when the Cabinet Secretary for Agriculture made a presentation to this House. Initially, I was skeptical but at the end of that presentation, if all those measures that he has put before us can be effected, then I am quite satisfied that the presentation was up to date. They were agreeable on the measures that must be taken, particularly with regard to the second generation of locusts that will develop after this period of time.

Fortunately for farmers, there is a lot of rain, but unfortunately for us, the locusts tend to be dormant during this period of time and resurface when it is warm, and they multiply. I expect a very high intensity of locust production in billions and, therefore, we must be prepared to deal with the menace at that scale. More so, they will ravage every

single greenery that we see around. Therefore, food shortage will be a reality rather than anything else.

The only thing I can say is that, we have not planted crops at the moment. It is a planting season and we must take stock of this menace before planting is done and the green products come up. If we do not do so, it will destroy the future of this nation and the food basket will obviously dwindle.

With those few remarks, I support the Statement by the Chairperson of the Committee. We need to follow up on the promises made on this Floor by the Cabinet Secretary for Agriculture, on whether those measures are being carried out effectively or have been relaxed because they have appeared before us and, therefore, feel that the matter is over.

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

**Sen. Wario:** Asante, Bw. Spika kwa kunipatia nafasi hii. Nimesimama kuunga mkono Taarifa fupi iliyosomwa na Mwenyekiti wa Kamati ya Kilimo ambako ninahudumu kama Mwanachama.

Nzige wanaopatikana katika sehemu nyingi za nchi ya Kenya wameleta maafa mengi, hasa sehemu ninakotoka ya Tana River. Nzige wako kwa wingi. Tulipata baraka ya mvua nyingi hivi karibuni na sehemu zote zimekuwa na nyasi tele. Hasa mazingara yote yamekuwa ya kuvutia na maisha yetu pia imeanza kubadilika. Lakini tangu nzige watuvamie, mazingara hayo yameanza kuharibika. Nzige wamekuwa wengi na wanakula miche yote ambayo inakua wakati wa mvua. Nzige hawa wamesababisha ukosefu wa nyasi na kuathiri wakulima wanaofanya ukulima katika sehemu ya Mto Tana na wale wanaofanya kilimo cha unyunyizaji katika Mto Tana.

Nilipoangalia katika Kaunti jirani, nzige wanapatikana kwa wingi. Kaunti hazina nguvu ya kupigana na nzige. Kwa hivyo, nzige wale wanaendelea kuzaa, kuwa wengi na kutapaka katika sehemu nyingi. Kama Wizara husika haitachukua mikakati muafaka ya kupigana na nzige hawa, basi mvua ile ambayo ilikuwa baraka kwetu itabadilika na kuwa shida kubwa.

Nawasihi Wakenya wote wakuje pamoja na kuomba Mungu. Hasa vile Seneta mwenzangu alivyosema, huu ni wakati ambao wanajeshi wa Kenya ambao wanaonekana kama hawana mambo mengi ya kufanya wanafaa kusaidia katika harakati za kupuliza madawa ya kuwaangamiza nzige. Hii itasaidia katika kupambana na uvamizi huu wa nzige.

Asante kwa kunipa nafasi.

**The Speaker** (Hon. Lusaka): Finally, Sen. Pareno.

**Sen. Pareno:** Thank you, Mr. Speaker, Sir. I thank Sen. Ndwiga for coming up with this Statement, noting that this is not the first time that this House is handling the issue of locusts.

I was reading a verse in the Bible, in the book of Exodus, Chapter 10:12, it reads:

“And the LORD said to Moses, stretch out your hand over Egypt, so that locusts will swarm over the land and devour everything growing in the fields, everything left by the hail.”

Verse 14 reads:

“Never before had there been such a plague of locusts, nor will there ever be again.”

Mr. Speaker, Sir, we need to repent as a country. Since I was born, and I am a bit old right now, I have never seen this kind of locusts. These are signs that we should repent as a country. Maybe there is something that we are not doing right. All the countries affected should repent. We should turn to the Lord and ask for forgiveness. We have the Corona Virus Disease and attacks all over. These are signs that we need to do something right. We are told that in the last 70 years we have not seen such kind of locusts. If it has taken 70 years to see such devastating effects---

*(Sen. Wetangula spoke off record)*

I am informed by Sen. Wetangula that the last invasion was in 1953 before some of us were born.

Mr. Speaker, Sir, this is serious. I hope that the Ministry is going to give us answers and that the situation will not get any worse than it is right now. We are already feeling it. It is said that locusts are food for others but for some of us they are a sign of devastation, hunger and probably drought. We are just about to start the planting season. You can imagine that the rains are here but the locusts---

**The Speaker** (Hon. Lusaka): What is your point order Sen. Kinyua?

**Sen. Kinyua:** Thank you, Mr. Speaker, Sir. I have been listening to the Senator and she started by telling us that she has already got a solution, which is that we can turn to the Lord. All of a sudden, she has said that the Ministry should give us a solution. I thought the first solution is the best and the other is just a preliminary.

**Sen. Pareno:** Mr. Speaker, Sir, we are told in the Bible that you help yourself so that God can help you. We have to start by helping ourselves in the Ministries, in our backyards---

**The Speaker** (Hon. Lusaka): Your time is up. Sen. Ndwiga, just wind up and then we move on.

**Sen. Ndwiga:** Thank you, Mr. Speaker, Sir. I want to thank my colleagues who have contributed to this Statement.

It is true we found that the county governments are very active on the ground but they are handicapped by lack of pesticides and protective clothing. We went to some places in Tharaka Nithi and found women and young men spraying these locusts without wearing any protective gear at all. In Samburu, we were informed and saw - I want to address this to my dear friend Sen. M. Kajwang' about eating locusts - when these locusts are sprayed overnight, since the locusts are carnivorous, the following day, the ones which did not die, turn around and eat the ones which had died and then they also die. That tells you that this pesticide is not safe. When the locusts which survived eat the dead ones which were sprayed, they also die.

Mr. Speaker, Sir, most important is the issue that Sen. Sakaja raised; that we need to find a mechanism of going to Samburu North. Areas like Kapedo, Samburu North and Baringo are very fertile breeding grounds for locusts. Nobody goes there because of insecurity. The people of Samburu are very worried and are saying that if nothing happens and the Government does not find a way of going to those areas, then all the work that is being done now might not be useful.

Thank you.



**The Speaker** (Hon. Lusaka): Hon. Senators, I also want to join you in thanking the Chairperson of the Committee on Agriculture, Livestock and Fisheries. If all Chairpersons moved with speed and reported to this House the way he has done, we would be doing very well. I just want to encourage you.

Senators have urged that this is an ongoing problem and we would require an update after every two weeks so that we are able to know exactly what is going on.

Those of you who want to read the Bible about locusts; you can read 2<sup>nd</sup> Chronicles 7:13 which also talks about locusts. I agree that we need to pray and repent because the locusts are also communicating something. This is Biblical in the books of Exodus and in 2<sup>nd</sup> Chronicles.

But again, from where I come from with my Senator, we say that God helps one who helps himself.

*(Interruption of debate on the Statement)*

### COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM DAGORETTI  
NORTH CONSTITUENCY, NAIROBI COUNTY

*(Comments on the communication by Senators)*

**Sen. Sakaja:** Mr. Speaker, Sir, thank you so much for that advice that once we spray we pray and then repent to deal with the locusts.

I just seek your indulgence; when some things happen, they can cost one politically. There are four people from my group from Dagoretti North that I did not mention and I might be in trouble on the ground.

Mr. Speaker, Sir, there is Wiliam Ng'anga Ndung'u, Lilian Mbaabu, Fatuma Bakari and Antony Maina who are also from there. I forgot to say that in line with the spirit of Building Bridges Initiative (BBI), these groups that have been coming from all the constituencies in Nairobi are from all the political parties. We have them from ODM, Wiper, Jubilee, and from Ford Kenya, Sen. Wetangula has quite some support in this town.

Thank you once more and for helping me salvage that.

**The Speaker** (Hon. Lusaka): Sen. Beth Mugo, you wanted to say something?

**Sen. Mugo:** Thank you, Mr. Speaker, Sir, for giving me the opportunity to also add my voice to welcome very warmly into the Senate the group from Dagoreti, my friends from Dagoreti and to appreciate them very much. They are very hardworking and very development conscious.

*Karibuni.*

*(Resumption of debate on the Statement)*

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I was just thinking aloud and I thought I would bring this to your attention that the last time we spoke about the Corona

Virus disease (COVID-19), the Executive took us so seriously that an Executive order was issued the following day.

I was thinking that in light of what is happening and most of the Senators have said that this is a disaster/emergency or both, I think the Committee should not wait. We should pass a resolution here for the Executive to have this as a national disaster and set aside funds for this exercise.

Sen. Wetangula was talking about the Kenya Defence Forces (KDF), but the KDF can only come in once there is a disaster. That request can only come in once you declare an emergency. I do not think we should wait. I think we should have a Motion in the course of this week.

Thank you.

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

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

**The Temporary Speaker** (Sen. (Prof.) Kamar): Senators, the next Statement is from Sen. Iman.

Sen. Iman, I cannot see you on the screen.

**Sen. Wetangula:** On a point of order, Madam Temporary Speaker. I think this House must be proactive. The point Sen. Mutula Kilonzo Jnr. has raised must elicit some response from the Chairperson of the Committee or the Speaker.

We should not wait for the national Government to declare this a disaster. This House can pass a Motion and call upon the Government to move with speed and declare this a national disaster.

Madam Temporary Speaker, I want to suggest that since the Chair of the Committee on Agriculture is taking the lead, he should draft a Motion and bring it to the House this week; probably tomorrow afternoon or on Thursday. We then debate and pass a unanimous House resolution. This is a House that represents counties that are ravaged by these insects. Once we pass this Motion, we pass it on to the Executive to implement.

**The Temporary Speaker** (Sen. (Prof.) Kamar): The Chairperson of the Committee on Agriculture, Livestock and Fisheries, what is your response on that?

**Sen. Ndwiga:** Madam Temporary Speaker, the military is already involved in this exercise. Having listened to my two colleagues, my Committee will do that. We need more action on the ground than what is currently going on. As Sen. Sakaja and I have just said, there are areas that need military intervention and not just these other interventions.

Therefore, we will be proactive and will bring a Motion to this House.

Thank you.

*(Applause)*

**The Temporary Speaker** (Sen. (Prof.) Kamar): Sen. Ndwiga, what about the timeline?

**Sen. Ndwiga:** On Thursday.

**The Temporary Speaker** (Sen. (Prof.) Kamar): On Thursday, we expect a Motion on that. Thank you.

The next Statement is from Sen. Iman.

## THE SECURITY STATUS IN THE COUNTRY

**Sen. Iman:** Thank you, Madam Temporary Speaker. I rise pursuant to Standing Order 48(1) to seek a Statement from the Standing Committee on National Security, Defence and Foreign Relations, regarding the security status in the country.

In the Statement, the Committee should-

- (1) Outline the measures taken by the security agencies following an alert issued by the United States of America (USA) Embassy on the planned terror attack at a major hotel in Nairobi City County.
- (2) State measures that have been put in place to ensure that citizens receive the right information to avoid panic and unnecessary tension; and,
- (3) Outline the preparedness of the relevant authorities to handle such a threat, should it materialise.

Thank you, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Thank you, Senator. I will now give a chance to a few Members to ventilate on that Statement.

Proceed, Sen. Haji.

*(Sen. Haji was not in the Chamber)*

Who is using that card?

**Sen. Mutula Kilonzo Jnr.:** It is Sen. Sakaja.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Sen. Sakaja, that is a wrong card.

**Sen. Sakaja:** I am sorry, Madam Temporary Speaker. I mistook. It is just that being a creature of habit, since this is where I normally sit--- but the card is Sen. Haji's.

Madam Temporary Speaker, I thank Sen. Iman for requesting this Statement. I hope that the Committee will actually look into it. Of course, we live in a day and age of both threats to security, but also propaganda and fake news. Therefore, I would advise the Committee to first ascertain the veracity of this information. They should also let Kenyans know the channels through which such information is supposed to be shared. This is because you sometimes find something has been shared on *WhatsApp*---

Yesterday, Madam Temporary Speaker, an audio clip was being shared, where somebody was declaring, in a press conference, the toll of Coronavirus Disease (COVID-19) in this country. In the clip, somebody was speaking and saying that there have been - I do not know how many cases - and that was completely fake. This is because some people had sat somewhere in a room and recorded themselves. We are living in that era. The Government was clear that there is no case or such a press conference. I am sure that many of you heard it.

In that same breath, Madam Temporary Speaker, we will find out. Fortunately, the Committee not only deals with security, but also foreign relations. You remember that when we had the DusitD2 Hotel attack, there were misgivings that there was probably a lapse in the security intelligence protocols between the countries on how information was shared. This is because there was supposed to be an earlier meeting of a foreign country in that hotel, and it was moved. Therefore, there were those questions. We will just take the opportunity - in as much as that specific one might be fake news - to establish those

protocols in terms of when such a thing happens, how we inform Kenyans in order to avoid panic as Sen. Iman has said.

Thank you, Madam Temporary Speaker.

**Sen. Wario:** Asante, Bi. Spika wa Muda, kwa kunipa nafasi hii. Kwa hakika, usalama wa nchi hii ni kitu muhimu sana. Ili kupunguza utatanishi na mazungumzo ya hofu nyingi mitaani, ni vyema kabisa tuelezwe kinaga ubaga hali ya usalama ilivyo hapa nchini.

Tukiangazia sehemu za kaunti za Wajir na Mandera, tuliona vile mambo yalivyofanyika jana na juzi. Hali ilikuwa ni kulumbana, na watu walikuwa wakifyatuliana risasi hapa na pale. Kunao majangili walioingia sehemu hiyo, ambao sisi tunanona katika runinga na vyombo vingine vya habari, kwamba kuna hali ya kutatanisha katika upande huo.

Bi. Spika wa Muda, hali ya usalama sio tu kuhusu bunduki, risasi, kupigana na kulumbana. Hali ya usalama pia inatokea upande was magonjwa, kama vile CoronaVirus Disease (COVID-19). Jana nilipotua katika uwanja wa ndege wa Wilson, mtu alinipima kichwa na kuniambia kuwa niko sawa. Nilipotoka hapo, nikajiangalia na kushangaa kwamba yule alijuaje haraka kwamba niko sawa? Hii ni kwa sababu kwanza sikuwa nimetoka Uchina, bali katika Kaunti ya Tana River, ambako kama ninajua, ni sehemu salama, wala hakuna ugonjwa wa COVID-19.

Kwa hivyo, tukishaangalia usalama katika mambo ya kulumbana, twende katika magonjwa kama vile COVID-19, tukienda katika viwanja vyetu vya ndege, ukiteremka tu katika ndege, unapimwa na kuambiwa kwamba joto lako la mwili liko juu ama chini. Sasa, sijajua jinsi gani joto la mwili la mtu linaweza kutambulisha iwapo mtu anaugua ugonjwa wa COVID-19 au la. Sisi tunatoka katika sehemu ya joto katika Kaunti ya Tana River. Kwa hakika, tukiteremka kutoka katika ndege, lazima joto letu litakuwa juu. Ukinipima kisha uniambie, “Joto lako liko juu na unaugua,” basi nitakuwa na wasiwasi. Nikifika kwa mke wangu, nitamwambia, “Nilipofika uwanjani, kuna mtu alinifuata, akanipima kichwani na kitu kama bunduki, na akaniambia kwamba joto langu la mwili liko juu.

**Sen. Sakaja:** Hoja ya nidhamu, Bi, Spika wa Muda.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Sen. Sakaja, hoja yako ni ipi?

**Sen. Sakaja:** Bi. Spika wa Muda, nimemsikiza vizuri sana Seneta mwenzangu; ni kama anataka kutuletea hali ya taharuki. Hii ni kwa sababu amesema kwamba alipimwa, kisha akaambiwa kuwa yuko sawa; lakini ako na tashwishi iwapo ni kweli ako sawa. Ni vyema basi yeye kuja Bungeni kutuambukiza ugonjwa wa COVID-19, iwapo yeye mwenyewe ako na tashwishi ya hali yake ya kiafya? Kwanza angeenda hospitali iwapo aliona kwamba kile kipimo cha joto la mwili alichopimwa katika uwanja wa ndege hakitoshi. Je, ni njia gani angetumia kujua iwapo yuko sawa bila ya kutoa taarifa Bungeni, kama sio kwenda hospitalini kwanza?

Bi Spika wa Muda, tuko na wasiwasi kwa sababu tumekaa karibu sana na yeye; na akikohoa, tutatoroka.

*(Laughter)*

**The Temporary Speaker** (Sen. (Prof.) Kamar): Sen. Wario, clarify as we proceed.

**Sen. Kinyua:** Hoja ya nidhamu, Bi. Spika wa Muda.

**The Temporary Speaker** (Sen. (Prof.) Kamar): I see another point of order from Sen. Kinyua.

**Sen. Kinyua:** Bi. Spika wa Muda, nimemsikiza Sen. Wario kwa makini kabisa. Wakati alipoanza kuzungumza, nilisikia akisema kuwa “alipopimwa kichwa.” Kwa hivyo, nikawa sielewi jinsi alivyopimwa kichwa. Unajua mtu akipimwa kichwa, inamaanisha jambo lingine.

Nimekuwa nikisubiri kusikia atamaliza vipi, kwa sababu kama alipimwa kichwa, hiyo imeniletea shida; wacha hali ya taharuki inayompata Seneta wa Kaunti wa Jiji la Nairobi. Nilidhani angesema “alipopimwa joto.” Ametoka kwa mambo ya joto, na kuleta mambo mengine ya kurudi kwa mke wake, ambapo badala aseme alipimwa joto, amesema kuwa alipimwa kichwa. Mimi naona kuna hali ya hatari hapo.

*(Laughter)*

**The Temporary Speaker** (Sen. (Prof.) Kamar): Endelea, Sen. Wario.

**Sen. Wario:** Asante, Bi. Spika wa Muda. Nimewasikiza vizuri marafiki zangu, Sen. Sakaja na Sen. Kinyua, ambaye ni Mwenyekiti wangu katika Kamati ya Ugatuzi. Kwa kweli, hali ya kutatanisha ni kwamba ukishuka kutoka kwa ndege, kuna kifaa kinachowekwa karibu na kichwa chako. Sio mimi peke yangu, bali najua kwamba pia hao wamewahi kupimwa hivyo. Wakati unapimwa hivyo, lazima utafikiria, “Alaa, leo unapimwa sehemu yako ya kichwa.” Hii ni kwa sababu mtu anakugusa kichwa hivi. Sasa, anajua haraka vipi iwapo umeambukiwa au la? Katika hali hiyo sasa, lazima kutakuwa na taharuki, mtafaruku na hasa kutatanika hapa na pale. Na jambo hilo sio kwangu peke yangu, bali ni abiria wote walioshuka kutoka kwa ndege. Kama hujawahi kupimwa, jaribu usafiri kesho kupitia uwanja wa ndege wa Wilson au uwanja wa ndege wa Kimataifa wa Jomo Kenyatta, na utapimwa ili ujulikane.

Nikiendelea, Bi. Spika wa Muda, ugonjwa wa COVID-19 ilipatikana Uzunguni, hasa sehemu ya bara Asia kule kwa Wachina. Kule ndiko maafa mengi sana yametokea. Sisi hapa tunatakiwa kuangalia watu waliotoka bara hizo, na hasa kuangalia usafiri wa watu kutoka huko ambao wanakuja upande huu. Katika sehemu ya Kaunti ya Mombasa, mimi sijapata kusikia kwamba kuna COVID-19 Kenya. Iwapo kuna ugonjwa wa COVID-19 Kenya, hatutaki kutatanika wala kuwa na wasiwasi. Bali tunataka Serikali itoe taarifa, iseme iwapo kuna wagonjwa ambao wamepatikana, na kuna hospitali iliyotengwa kwa watu wa ugonjwa wa COVID-19, ili tusitatizike wali kuwa na wasiwasi. Serikali ikifanya hivyo, wale watu waliotuchagua wakituuliza, tutawaambia kwamba kuna hospitali fulani iliyotengwa kwa watu wa ugonjwa wa COVID-19; na kuwa watu kiasi fulani waliolazwa katika hospitali hiyo.

Wakati dunia ya Kenya imenyamaza---

**The Temporary Speaker** (Sen. (Prof.) Kamar): There is a point of order from Sen. Zawadi.

**Sen. Zawadi:** Asante, Bi. Spika wa Muda. Nasimama kwa hoja ya nidhamu, kwa sababu sielewi kile anachosema Sen. Wario. Mjadala ulio hapa unahusu usalama, wala si COVID-19. Najaribu kufuata, lakini sipati picha kamili.

**Sen. M. Kajwang':** On a point of order, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. (Prof.) Kamar): There is another point of order from Sen. M. Kajwang’.

**Sen. M. Kajwang’:** Madam Temporary Speaker, Kiswahili was declared a national disaster in Homa Bay County; so, I shall not go there. Could the point of order raised by Sen. Zawadi confirm the fears of Sen. Kinyua, that Sen. Wario’s head was checked? Indeed, he is not correct, because Sen. (Prof.) Ongeru raised the same thing here. How did we get to COVID-19, yet the debate was about insecurity?

Madam Temporary Speaker, could you direct that Sen. Wario seeks a second opinion on that matter?

**The Temporary Speaker** (Sen. (Prof.) Kamar): Thank you very much. *Nilikuwa nafikiri nimesikia Kiswahili kingi.* That is why I was also trying to understand where we were going, because we diverted from the security concerns raised by Sen. Iman, and we are now talking about COVID-19. Hon. Senators, let us stick to that, although we know that it is another dangerous issue.

**Sen. Wario:** Asante, Bi. Spika wa Muda. Tunafahamu kuwa Kiswahili ni jangwa kwa watu wengine, haswa wale wanaotoka magharibi mwa Kenya. Kwa hivyo ninapongea hapa, huenda wasielewe chochote. Ninachomaanisha ni kuwa magonjwa au hata ukosefu wa chakula huenda ukaathiri usalama wa nchi. Wakati kuna vita, ambapo bunduki zinatumiwa, hali hiyo pia huathiri usalama. Hivyo vyote vinahusiana na usalama katika nchi ya Kenya. Kama mtu ni mgonjwa, hayuko salama. Mtu anapoambukizwa COVID-19, hayuko salama. Nilikuwa naeleza kinagaubaga hali ya usalama wetu unaotishwa na COVID-19 kutoka Bara la Asia. Ukiwa hapai, wakati mambo yanazungumzwa---

*(Sen. Wario’s microphone went off)*

**The Temporary Speaker** (Sen. (Prof.) Kamar): Muda wako umekwisha. *Thank you very much, you made your point.*

Proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Asante, Bi. Spika wa Muda. Jambo ambalo Sen. Wario amesema hapa ni la utata. Hii ni kwa sababu Wabunge 23 katika Bunge la Iran wamepatikana na ugonjwa huo. Kwa hivyo, jambo ambalo Sen. Wario amesema linafaa kujadiliwa kiundani nasi Wabunge. Ikiwa anajishuku, inafaa aende akapimwe ili tujue hali yake ya afya.

Sisi kama Wabunge huwa tunasalimiana tunapokuwa katika mikutano. Je, itakuwa vipi mmoja wetu akiambukizwa? Tusichukulie jambo hili kimzaha. Ni jambo ambalo tunafaa kulijadili kiundani. Itakuwaje ugonjwa huo ukitokea hapa Bungeni, tunapokutania ilhali tunakumbatiana?

**The Temporary Speaker** (Sen. (Prof.) Kamar): Sen. Mutula Kilonzo Jnr., you should have raised a question on COVID-19 and Iran, so that we prosecute it.

**Sen. Mutula Kilonzo Jnr.:** Jambo la pili ni kuhusu usalama. Jana tulikutana katika hoteli moja ya kifahari. Tuliambiwa kuwa kulikua na *alert*, kama alivyotueleza Sen. Farhiya, ilhali Serikali haizungumzii maneno haya. Serikali inafaa kumpatia mtu kazi ya kutoa taarifa, kama vile Dkt. Mutua alivyokuwa akifanya kabla ya kuwa gavana. Hii ni kwa sababu huwezi kutofautisha baina ya taarifa za uongo na za ukweli. Huwezi

kujua kama Msemaji wa Serikali anasema ukweli, ama uongo. Hii ni kwa sababu leo atasema hivi, na kesho vile.

Serikali inafaa kutupatia taarifa ya ukweli, kwa sababu hoteli zote za kifahari ziko na *alert*. Tunafaa kujua nini kinachoendelea. Ikiwa ni mtu anajaribu kututisha, basi tujuzwe. Kuna COVID-19, *alerts* za majambazi na uvamizi wa nzige. Jameni, tutakimbilia wapi na tutaenda wapi?

**Sen. Zawadi:** Bi Spika wa Muda, nami pia nasimama ili kuzungumzia swala la usalama. Ni kweli kabisa kuwa hatuna usalama Kenya, haswa kwenye mipaka yetu. Jana tulionyeshwa kina mama waliokuwa wanakimbia na watoto wakati watu walikuwa wanafyatuliana risasi.

Nilipokuwa nikitazama runinga leo asubuhi, kulikuwa na maelezo kuhusu hali ya mipaka yetu katika maeneo ya Turkana na Samburu. Walionyesha watoto wa miaka kumi hivi wakitumia bunduki zilizo na risasi nyingi. Waziri (Dkt.) Matiang'i aliwapa muda warudishe bunduki hizo. Kulikuwa na maandishi kuwa bunduki hizo zinatoka Nigeria na sehemu nyingine. Sijui wanaingilia wapi, ilhali kuna viziwi kwenye kila mpaka. Hiyo inamaanisha kuwa hakuna usalama hapa kwetu.

Inakuwaje watoto wa miaka kumi, kama wale niliowaona wakiwa na bunduki, eti kisa na maana wanalinda ng'ombe wao wasiibiwe ihali wameambiwa wazirudishe? Kuna msemo kuwa ukifunga njia, ufungue njia. Waziri (Dkt.) Matiang'i alisema kuwa bunduki zirudishwe, lakini hatua gani zimewekwa kuhakikisha wale watu wanaacha kuuana na kuibiana?

Kama watu hawataacha kuibiana na kuuana, basi watakuwa wakiuana na kuibiana kila wakati, kwa sababu wamekuwa wakipigana tangu jadi. Serikali inachukuwa hatua gani kuhakikisha kwamba kuna usalama kwenye mipaka yetu? Kunafaa kuwe na usalama mipakani ili nasi hapa tuwe salama. Kwa hivyo, naomba Wizara inayohusika na mambo ya usalama ichukue hatua zinazofaa ili kuhakikisha kwamba kuna usalama nchini.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Sen. Sakaja, am I seeing a point of order?

**Sen. Sakaja:** Madam Temporary Speaker, it is a point of information to the House. I had earlier said that I suspected that this information is coming from social media. I have just confirmed that this is actually from the United States of America (USA) Embassy Website. I am glad that a former Minister for Foreign Affairs, Sen. (Prof.) Ongeru, is here.

The question that arises is whether a foreign nation is allowed to issue a public statement of the security status of a country where it has an embassy. Is that within the rules of the Geneva Convention and all other diplomatic protocols? I wonder whether this is diplomatically correct. I think that is what the Committee should look at, because you cannot imagine the Kenyan Embassy---

**The Temporary Speaker** (Sen. (Prof.) Kamar): Sen. Sakaja, you are changing the question on the Floor. You can also raise your question so that another Committee can investigate whether it was rightfully done.

**Sen. Sakaja:** Madam Temporary Speaker, the question that came was about a terror alert issued by a foreign nation. Many Members have said that it is likely to be propaganda or social media banter. Having discovered that, may the Committee further

inquire on whether that is the correct diplomatic protocol to follow, even if they had such concerns and not just telling their citizens?

**The Temporary Speaker** (Sen. (Prof.) Kamar): It is okay. You are raising an additional concern that the Committee should pay attention to.

**Sen. Farhiya:** Thank you, Madam Temporary Speaker, for giving me this opportunity. I wish to thank Sen. Iman for bringing this timely issue.

The American Embassy has raised alerts before, and on two occasions, they have turned out to be true. They raised an alert on the Garissa University attack. The problem we have is that we act late when Kenyans' lives have been lost. Can we take this terror issue seriously?

Madam Temporary Speaker, the other issue is that sometimes terrorists might want to show us that they are targeting some hotels in Nairobi, while in actual sense, they are targeting hotels in Mombasa. This is the time we need to check these things properly.

Madam Temporary Speaker, I come from a community where terrorists have terrorised us to the extent that we now run the risk of our children lacking education. As we speak today, it is volunteers who just keep children in the classrooms in northern Kenya with no learning activity going on. The terror issue is real, and it affects the people of northern Kenya more than anybody else.

We do not want to discuss the issue of terror attacks now and one or two days later, it happens in a hotel, banking hall or wherever. It is high time that our security agencies took this matter of terror attacks seriously. Even in that alert on terror attacks, I saw that the Jomo Kenyatta International Airport (JKIA) is targeted. If JKIA is targeted, we cannot imagine the economic impact it will have to this country while we are trying to market ourselves as an economic hub for flights from different destinations.

Our security agencies need to be alert this time round. Otherwise, the CS should resign if something happens in this country, yet we had a terror alert early enough and he never acted on it. It is high time that issues are taken seriously in this country and dealt with according to the needs. We do not wish to lose lives in this country, because we have lost enough.

In Garissa, we lost 142 innocent lives, yet the American Embassy had issued the same alert before. Therefore, this is not a matter of who had a jurisdiction to raise that alert. The bottom line is that there is an issue, and it needs to be addressed. This time round, there is need for consequences if this is not tackled.

Thank you, Madam Temporary Speaker.

**Sen. (Prof.) Onger:** Thank you, Madam Temporary Speaker. I am speaking on a topic where I have had the opportunity to be the Minister for Foreign Affairs. If you remember, when I took a message of congratulations to the President of Somalia, I almost became a victim of a terror attack in the hotel where we were having the meeting. It was just by the grace of God that I was able to come out.

Madam Temporary Speaker, the problem with terrorists is that this is an area which has mutated from external forces to internal forces. The people who are carrying out these terrorist activities are, in some cases, Kenyans themselves who have mutated from foreign ideology to the local ideology. It is, therefore, very difficult to get to the bottom of the situation.



Madam Temporary Speaker, there has been an alert which has been given by the American Embassy. By all means, from the position where I was before, I am sure that the Government is using all manner of ways to get to the bottom of this issue, because nobody wants to be caught off-guard. I believe that this is a situation that we should be calm about; we should be careful not to glorify terrorism. This is because when you glorify terrorism, it becomes bolder and they are able to carry out targets away from the targets that have been pointed out. We should help the Government, if you have any information, so that they can deal with this situation in a wholesome manner.

Secondly, Madam Temporary Speaker, one of the things that I have noticed over a period of time is that Kenyans are their own enemies. This is because we have the information, but we do not pass on that information. Therefore, when a catastrophe occurs, we start blame games on one another. We should go beyond this blame game and be able to come together.

Having said that, I will urge that the Committee that is in charge of defence that not all matters are going to be disclosed to the Committee, but only the essential ones that are important for the consumption of the public and everybody else. However, it is important to know other deliberate actions that are being taken to safeguard Kenyans from this situation.

Thank you, Madam Temporary Speaker.

**Sen. (Eng.) Mahamud:** Thank you, Madam Temporary Speaker. This issue of terror alerts is a very important matter. Terror alerts have been coming and sometimes in a very unorthodox manner. As mentioned, as we hear about it from social media, and there is nothing that is not coupled with terror alert coming from the country to alert Kenyans. Therefore, the concern of the Member raised is that having been raised by the American Embassy, what are we doing about it?

Madam Temporary Speaker, we usually take things very lightly in Kenya. This is because the information is not forthcoming to citizens from the Government, and that is why people are a bit confused. The danger is that we are going to take these things lightly, because it is a usual thing. We are going to talk of a terror alert today, then you are caught unaware.

Yesterday, I saw a notice by the police that there was nothing happening in Mandera, whereas there was a crisis in Mandera when the border war was going on. People were terrorised and they were in danger the whole of yesterday, yet the Police said there was nothing going on in Mandera. This is the sort of information we give out to Kenyans. It is very serious and when dealing with the Ministry of Interior and Coordination of National Government, and the Committee must ask how they are dealing with terror issues and threats to Kenyans in a structured manner. The information is timely and must be dealt with.

Thank you, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Thank you, Senators. The Statement, therefore, stands committed to the Standing Committee on National Security, Defence and Foreign Relations. We expect an answer from them in 14 days.

Hon. Senators, for the convenience of the House, I am going to defer Orders---  
Order, Sen. Mutula Kilonzo Jr.

*(Sen. Mutula Kilonzo Jr. Consulted Sen. Were)*

Hon. Senators, for the convenience of the House, we will be doing divisions tomorrow. Therefore, I would like to defer Order Nos. 8, 9, 10, 11, 12, 13 and 14.

## **BILLS**

### *Second Reading*

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO. 2) BILL  
(NATIONAL ASSEMBLY BILLS NO. 13 F 2018)

*(Bill deferred)*

### *Second Reading*

THE SACCO SOCIETIES (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILLS NO. 1 OF 2018)

*(Bill deferred)*

### *Second Reading*

THE FISHERIES MANAGEMENT AND DEVELOPMENT  
(AMENDMENT) BILL (SENATE BILLS NO. 22 OF 2019)

*(Bill deferred)*

### *Second Reading*

THE INDEPENDENT ELECTORAL AND BOUNDARIES  
COMMISSION (AMENDMENT) (NO. 3) BILL  
(NATIONAL ASSEMBLY BILLS NO.35 OF 2019)

*(Bill deferred)*

**COMMITTEE OF THE WHOLE**

CONSIDERATION OF THE NATIONAL ASSEMBLY  
AMENDMENTS TO THE OFFICE OF THE COUNTY  
ATTORNEY BILL (SENATE BILLS NO. 3 OF 2018)

CONSIDERATION OF THE NATIONAL ASSEMBLY  
AMENDMENTS TO THE PETITION TO COUNTY ASSEMBLIES  
(PROCEDURE) BILL (SENATE BILLS NO. 22 OF 2018)

CONSIDERATION OF THE NATIONAL ASSEMBLY AMENDMENTS  
TO THE EARLY CHILDHOOD EDUCATION BILL  
(SENATE BILLS NO. 26 OF 2018)

*(Committee of the Whole deferred)*

**BILL***Second Reading*

THE LIFESTYLE AUDIT (NO. 2) BILL  
(SENATE BILLS NO. 21 OF 2019)

**Sen. Farhiya:** Thank you Madam Temporary Speaker.

I beg to move that The Lifestyle Audit (No. 2) Bill (Senate Bills No. 21 of 2019) be now read a second time.

Madam Temporary Speaker, what gave me the idea of coming up with this Bill is when His Excellency Uhuru Muigai Kenyatta said that all public officers should undergo lifestyle audits in 2018. There was a lot of response to that saying that there is no legal framework. As a result, I have a friend who works in the United Kingdom (UK), and I asked if there was a legal framework of such nature.

That was in 2018, and it took a long time and thorough thinking in terms of the process. I asked the person to send me the legal framework. We cannot implement some of those issues in our country because we still have a long way in terms of how we fight it. However, we implemented some of them.

Before I continue, Madam Temporary Speaker, I wish to thank the Directorate of Legal Services, because they continuously assist us. They have a lot of knowledge and do a lot of research. I could not come up with such a detailed and thorough Bill without their support. Therefore, from the outset, I wish to thank them.

Madam Temporary Speaker, then main object of the Bill is to put into place a legal framework for undertaking lifestyle audits on public officers. In creating this legal framework, the Bill seeks to incorporate the values and principles of governance under Article 10 and Chapter Six of the Constitution into the public service.

It is needless to say that corruption is a pandemic in this country. I sit in the Senate Committee on Finance and Budget, and every time we are told that the Gross Domestic Product (GDP) has grown by a certain percentage. When the GDP grows in our country, it is supposed to be equated to the number of people who get out of poverty, but it does not translate to that. More people go into poverty as our GDP increases. That tells you that the money of this country is in the pockets of a few Kenyan individuals through corruption.

It is, therefore, needless to also say that corruption affects security, poverty levels in the country, how healthy and educated we are. It also affects the dream that the fighters for independence in this country had, to ensure that we have a prosperous country where the economic gain is felt in all the corners. Due to corruption, these dreams are still not realized.

Despite empirical evidence showing that there are officers living beyond their means, there is no legal framework to put these perpetrators of corruption behind bars, because corruption does not happen in open air. No one will come to this Senate Plenary to say, "I am corrupting so and so." Due to the hidden nature of corruption, we need a legislation to ensure that the wealth one acquires is explained in a manner that is fair and just to everybody else, and that finally eradicates corruption.

Madam Temporary Speaker, Article 10(2)(c) of the Constitution states-

"The national values and principles of governance include good governance, integrity, transparency and accountability."

Indeed, Chapter Six of the Constitution makes further detailed provisions in the responsibility of leadership guiding principles and leadership, integrity and conduct of the public officers.

The following statutes, among others, have been enacted that further the provision of the leadership and integrity to deter corruption and other economic crimes with respect to public officers-

- (1) Anti-Corruption and Economic Crimes Act.
- (2) Public Officers Ethics Act.
- (3) The Leadership and Integrity Act.
- (4) The Public Service Values and Principles Act.
- (5) The Bribery Act.
- (6) The Proceeds of Crime and Anti-Money Laundering Act.
- (7) The Public Finance Management (PFM) Act.
- (8) The Public Procurement and Asset Disposal Act.

There are, therefore, plenty of laws that make the provisions of leadership and integrity, criminalize corruption and economic crimes. Corruption, however, is still rampant in this country, and tackling it continues to be a challenge. Investigative agencies still face an uphill task in investigating and establishing corruption and corrupt practices.

Madam Temporary Speaker, noting that some public officers seem to be living large, one of the ways of identifying and rooting out corruption maybe undertaking lifestyle audits on public officers suspected to be living beyond their means. There is, however, no legal framework for carrying out these lifestyle audits.

This Bill, therefore, seeks to cure this lacuna in making provisions for a lifestyle audit process; the standard of professional conduct when carrying out lifestyle audits,

bodies to be involved in carrying out lifestyle audits, reporting and investigating unexplained wealth, making public declaration of income, assets and liabilities; referral of matters to the Director of Public Prosecution (DPP) after conclusion of lifestyle audits and procedures for carrying out lifestyle audit on public officers.

Madam Temporary Speaker, in terms of overview, the Bill provides the standard of professional conduct applicable for carrying out lifestyle audits. These include due care, professionalism, objectivity and confidentiality. The Bill also states that lifestyle audits may be carried out if there was an indication that a public officer is living beyond their means; is unable to account for some income or has misappropriated funds under his or her control.

The Bill mandates the following bodies to undertake lifestyle audits-

- (1) The Kenya Revenue Authority (KRA) for purposes of determining tax evasion and, therefore, someone growing their wealth.
- (2) The EACC.
- (3) The Committee of the National Assembly responsible for ethics of Members of Parliament.
- (4) The Public Service Commission.
- (5) The Judicial Service Commission (JSC).
- (6) The Parliamentary Service Commission (PSC).
- (7) The Independent Electoral and Boundaries Commission (IEBC).
- (8) The Teachers Service Commission (TSC).
- (9) The National Defence Council.
- (10) The National Security Council.
- (11) The Witness Protection Advisory Board.

The Bill provides that the investigating bodies procure search warrants from courts of law before conducting searches on the public officer. This rests the cases where people may be targeted using lifestyle audits. There is a clear procedure in terms of who can conduct, when and how, since you need a court order, unless otherwise, before conducting searches and the suspect holding property does not corroborate with their lawful income.

The Bill, however, allows conduct of searches without a warrant in exceptional cases where the investigating agencies believe that the evidence will be removed or destroyed. The Bill makes it an offence for someone to lie to investigating agencies in a lifestyle audit process. Those convicted will be liable for imprisonment for a period not exceeding two years, and a fine not exceeding Kshs5 million, or both. This shows that this process of conducting lifestyle audits has been taken very seriously; so, people will not be tempted to witch-hunt using this Bill.

The Bill further allows investigating agencies to apply to court for interim freezing orders with respect to property or accounts subject to lifestyle audit proofs. It allows the High Court of Kenya to vary or discharge freezing orders on the application of either party. It also provides for compensation for public officers against whom a freezing order is made.

Madam Temporary Speaker, if you have been targeted unfairly, the law also protects you in terms of the forfeiture and other issues. The Bill makes provision for members of the public to launch complaints. So, it is not only about the agencies

mandated to carry out the lifestyle audit. It is even the member of the public who can already see that there is corruption going on, who can report.

Madam Temporary Speaker, this Bill would be more effective if the law on protection of witnesses is also enacted. This is so that those people who blow the whistle on corruption, like it is envisaged in this Bill, are protected legally.

Madam Temporary Speaker, this Bill foresees deferred prosecution. Part 2 of the Bill provides for amnesty for corruption cases under a deferred prosecution agreement with the Director of Public Prosecutions (DPP). Once the investigating body establishes that there is a case to answer, a lifestyle audit is carried out. When it is determined that the person could not account for his wealth, then another process is followed, where the matter is now referred to the office of the DPP for criminal proceedings. As a result of that, there is also a Section on deferred prosecution agreement.

Madam Temporary Speaker, Part 2 of the Bill provides for amnesty for corruption cases under deferred prosecution agreement with the DPP. A deferred prosecution agreement in respect of the alleged offence may be entered into before or after the date on which a person is charged with the alleged offence, but shall not be entered into after the commencement of trial for the alleged offence. Persons who may enter into deferred prosecution agreement include individuals, body corporates and limited liability partnerships. A deferred prosecution may attach the following obligations:-

- (i) To pay to the DPP a financial penalty;
- (ii) to compensate victims of an alleged offence;
- (iii) to compensate for loss of public funds;
- (iv) to pay interest on the lost funds;
- (v) to surrender all private assets acquired using the public funds;
- (vi) to donate money to charity or any other third party; and,
- (vii) to disgorge any profits made by the person from the alleged offence.

Madam Temporary Speaker, the Bill also provides that the deferred prosecution agreement be concluded under the supervision of the High Court Judge. The Judge must be convinced that the deferred prosecution agreement is in the interest of justice, and has fair and reasonable proportionate terms.

The Bill also has miscellaneous provisions as well. The Bill allows the court to defer publication of information to such a time as it may consider necessary. The Bill also provides that the statement of facts contained in the deferred prosecution agreement in a criminal proceeding against a person for an alleged offence shall be treated as proof of formal admission by the person. The Bill further amends Section 30 of Public Officer Ethics Act to make the declaration of income, assets and liability by a public officer accessible to the public.

Madam Temporary Speaker, the Bill also creates a mechanism for undertaking lifestyle audits for public officers. This will go a long way in tackling and arresting corruption in the country. It will also deter corrupt practices by public officers who will be reluctant to steal public funds and flaunt them in public.

In cases where the fight against corruption has been won in other jurisdictions, the benefits in terms of public good associated with that is enormous. For example, in Sri Lanka, Transparency International (TI) promoted transparency. I am just explaining the

ways in which other people have fought corruption in terms of participation, the budgeting process and by training the communities to comment on proposed budgets.

I talked about budget padding in one of my other corruption submissions. This means that by the time the budget is done by the Treasury, very influential bodies have lobbied. The prices are sometimes determined even before the bidding process by people with interest. Involving the community helps in ensuring that whatever is costed and budgeted is a close estimate and not just people throwing in figures that include their own corruption.

Madam Temporary Speaker, Transparency International also successfully advocated for adoption of one of the world's strongest rights to information laws in the Maldives by putting pressure on local members of parliament via a Short Message Service (SMS) campaign. They also did this by having communities monitor their own projects.

In a survey that was conducted by KPMG in Hong Kong in 1996, corruption was estimated to be worth 230 million Hong Kong Dollars. The consultancy felt that this was an underestimate. Most of the corruption that was happening was under procurement. Another two per cent and 15 per cent were under businesses. People assume that corruption should only be eliminated in the government. Even businesses, in order for them to thrive, they need a corruption-free environment. Corruption is not documented anywhere, and as a business person, you need to cover your costs. The cost of corruption is also included in the pricing of commodities. Therefore, you cannot overemphasize how some of these things affect us.

Madam Temporary Speaker, in Afghanistan when the fight against corruption became successful, they realized that they saved up to US\$270 million annually. There was also another country that saved up to US\$1.7 million through discontinuation of salary payments. That happened in this country in terms of security forces. We know that there were so many people who were on the payroll of the security forces. Therefore, the government in this country saved a lot of money by doing a head count of security officers as one of the measures of fighting corruption. In Guinea, they saved US\$1.7 million by just doing a head count of government officials.

Despite passing all these laws, the idea of having separation of ethics and anti-corruption is welcome. Sometimes you cannot legislate behavior. The best thing is to start training children from kindergarten about the immorality around corruption. That way, people will know that if you do corruption, then you have less success in life.

Madam Temporary Speaker, we need to stop looking inwardly at ourselves, fearing that we might become victims of this law. We should instead should think about what is good for this county. This is the Bill to deal with, on the issue of corruption. This will not allow us to recover the loot. However, it will enable the institutions that are mandated to carry out lifestyle audit to arrest the 'big' people. This will act as a deterrent and those thinking about corruption will stop. This is because right now, people can even corrupt their way into the justice system.

This Bill provides that people's income and liabilities will be checked and they should explain the difference. So, this simplifies the process of tackling corruption in a major way. It will take the fight against corruption to the next level.

Madam Temporary Speaker, freezing of assets for people who are corrupt can take forever. However, this Bill creates a time frame for that process. The courts have been given three months to conduct lifestyle audit. This will reduce the level of anxiety for the persons whose assets have been frozen.

There is also the issue of compensation. For example, if a person targets another because of political vendetta, this Bill provides a framework whereby the person is paid back whatever they lost.

If it is determined that the other person had ill intentions, he or she is held responsible for the losses made. For example, if an officer working for the Ethics and Anti-Corruption Commission (EACC) targets a person arbitrarily and it is proven that the person is innocent, the officer will be held liable and might be chased away from office despite the financial losses that will be incurred in the process.

Madam Temporary Speaker, citizens can be the basis for a lifestyle audit. However, if they complain that I am corrupt and I have accumulated a lot of money, the agencies need to do some fact finding before they undertake the lifestyle audit so as to corroborate the evidence brought by the people.

Although this Bill makes the procedure for curbing corruption easy, it also puts a lot of stringent measures for people who take advantage of others.

I also talked about the issue of conducting negotiations with the public prosecutor and ensuring that victims are compensated.

This Bill provides for a procedure for deferred prosecution agreement and what will happen if a person breaches the agreement. In relation to that Clause 32 states that:

“Where the High Court makes an order for termination of a deferred prosecution agreement under Section 29(1)(b) or 30(1)(b), a person shall not be entitled to—

(a) recover any money that the person had paid, before the termination, pursuant to a requirement imposed by the deferred prosecution agreement; and

(b) a relief for a detriment caused to the person by the person’s compliance with the terms of the deferred prosecution agreement before the termination.

The courts can also validate and deferred prosecution can be done. The issue of discontinuance of proceedings on expiry of deferred prosecution agreement is also taken care of.

Clause 35 (1) on miscellaneous provision states that:

“The High Court may defer the publication of information under this Part for such a time as it considers necessary, if it appears to the Court that the postponement is necessary to avoid substantial risk of prejudice to the administration of justice in—

(a) legal proceedings;

(b) an investigation under this Act; or

(c) a criminal investigation under any other written law.

Clause 35(2) states that:

“In proceedings under this Part, the High Court may, in the interests of justice, public safety, public security or propriety or for any other sufficient reason, make an order requiring —



(a) any information which is contained in a Court document intended to be produced before the court, be removed or be sufficiently redacted;

(b) a person shall not publish such information, or do an act that is likely to lead to the publication of such information.

Madam Temporary Speaker, there is need to have regulation by EACC because they will be the main principals to conduct this exercise. In that regard Clause 38(1) provides that:

“The Director of Public Prosecutions may make Regulations generally for the better carrying out into effect of this Act.

(2) Without limiting the generality under subsection (1), the Director of Public Prosecutions may make regulations providing for—

(a) the procedure for cooperation with the relevant investigating bodies under section 5;

(b) guidance and regulation in the submission of information and carrying out of investigations;

(c) classification of and prosecution of specified offences or class of offences; and

(d) conditions to be complied with in prosecuting under this Act.

Madam Temporary Speaker, for the sake of prosperity of this country, the impact it will have on corruption and the economic gains that this country will reap as a result of this, I urge my fellow Senators to pass this Bill.

I beg to move and request, Sen. Mutula Kilonzo Jnr., to second.

**Sen. Mutula Kilonzo Jnr:** I rise to second the Lifestyle Audit Bill No. 2 of 2019, with general comments as follows. One, this is an extremely ambitious Bill. I have my own difficulties about some of the provisions, and I will mention them as I Second so that Sen. Farhiya can make some corrections. First generally, I think stealing is fashionable in Kenya, it is part of us and so, we have to legislate about stealing. There is a verse in the Bible, “Thou shall not steal” has been converted to thou shall steal, but shall not be caught; which is now commandment number 11.

Therefore, Madam Temporary Speaker, this is not about the ordinary Wanjiku in Murang’a; Mwikali in Machakos; Mutheru in Kiambu; Atieno in Kisumu or any other place in Kenya. This is about public servants who have public office; who have been given positions of leadership and who have used those positions to enrich themselves.

I had the opportunity in the Committee on Justice, Legal Affairs and Human Rights – and I was not sure whether Sen. Kang’ata was in the trip; maybe he was with the Chair, who is here – to sit with a consultative forum in London that deals with anti-corruption measures all over Europe. They gave us a very good example of a governor who stole so much money, was prepared to be jailed – and in fact was jailed for a long time – and after being jailed, they continued monitoring the proceeds of the theft. The wife, ended up being used as a conduit of corruption. This lady used to shop in Harrods and spend so much money. They traced the money to the wife. In this Bill, although Sen. Farhiya has proposed a *caveat* in terms of family, there is not tracing; you cannot trace. This outfit traced the proceeds of this governor – who took his proceeds and lived in England – to his wife.

They also gave us an example of a Nigerian who stole so much money as minister and then relocated to England. This gentleman had all the luxury cars that money can buy, from a Rolls Royce, *et cetera* while there. They did the calculation and there was no way that this person could have purchased all these luxury vehicles using his salary. This should apply both to people who bring their wealth to Kenya, and vice-versa.

On jurisdictional issues now, what happens to Sen. Irungu Kang'ata if he becomes wealthy, relocates his wealth to the Isle of Man, goes and lives there? You need corresponding jurisdiction and extradition treaties with the corresponding jurisdiction, because it is about tracing the sources of wealth. In India it is simple; they say assets are proportionate to the known sources of income.

Madam Temporary Speaker, the other issue is – I do not know where Sen. Farhiya has gone – this is upon a Statute. Being upon a Statute, there is a question of retrospective operation of upon a Statute. Once again, I will use Sen. Kang'ata as an example. Assuming that he stole 10 years ago, and you find that 10 years ago, he had assets unknown, un-proportionate to the known sources of income. In Penal Law, you cannot make a statute retrospective. So, we need to find a way of how we will anchor retrospective operation in this law. Otherwise, anybody who stole before 2020 is exempted from this law; it will not apply, and there is nothing that you can do about it once that is done.

Madam Temporary Speaker, the framework is good, but I want to advice that in criminal jurisdiction in Kenya, the first point of trial is a Magistrate's Court. You only go to the High Court on appeal. The only time that you go for a criminal trial in the High Court is murder; it is an appellate. Therefore, in terms of your jurisdiction here, you have started with the High Court. The High Court then would not be the correct court to start; you will start with the Magistrate's Court.

Sen. Farhiya, in our criminal jurisprudence, a Magistrate only gets jurisdiction once you have a charge-sheet. That is the same problem that we have today with Manduku. They said that they had arrested him, and when they went to the Magistrate, he said that he does not have a charge sheet. Therefore, you cannot commence, strictly speaking, criminal prosecution without a charge sheet. Therefore, the question of deferred prosecution before you charge somebody is unknown in our criminal jurisprudence. Therefore, there must be corresponding amendments to our criminal procedure.

The second one, Madam Temporary Speaker, is that the Director of Criminal Prosecution is an interested party in prosecution. Is it the right person to negotiate with, in terms of deferred prosecution? This is because I said that he is an interested party. The Director is an interested party in your conviction; it is not necessarily on what you have stolen. I am saying that he is an interested party in your conviction. Therefore, Sen. Farhiya, when you propose that the word "intends" or "is in the process of prosecuting you;" that is so dangerous. All he needs to do is to commence a criminal prosecution against Sen. Wamatangi – that is it – that will give him jurisdiction.

Therefore, where you do not want the power to be abused, you cannot say, "Intends to prosecute." This is because in our criminal jurisprudence, by the time a charge sheet is tabled in court, the prosecutor is saying that, "I am satisfied by the evidence." However, when they are seated in their office – I do not know where their office is these days – anything that they get is prosecution. The problem that we have is

that our Chairman keeps calling the Director of Public Prosecution (DPP) the “Director of Political Prosecution” all because they think that every time you get a complaint, it is something that can be charged. In some cases, it cannot be.

The other thing is that, in deferred prosecution, there is something called plea bargaining. This is where you get certain people who know what happened, as witnesses in the prosecution and is plea bargaining. Therefore, Sen. Farhiya, I would rather that in lifestyle audit, the DPP finds that the shoe that Sen. Kang’ata is wearing is so expensive, that he could not have afforded it. He then charges him in court. It is in the process of charging him in court where there is jurisdiction for plea bargaining. Therefore, the court that then has the matter can enter into a plea. Before that, it becomes very dangerous, because all power is capable of abuse; and we know that; this is Africa. If they have something against you and it is politics, they will come for you.

Recently, the Supreme Court made a very interesting finding on the case of Prof. Ojienda. The law then by the High Court, which was a three-judge bench of the Court of Appeal, said that you cannot go behind somebody’s back and get into their account. Sen. Kang’ata received Kshs100 million and before you notify him, you cannot go to the bank and collect that evidence. The Supreme Court disagrees; that you actually do not need such sort of notice.

I would, therefore, propose that in the case of Clause 7 – where you are doing search before a warrant – be restructured in such a way that it is not abused again. In the past, the criminal prosecution has been used to do searches without warrants for the wrong reason. All they need to do is to plant a gun in your house. They come to look for a bank account, but then they come with a gun and put it in your house; like the way I saw a policeman climbing over a gate by stepping onto a vehicle. All they need to do is to drive a vehicle and arrest you. Therefore, we must have a method, in lifestyle audit, on how you can do this so that the police do not abuse this power again, because it is capable of abuse.

We must have a method of doing lifestyle audit so that the police do not abuse the power because it can be abused.

As I said, there is the process of deferred prosecution in the High Court. We must find a way where even if the matter is not live, a criminal court can get jurisdiction by you being charged, the same way a prosecutor or investigator can get a search warrant in a miscellaneous matter without necessarily prosecuting you. There must be a method where you cloth the court with jurisdiction, so that the prosecutors can be audited in the event they make a mistake.

Madam Temporary Speaker, the framework is good. How we will accept it in this country is something I do not know since the people we are targeting are power brokers, tenderpreneurs, profiteers, people with high insolence of power and governors, *et cetera*.

Sen. Farhiya, this is something that has bothered the President himself. He said he will be the first one to undergo a lifestyle audit followed by his deputy and others. That announcement was made in Mombasa but has it happened? It has not because it is difficult. Up to what extent can you limit lifestyle audit?

A governor was accused of depositing money in the accounts of the daughter and getting money for a person referred to as “customary law wife” according to the charge

that I read. Do we need to limit? More importantly how do we limit public servants and State officers from trading when they are in office? That is the problem.

Sen. Farihya and my colleagues, nothing stops Sen. Wamatangi from having 16 to 20 limited liability companies trading anywhere in the country. He is an entrepreneur and that is not a crime. Can you go to his luxurious house and tell him that since you know his salary, he could not afford to build his house? How do you do that? You cannot look at his nice car and tell him that his salary cannot buy a new VX 2017 or 2019 model yet he is a businessman.

Up to what limit can we restrict public servants who are the target of this Bill from trading and how do you trace their assets? We should assume that a good entrepreneur like Sen. Kang'ata keeps all his money in one account from his *mama mboga*, his shop in Murang'a and his shop in Nairobi. That is why it is important to do tracing.

We have set up an outfit led by a lady called Muthoni Kimani known as the Assets Recovery Agency (ARA). That is the outfit you would cloth with jurisdiction to do the tracing then forward the information to the DPP, so that he is not the one chasing the tracing and the same person prosecuting.

In Kenya prosecutors and DPPs have been given instructions to prosecute people who are not considered politically correct. If you doubt, pick the case of Stanley Munga Githunguri. He was prosecuted many times together with the owner of Royal Media Services (RMS), Mr. Macharia. The court released Stanley Munga Githunguri and told him to go to Mt. Kenya, which is the tallest mountain in Kenya, to thank God that we have a country and law.

In terms of how, because deferred prosecution takes time, once we tweak that in terms of who does the tracing and prosecution and how you escalate it to the High Court, we will have solved the problem that I have with this Bill.

I have also spoken about search warrants and we must be very circumspect about this. In law, we have something called *mareva* injunction, where you injunct the withdrawal of money from an account in advance if you suspect that the money is either proceeds of crime or proceeds of corruption.

There was a famous case of a gentleman called Humphrey Kariuki. The order was lifted at about 4.00 p.m. on a Friday and in less than 30 minutes Kshs2.1 billion had been withdrawn. Since we have a history of such cases, those factors must be included here.

Madam Temporary Speaker, this is a beautiful law that I would like to see in place. This is what we are discussing in the national ethos. By the way, Chancellor Angela Merkel lives in a flat in London. We would like to see a president living in a flat. Prime Minister Boris Johnson rides a bicycle to work. The former British Prime Minister David Cameron boards a train.

It is the way we live that encourages stealing; that if you are a leader, you must have a house with 60 rooms. It is the way of life of leaders that you must have a perimeter wall as big as a prison to be considered a big man. It is the big man syndrome that has led to corruption, theft and the 11<sup>th</sup> commandment which states that: "Thou shall not be caught". The people who are caught have money to pay for bail even if it is Kshs15 million, Kshs20 million or Kshs30 million.

We must have a framework where we can prosecute quickly, jail people and recover the assets. We had the case of Smith and Ouzman where ambulances were bought which I never saw. However, the people who gave them the bribes in Kenya are walking free. I am told that some of them will be governors.

I beg to second.

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

*(Question proposed)*

**Sen. Pareno:** Madam Temporary Speaker, I thank you and my sister who is the former Vice Chairperson of the Committee on Delegated Legislation because the Committee is yet to be reconstituted.

Madam Temporary Speaker, this is an important Bill. The Bill is grounded on the provisions of Article 73 of our Constitution. You will allow me to read Chapter Six of the Constitution on Leadership and Integrity. Sometimes you wonder whether we have to draft more laws when we have the law right there. I do not know why as a country we do not implement and walk the talk. We come up with very beautiful provisions in the Constitution but fall short of implementing. I do not understand that.

Article 73 states that-

“(1) Authority assigned to a State officer-

(a) Is a public trust to be exercised in a manner that-

- (i) is consistent with the purposes and objects of this Constitution;
- (ii) demonstrates respect for the people;
- (iii) brings honour to the nation and dignity to the office; and
- (iv) promotes public confidence in the integrity of the office; and

(b) vests in the State officer the responsibility to serve the people rather the power to rule them.

(2) The guiding principles of leadership and integrity includes-

(a) selection on the basis of personal integrity, competence and suitability, or election in free and fair elections;

(b) objectivity and impartiality in decision making, and ensuring that decisions are not influenced by nepotism, favoritism, other improper motive or corrupt practices;

(c) selfless service based solely on the public interest, demonstrated by-

- (i) honesty in the execution of the public duties; and
- (ii) the declaration of any personal interest that may conflict with public duties;

(d) accountability to the public for decisions and actions; and

(e) discipline and commitment in service to the people.”

Madam Temporary Speaker, our Constitution is very clear that we intend to have leadership that is honest, corruption free and accountable to the people. However, we keep going round and round as a country. The other day, we heard about Ms. Ngirita, we were expecting to see a conviction, but the next thing we heard were her cries that her son no longer speaks German language when some children are lacking basic needs like school fees and medicine.

The picture we have of our country is disturbing. As I said this afternoon, we really need prayers. God should remember us so that we may go in His way. Yesterday, we watched news of police officers scaling down a very tall wall trying to get into a compound and then they recovered several motor vehicles, very expensive gadgets and lots of money. Thereafter, we have not seen any actual conviction.

Madam Temporary Speaker, the other day, a report was tabled in this House on how other countries are fighting corruption. Passing the necessary rules and laws will ensure that people are punished for wrong doing. One issue that struck me in that report that as laid on the Table by Sen. (Dr.) Mwaura was how Hong Kong has been able to fight corruption to the extent that they are now proud of being corruption free and how over 50 countries are trying to come together to get new ways of fighting corruption. The other issue that struck me was the issue of self-discipline. As a country, we lack self-discipline and we have taught our children that discipline no longer matters. Good practice starts with us being self-disciplined.

Madam Temporary Speaker, for the Maasai community and other communities, long time ago – right now it is not so - a child belonged to the entire community. In fact, a child could not dare do anything wrong before any member of the community or society. The moment you went wayward, anybody who was around would punish you. Right now, if you point at somebody's child for doing something the wrong way, you will find yourself in a police station to explain why you pinched or pointed at somebody's child for wrongdoing.

Madam Temporary Speaker, we have to shape this society how we want it to be or how we want our sons to be. That is one of the virtues that were being preached in the Hong Kong conference. They actually started by looking at self-discipline, what was ailing them and figured out how to come out of it. They went ahead to talk about the rule of law. For us Kenyans, we have very beautiful laws in our Constitution and I have read a very nice Chapter on leadership and integrity but we have done nothing about it.

Madam Temporary Speaker, I remember when we did the 2010 Constitution, immediately thereafter, even in political parties, we tried to vet candidates who brought their Curriculum Vitae (CVs) and we were able to know whether they were convicts or had court cases going on in order to clear them. I want to be frank that some of the people who were opposed to the vetting on integrity were politicians themselves. They interpreted Chapter Six differently. To us, the interpretation of Chapter Six was that if anyone had been charged or convicted, they needed to step aside until they were cleared. The politicians argued that we did not have the right to vet them.

As a country, we have a long way to go. Recently, we impeached Governor Ferdinand Waititu Ndung'u, and right now we are trying to come up with the procedure for curbing corruption. I am hoping that this law will not be another document to be shelved. This is a well thought-out piece of legislation to help implement Chapter Six of the Constitution. I hope we will be able to make a difference. If we do not make corruption a very painful venture, we will continue fighting a losing battle and piling up laws in the name of fighting corruption.

Madam Temporary Speaker, this will go a long way in implementing what we envisaged when we came up with Chapter Six of the Constitution.

I support.

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

**Sen. Kang'ata:** Thank you, Madam Temporary Speaker. I rise to support this Bill. I will start by giving some responses to the Seconder of this Bill. He made some contributions which I would like to correct from where I sit.

Number one, he suggested that the Mover should amend the Bill and provide for the concept of retrospectivity on the account that if you do not have such kind of a Clause, those who corrupted prior to 2020, will not be punished.

Madam Temporary Speaker, I beg to differ. I am not so sure that such kind of a Clause can stand the test of constitutionality. Article 50 and Article 49 have Clauses which seem to disallow retrospectivity of criminal law. Therefore, I am not so sure whether the Mover can be able to amend and provide for that.

I have also heard his proposal that the Mover of this Bill should seek to make the Chief Magistrate Court or the Magistrates' Court as the court of first instance. There have been several references to the High Court. I am not so sure that that will be the best course of action, the reason being that the High Court, pursuant to Article 165 of the Constitution has the power to supervise other courts; the supervisory jurisdiction of the High Court. In a way, to the best of my knowledge, the Mover of this Bill wanted to ensure that the High Court retains some supervisory roles. To that extent, the High Court is the correct court to be given the powers that have been proposed by this Bill.

Therefore, generally, for me, this is a good Bill. The reason I am supporting this Bill is: One, the President, His Excellency Uhuru Kenyatta, has expressed his need to do a lifestyle audit. When he was in Mombasa in the year 2018 or 2019, he said that he intends to do a lifestyle audit in as far as civil servants and other public servants are concerned. The truth is, we do not have a legislative framework to support such kind of an endeavor.

To that extent, therefore, my sister has done this country a great service by initiating something that ideally ought to have been brought to this House by the Ministry concerned or even the Attorney-General, to effectuate the intention of His Excellency President Uhuru Kenyatta. To that extent, this is positive.

Madam Temporary Speaker, another reason I support this Bill is because when you look at comparative jurisdictions, you draw lessons from other countries. You will ascertain that, indeed, those other progressive countries have a similar framework. Therefore, if you want to fight corruption, you may need to establish this kind of law, to ensure we achieve our big fight against corruption.

I also support this Bill because unlike several pieces of legislations that have the tendency to create bodies after bodies, this Bill does not propose to create any body. I have seen every Bill coming to this House or even the National Assembly proposing to come up with a certain agency or statutory body. This causes the Government to pay money to so many bodies which have overlapping responsibilities.

This Bill is not proposing to create any statutory body. To me, that is a positive thing. It is light in terms of regulation and expenditure to the Government. In fact, there is no cost that the Government will incur if this Bill becomes law.

Madam Temporary Speaker, I checked the proposed Clause 5 of the Bill, on the so called bodies involved in lifestyle audit. These are common bodies. I am happy that

this Bill is proposing to expand the scope of the functions of those bodies which have been mentioned in the proposed Clause 5.

My brother from Makueni County has raised the issues that the Director of Public Prosecutions (DPP) ought not to have any interest in this matter. He thinks that the DPP has a vested interest in a criminal prosecution and, therefore, he is not the one who can negotiate with a suspect for what is called deferred prosecution.

I beg to disagree. We all know that the DPP has the constitutional sole mandate of prosecuting suspects. We cannot by a statute take away that power. Therefore, all negotiations, *nolle prosequi* and all kinds of withdrawal of criminal prosecutions have to always get the concurrence of the DPP. So, I see no problem with the idea that the DPP gets a central role in this Bill.

Madam Temporary Speaker, the only areas I would ask my sister to consider improving would be in the following: One, there is this proposal contained in the Building Bridges Initiative (BBI) that a whistleblower will get a certain percentage of money that will be recovered from convicts in corruption cases. For me, this Bill can probably provide for that. I think we will have effectuated BBI as soon as possible. It makes all the sense; it is a very good proposal.

Therefore, my sister, consider bringing that BBI proposal into this Bill, so that heroes - people who have fought against the Goldenberg, Anglo Leasing and all sorts of corruption scandals and had the courage to blow the whistle - get a compensation. I agree that 5 or 10 per cent makes a lot of sense. Let us provide for that in this Bill. That will be a major positive feature of this Bill.

Secondly, I would urge the Mover of the Bill to consider providing what I would call mutual cooperation between Kenya and other states in asset recovery. I concede what my brother from Makueni County said that there exists a major loophole when it comes to cooperation between Kenya and other countries. It is a stain on Kenya that some people were found guilty in a case in the United Kingdom (UK), but their local counterparts who are suspected in that scandal have never gone to court to get justice up to today.

Madam Temporary Speaker, Hon. Chris Okemo is still here in this country. There is also the former Managing Director (MD) of Kenya Power and Lighting Company (KPLC) who is still in this country. I am not saying they are guilty. However, their counterparts in UK were found guilty and there was a request made by the UK Government to extradite them. Up to now, those people are still in this country.

To me, it shows that we have very weak laws, either in terms of procedure, which then makes suspects to wiggle and delay justice. To me, that is unfair. It is making Kenya's reputation internationally to be dented.

The same goes to other related white-collar crimes. Remember the case of Akasha brothers. They were in Kenya, never getting justice. It only took the intervention of the USA Government to have them taken to the United States of America to face justice. To me, that is not good. We need to look at this law to see what loopholes can be sealed in our criminal justice system, in order to ensure that white-collar criminals face justice in Kenya, and wherever we get a request from a foreign country, we immediately take a person to face justice elsewhere. Therefore, this is one of the pieces of legislation where



we can tidy up what I would call transnational justice mechanisms in the fight against white-collar crime.

Madam Temporary Speaker, I also support this Bill because I have been reading newspapers, and we have people coming for vetting before the National Assembly. There is a correlation. Every time you see a nominee for the position of Principal Secretary (PS), they declare wealth of about Kshs200 million, Kshs300 million or even Kshs1 billion. Surely, this is happening in a country that is so poor like Kenya and this is a person who has been in public service through and through. We all know the kind of salaries that are paid in the public service. When you see the kind of declarations those people are making, we need this law to investigate such characters.

For me, in terms of wealth creation, the richest people in this country ought to be in the private sector. That is where you create new ideas. As a result of those ideas, you then attract wealth because people come to purchase those ideas. You then appropriate money and become wealthy. When you see public or civil servants becoming millionaires and billionaires that is dangerous. People do not join the public service to become rich.

Wealth ought to be created out there because out there is where you are free, equal and no one is assisting you. In Government, you are a servant in a position of privilege and power, and you are going to leverage on that position to create wealth. Ideally, the richest people should be bankers, scientists or people coming up with ideas out there which then generate wealth.

Madam Temporary Speaker, in the USA or other advanced democracies, you will never see public servants becoming billionaires as compared to this country. In fact, to know how sick Kenya is in terms of corruption you only need to do an analysis of the rich people in Kenya. You will always find out that at one point of their life, they were in major positions of service in the public sector. There is a correlation between being wealthy in Kenya and having served in the public service at one moment.

To me, that is not a good system. A good system is where you are creating a patent which then does a good thing and you get a lot of money. You come up with an idea out there without any assistance or getting a penny from the Government. You create so much wealth and become rich.

The kind of society that we have in Kenya compels people to now fight for positions in Government. That explains why there is huge jostling for political positions. People want political or Government positions so that they leverage and then become rich. We should not become rich by leveraging.

Let us become rich by coming up with good ideas which are protected by the State. Those ideas will then empower the society. Let us create new scientific patterns and new businesses that employ people. Let us create wealth out there, but not joining the Government and overnight one is a billionaire. That is not how a society is made or how capitalism operates. A government should just enable society to live well, not people who are serving the government to become the rich in the country. If this Bill will enable us to fight corruption, to me, that is positive.

Madam Temporary Speaker, I laud His Excellency President Uhuru Kenyatta because he is the first President to go after major fat cats in this country. I have never seen any government prosecuting a Cabinet Secretary in charge of finance. For the first time, we are seeing a governor facing criminal charges before a court of law. To that

extent, we need to laud His Excellency Uhuru Kenyatta and support this Bill because it is part of the good efforts that my sister has done to support the President in that fight.

I support.

**Sen. (Dr.) Musuruve:** Thank you, Madam Temporary Speaker, for giving me an opportunity to support this important Bill. I commend what Sen. Farhiya has said with regards to the issue of lifestyle audit. This Bill is coming at a time when everyone is talking about fighting corruption. It will be effective if this is enshrined in law.

The issues of corruption are endemic among public servants. One thing that public servants need to know is that when one is a public officer, they are there as a servant to serve people. You need to have a lot of integrity when serving people.

Chapter Six of the Constitution on Leadership and Integrity is very clear. You cannot talk about leadership without talking about issues of integrity. When we talk about leadership, we are saying that a leader must be trustworthy. They must put others first, be concerned about others and demonstrate that they are there to serve the people. Based on Chapter Six of the Constitution, there is no way a public servant can be effective if he or she does not have integrity because integrity is a core characteristic in leadership. You cannot be an efficient leader if you do not have integrity.

Madam Temporary Speaker, this Bill seeks to ensure that public servants have the appropriate qualities as Chapter Six of Constitution demands. Most of the time, when public servants go for job interviews, they are asked about issues contained in Chapter Six, but some of them have not even looked at it to know what it entails.

When public servants go for job interviews, they should be asked to enumerate what is in Chapter Six of the Constitution. It should become part of the interview process to find out whether they really know what Chapter Six is all about. Many people talk about Chapter Six, but they do not know its contents. Therefore, there is a need for public servants to know about the contents of Chapter Six. This sensitization should be done in all public offices. In fact, Chapter Six of the Constitution should be in the charter of most organizations because many people are not aware of its nitty-gritties.

Madam Temporary Speaker, I support this Bill with regards to Clause 3 that talks about standards of conducting an audit. One of the standards is objectivity. Objectivity means that whoever is conducting an audit must be objective, impartial and not be lopsided in any way.

Any audit should be done in such a manner to achieve a certain objective. The objective should be to ensure that the person in the office is adhering to Chapter Six of Constitution. That should be the objective of carrying out an audit. If that is not the objective, then there is no need of carrying out an audit. If the audit is based on malice or something not formidable, then a lot of resources will be wasted for good reason.

This Bill also talks about confidentiality and professionalism; that an audit should be conducted in a professional manner. The audit should not be done by people who are learning on the job, or people who desire a certain outcome from the audit. It should be an objective one where a genuine investigation is carried out and then you are told what was discovered. You should not make the discovery and then go and do an audit.

An audit should be impartial and not about catching someone. It should be something that is done in a professional manner and seeks to ensure that you are someone of integrity. An audit should also be carried out within the existing standards of any

written law. It should not be done haphazardly. There should be a written law that speaks to the kind of audit that is being done.

Madam Temporary Speaker, another thing that I like about this Bill by Sen. Farhiya is that not anyone can be audited. We have reasons as to why audits can be carried out. Under Clause 4, we have the “ifs” of audit. For example, if a person seems to be living far beyond their means, then that is a ground to do an audit. Also, if a person is unable to explain how they got their wealth, then that can be a reason to investigate. Furthermore, if there is misappropriation of funds within the person’s docket, then that can be a ground for an audit to be carried out.

Kenyans should not fear the audit, because not anyone can be audited. You will not just be ambushed and told: “We want to carry out an audit for you”. There must be a reason. They have to co-relate the wealth and the person’s earnings. For instance, if you are in a docket where you are trusted with a lot of funds and then funds disappear and you appear to be living beyond your means, that could be a ground for an audit. An audit is not something that should catch people by surprise.

The Bill states very well that there are obligations of the auditing body. The auditing body should not just wake up one morning and tell you that they want to audit you, then ransack the office and catch you unawares. According to this Bill, for a proper and objective audit to be done, the body must ensure that it informs the person who is being audited at least seven days before the audit. This will ensure that the person is notified in good time.

When there is an audit, it does not mean that somebody is a thief. Auditing does not mean that they want to audit you because they have realized that you have stolen something. It is just a way of ensuring that Chapter Six of the Constitution is being obliged to and that you are innocent.

According to the Bill, people being audited should be informed by the auditing body that, in seven days, they are going to have an audit. In addition, people should also be told the reasons for the audit. It should not be just taken that because you are being audited, you are already a criminal. Somebody should not just get into your office, turn your computer upside down, switches of the lights or does this or that.

It should be a process that is proper, professional and standard. It should be a process that is going to come up with verifiable evidence, that an audit has been conducted and the person is okay or right. Alternatively, it should be a process where an audit has been conducted and there is a question mark about a person. It does not always mean that you are on the wrong when you are audited.

When it comes to audit, it states clearly that the body must know that the person being audited has the right to be heard. The fact that you are being audited does not mean that you are a criminal, and you cannot open your mouth or defend yourself on how you got your wealth.

The Bill provides that you have a right to be heard. If it is an issue of explanation, you need to explain and have verifiable evidence to show how you got your wealth. That way, the auditors can be satisfied that probably whatever they thought was wrong is not the case. This is because this is essentially supposed to be an objective process.

What I also like about the Bill is that the person has a right to representation. The fact that you are being audited does not mean that you should not have legal

representation. According to this Bill, the person being audited must be represented by law. Apart from being represented, the person must also be cross-examined so that he can defend himself.

When it comes to an audit and you want to criminalise someone, you must talk to the person and give them a hearing. After that, cross-examine them so that even if a ruling is going to be done, it will be fair and just. However, when someone is being audited, it does not mean that the person should just keep mum, or that the person should not be represented.

Something good about the Bill is that it also obligates public officers to be genuine and truthful on how they acquired their wealth, so that whatever wealth they have, it should be hard earned. This is because in a country like Kenya, if you are to own a house, you cannot build your house using your salary without taking a loan.

For a mega project in Kenya, any simple public servant must take a loan. If you have taken a loan to build a house and auditors establish that you took a loan and built the house, they will have answers to whatever they were seeking. However, if someone just wakes up one morning, builds a house, finishes it, builds another one and finishes it without taking loans at all, there must be question marks. This is because mega projects are not easy to come up with, unless you have taken a mega loan, so that you eventually stay like a pauper as you pay the loan.

So, I want to say---

**The Temporary Speaker** (Sen. Pareno): Just a minute.

Proceed, Sen. (Dr.) Kabaka.

**Sen. (Dr.) Kabaka:** Thank you, Madam Temporary Speaker. It is not my intention to interfere with my sister, Sen. (Dr.) Musuruve. However, it should be clear that a public servant taking a loan does not, of necessity, mean that he or she is clean and cannot service the loan even using the ill-gotten loot. It is very possible. People actually take loans to camouflage their loot and then later use corruption proceeds to service the loan. It is not a cure, as such. That is my opinion.

**The Temporary Speaker** (Sen. Pareno): I note that you are trying to give information to the Senator. You would have asked her to tell us whether she wanted to be informed. Nonetheless, that is good information.

**Sen. (Dr.) Musuruve:** Madam Temporary Speaker, this is a House of reason and everyone is entitled to their opinion. However, if you listened keenly, I was talking of probabilities. I did not mean that that is the case but I was just giving a scenario when it comes to owning wealth.

I am not talking about the extremes because I may not know public servants that could be crafty. What I am talking about is a normal public servant who is not crooked in thinking. Such a person could take a loan to build a house and they may take five or seven years just paying that loan. I am talking about that kind of a genuine public servant.

There are also many other public servants who are just after enriching themselves. Such are the ones I am talking about. It needs an investigation to be done to know what they have done. It is not possible to have a mega project in Kenya as a public servant without taking loans. If you just rely on salary alone, you may not even build a house in your home. Instead, you might end up in a semi-permanent house or not one at all. You must at least sacrifice at some point. That sacrifice is what I am saying that it is in order.

An auditor may want to find out how you managed to do a mega project. When you explain and the evidence about the loans you took is there, I think they will be satisfied. If they find out your crooked ways, that will still be okay.

In the process of auditing, it is possible for them to know whether whatever you are saying is true or not because according to this Bill, public servants are obligated to be truthful when it comes to the information they give. If they give information that is not truthful, it attracts a fine. If it comes out that a public servant was not truthful, they will be prosecuted for not being honest.

This Bill obligates public officers to be highly cautious and careful in the manner they handle public money when they are in office. If it is followed to the letter professionally and with integrity and objectivity, it will help public servants style up and ensure that they give genuine service to the people of this Republic because that is what they are employed to do. They are supposed to be servant leaders in whatever capacity.

Madam Temporary Speaker, I support.

**Sen. (Dr.) Milgo:** Thank you, Madam Temporary Speaker, for giving this chance to also support this Bill. I thank Sen. Farhiya for thinking through and coming up with such a wonderful Bill that will go a long way to speak to issues of illegal acquisition of wealth.

This Bill has come at the right time because in 2018, if I am not wrong, the President of this country declared that everyone has to undergo a lifestyle audit. Many people felt that there was some witch-hunt. Others felt that “their people” were being targeted while others felt that they were the only ones being targeted.

With a legal framework, this will go a long way to guide the investigating bodies to conduct this without fear or favour. I hope my sister, Sen. Farhiya, will ensure that this Bill declares when, where, and how this one will be undertaken so that it applies to all people in this country.

Madam Temporary Speaker, this is the first time that we have a legal framework that will guide in terms of process. It is also directing on issues of professionalism. Without professionalism, this can be prone to abuse where even those who go out to purport to be looking at lifestyle audit may end up conducting some other activities. In this case, the activities may affect officers who are being audited in the wrong way.

If this country will embrace this Bill, it is going to be a game changer, particularly when we have a body involved. The Office of the Director of Public Prosecutions (ODPP) will even receive serious cases from this body so that it is not the only one. Many a time, we have been saying that this body is toothless. It is the only body that has been looking out to prosecute cases without having an investigating body to refer to. I have seen many cases that have gone to the ODPP being thrown out and being declared not fit to be taken there because they lack evidence.

Madam Temporary Speaker, if we have such a legal framework, we will have a professional body. That means that by the time any individual will be referred to the ODPP, that case will be one that should be investigated. We have wasted a lot of money and time with the ODPP conducting cases and at the end of it all, there is no case to be answered.

I support this Bill because it has been done with the consideration of all other Acts that deal with integrity, procurement, and financial management. A lot has gone into

this. I thank my sister because she has even gone to the extent of finding out from other countries how they came up with such a Bill.

In Part 3, this Bill provides that cases that will be deferred will be directed to the ODPP. However, this is the area which must be looked into clearly. As it stands right now, there are very many cases that have been taken to the ODPP as well and they have never seen the light of day. I know there are cases of corruption in maize. Sometimes back, we were told that some Kshs18 billion was stolen that was otherwise supposed to be paid to the farmers. In any case, you even mentioned the cases of the Ngiritas and nothing has come out of it.

Madam Temporary Speaker, there are other cases that have gone to this particular body - the list is endless - but then nothing has come out of it. Those are the cases that may take a long time to prosecute. Such are the cases which may otherwise require a lot of money to investigate. Sen. Mutula Kilonzo Jnr. said that these are the very lucrative ones which will even escape prosecution because of the fact that they have got money to buy their way.

Our major challenge in this country is that despite the very many bodies that we have--- We even have Chapter Six of the Constitution. She even gave an example of an officer who must be vetted on his conduct before employment. When an officer is in office, they must conduct themselves in a manner that befits a public officer.

Article 75 (2) of the Constitution which states that-

“A person who contravenes Clause 1 or Article 76, 77 or 78 (2) shall be subject to the applicable disciplinary procedure for the relevant office.”

How many officers have been prosecuted for abusing office? The answer is none, yet there are many of them.

Today, we have been told that there are those who engage in corrupt deals but when they find out they have a case to answer, they burn their offices. They therefore, interfere with the evidence that could convict them. My prayer is that once this Bill is assented to, it should be acted upon, so that it does not collect dust like many others.

There are many questions that come to my mind when I look at this Bill. For example, it has not declared how money that is stashed in other accounts outside the country will be established. Recently, we learnt of a case where Kshs2.5 billion was found in some banks outside the country.

We also have cases where people trade in offices where they are supposed to serve which is not supposed to be the case. Some people also use proxies so as to trade in those offices. Others keep money in the accounts of their daughters, sons or wives. Therefore, this Bill ought to have a Clause that will follow up, not only on the officer, but also the extended family.

Madam Temporary Speaker, another challenge that may affect this Bill is that it may be used to prosecute people selectively. For example, the poor may end up suffering. As my colleagues have said, in most cases, Bills that could have cured issues of corruption in this country are normally applied to the poor. The poor people who steal little money are jailed and suffer more than those who steal billions of money. Therefore, this Bill must not only affect the poor or those that are politically incorrect. If you look at trends, some corrupt people are allowed to go scot-free while others are prosecuted.

Madam Temporary Speaker, when you look across various Government institutions, you will realise that the only people that got prosecuted are those that stole little money or those who do not have enough money to hire good lawyers. So, this is an important Bill that requires the people's complete mindset.

There is also the issue of filling wealth declaration forms. I do not know who consumes them yet we fill them year in, year out. There are officers who fill those forms and have wealth which is beyond their means but nobody prosecutes them. Therefore, we are just filling office shelves with forms. It is time to find out whether they reflect the truth.

With amendments and support from all officers, this Bill will go a long way to speak to the issues of run-way corruption in our country.

I once again thank, Sen. Farhiya, for bringing such a wonderful Bill to this House.

**Sen. (Dr.) Kabaka:** Thank you very much, Madam Temporary Speaker. I will be very brief. Looking at the clock there, I can see that we have barely 10 minutes, and maybe, there is somebody else to follow.

I thank Sen. Farhiya for bringing this important Bill which is long overdue. If this Bill was established at the advent of Independence, we would not be having this problem. We do appreciate that historically, Kenya after attaining Independence, we inherited the system of capitalism through our body organs, including the Judiciary. We do appreciate that at Independence, all the officers of the Judiciary were White men and they perpetuated the doctrine of capitalism.

I have read this Bill very well from Clause 1 all the way. In particular, I would say that it terminates at Clause 34 because after that we have Miscellaneous Provisions under Part 5. That is Clause 35 all through to Clause 40. Then, of course, thereunder are the Memoranda of Objects and the Reasons thereof.

This Bill is good, only that it needs to be polished in certain aspects. I appreciate that I have 20 minutes; I will go slowly then. I have looked at the objectives of this Bill and they are very clear. It deals with lifestyle audit. Clause 2 on the interpretation of this Bill defines it very clear for everyone to understand what it is talking about. It means – and means is conclusive in law – an investigative audit of a person's living standards to ascertain consistency with their lawfully obtained or reported income.

In short, this Bill entirely deals with the lifestyles of persons. In other words, a person should not be seen to live beyond his or her own means. If your salary is Kshs100,000, then you cannot afford a chopper. If you get a chopper, then the analogy, and it is a very clear decision of the Court of Appeal and even the Supreme Court--- The court has held more than once that if a person is challenged to explain the source of their wealth and is unable to do so, then logically, that person will be deemed to be corrupt. It goes without saying and that is what we are talking about.

The other issue that I have seen that needs brushing is jurisdiction. I was very careful looking at the hierarchy or systems of the courts here. Under the Bill, the Mover proposes that the jurisdiction of the court commences with the High Court. However, if you look at Article 162 of the Constitution, it defines the courts. Of course, it bequeaths Parliament certain powers. It says that the superior courts are the Supreme Court, the Court of Appeal, the High Court, and the courts referred to in Sub-section 2.

Article 162 (2) of the Constitution states that-

“Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—

- (a) employment and labour relations; and
- (b) the environment and the use and occupation of, and title to, land.”

**The Temporary Speaker** (Sen. Pareno): Sen. Farhiya, do you have an intervention? Take your seat Sen. (Dr.) Kabaka.

*(Sen. (Dr.) Kabaka resumed his seat)*

**Sen. Farhiya:** Thank you, Madam Temporary Speaker. I am standing on a point of information because this has come up now for the second time. The reason why I picked the High Court was to give this a better stature. In lower courts everyone can get orders from magistrates and we will end up having people charged everywhere. That is why I raised the issue. An amendment can be brought but that is the reason for picking the High Court.

**Sen. (Dr.) Kabaka:** I appreciate what you are saying. This is a good Bill but we will bring an amendment to polish it. It is not possible for us to just have the High Court because the Constitution, which is the supreme law, is very clear.

Article 162(2) is very categorical that it only gives two aspects for the High Court. It states that—

“Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—

- (a) employment and labour relations; and
- (b) the environment and the use and occupation of, and title to, land.”

That is what lawyers called land law courts. There is nothing beyond that. That is why I am saying the intention of this Bill is good but Article 162(3) of the Constitution says that—

“Parliament shall determine the jurisdiction of the courts contemplated in Article 162(2).”

It is the role of Parliament to bestow the administrative aspect of the courts.

It is imperative that at this stage, we should not demean a magistrate court because justice can be done anywhere. It does not mean that it is only the High Court or the Supreme Court where justice is. Justice can be found in any court. Any court is a court of competent jurisdiction; that is what we say.

My take as a lawyer is that the jurisdiction ought to start at the lower level; which is the magistrate court. However, magistrate court should not be defined to deal with matters relating to lifestyle audit alone because of time limitations. This is because matters are referred to the High Court or the Court of Appeal take many years because of the backlog of cases.

If we are serious to have this law, so that cases move fast, it is better we have a specialized court. There is no better court than a subordinate court which is subject to supervisory jurisdiction of the High Court, where the parties can appeal if they are not satisfied.



Madam Temporary Speaker, the other aspect of this Bill is that we presuppose that there are persons who cannot explain how they obtained their wealth. The question we should be asking is what happens at both national and county governments and how do people get wealth. This is an area we need to interrogate but there is a law on that.

The wealth is obtained through procurement at the national and county levels. Parties are known to do shoddy tendering process and that is where they make money and get kickbacks. There is also what we call falsification of Government land titles by those working at the Lands Registry. They are known to make money that way.

We have heard Governor Sonko claiming that there are cartels in the city and that is the challenge he is facing. People look at files of certain pieces of land, especially in prime areas in places like Karen, Westlands, Kileleshwa, Rift Valley and Nakuru. They are known to keep an eye on prime areas, mainly land which was owned by the colonial masters and renew their titles or ask for extension of the lease---

*(Sen. (Dr.) Kabaka's microphone went off)*

### ADJOURNMENT

**The Temporary Speaker** (Sen. Pareno): Order! Sen. (Dr.) Kabaka, you will have a balance of 10 minutes when this matter comes next in the Order Paper.

Hon. Senators, it is now 6.30 p.m., time to adjourn the business of the Senate. The House, therefore, stands adjourned until tomorrow, Wednesday 4<sup>th</sup> March, 2020, at 2.30 p.m.

The Senate rose at 6.30 p.m.