

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

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

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

PRAYER

PETITION

HISTORICAL INJUSTICES AGAINST THE SAMBURU COMMUNITY LIVING IN KIRIMUN AREA OF LAIKIPIA COUNTY

The Speaker (Hon. Lusaka): Sen. (Dr.) Lelegwe.

Sen. (Dr.) Lelegwe: Thank you, Mr. Speaker, Sir. I read this Petition on behalf of the Petitioners. It is a Petition to the Senate by Kirimun residents concerning historical injustices against the Samburu community living in Kirimun, Laikipia North, Laikipia County.

“We, the undersigned citizens of the Republic of Kenya and residents of Kirimun, Laikipia County draw the attention of the Senate to the following-

THAT, The National Land Commission Act 2012 was enacted to provide for the management and administration of land in accordance with the principles of land policy set out in Article 60 of the Constitution and the national land policy. The enunciated principles include the principle of equitable access to land, the security of land rights and as well the settlement of community land disputes using local initiatives;

THAT, the Samburu community have often been depicted in postcards, coffee-table books, and the popular media as generously adorned girls or as glamorous bachelor warriors roaming the countryside, engaging in livestock theft against their neighbors, and illegal herders;

THAT, the British Colonial Government founded the African Livestock Marketing Organization (ALMO), later transformed into the Livestock Marketing Division (LMD) to spearhead livestock development and marketing. This policy development became a nightmare for the Samburu community. To date, the LMD is seen as a curse to the Samburu community land rights;

THAT, the establishment of the Isiolo Holding Ground in 1952 by the colonial government as a quarantine and disease screening area for pastoralists’ cattle prior to their travelling further south for sale, was originally only 16,000 hectares, but over time,

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expanded to an area of approximately 124,000 hectares. This expansion extended the southern LMD territory to the current Laikipia County, further displacing the Samburu from their traditional lands;

THAT, the changes in land tenure introduced by the colonial government and later, the independent government, affected the Samburu negatively. The nomadic pastoralist Samburus remained largely landless;

THAT, in Kirimun, there are harrowing testimonies of harassments, torture and even death in the hands of the LMD personnel for the nomadic herders, and even women and children found in the LMD controlled areas;

THAT, the Samburu community have been depicted as illegal herders and trouble makers in the vast ranches of Laikipia County. The herders, as they are referred to, are seen as a source of insecurity for the private ranchers. On the basis of this depiction, the serious problem of unfair land alienation of the traditional Samburu lands has been perpetrated;

THAT, the local community members have in the past engaged with the relevant authorities to lay down formal claims to the Samburu traditional land in Laikipia North Sub County, and particularly Kirimun Sub-location. As early as the 1990s, local delegations met with several national leaders to resolve the matter (2003-2007);

The same issue has been raised with the Laikipia County Council for a long time. In particular, in 1996, this was petitioned to the Ccounty Council during the leadership of Mr. John Lokopien, with no success. Local leaders were part of the delegation of Maa speakers to the former Vice President, Moody Awori, in 2003 on the Laikipia landlessness of Samburu people, but once again, no action was taken;

THAT, in 2004, following the expiry of the 100 years' land lease of some one million hectares of land in the hands of British settlers in the country, the Samburu community, under the aegis of the Maasai Civil Society Group, presented a petition to the Government on the return of traditional Maa speaking land alienated by the colonial government. This was before the promulgation of Kenyan Constitution (2010), which now recognized discussions on historical land injustices in the country. Unfortunately, the government rubbished the community demands;

THAT, the Petitioners have made the best efforts to have these matters addressed by the relevant authorities, all of which have failed to give a satisfactory response;

THAT, none of these issues raised in this Petition is pending in any court of law, constitutional or any other legal body;

WHEREFORE, we, humble Petitioners, pray that the Senate intervenes with a view to ensure that-

- (i) the rights and interests of the Samburu Community are protected by the National Land Commission (NLC) through conferment of the title of all land in Kirimun Sub-location to the designated Samburu Community residents under the Community Land Act, 2016;
- (ii) the Samburu people living in Kirimun, Laikipia North Sub County are compensated commensurate with the value of any land taken from them;
- (iii) the Samburu Community are compensated for historical wrongs of torture, humiliation and suffering perpetrated by the successive governments and its agents such

as the LMD, NYS, KWS game wardens and the police on the members of the Samburu in Kirimun Sub Location;

(iv) there is accelerated establishment of schools, health facilities and other public service institutions for the benefit of the Samburu Community;

(v) the rights of the Samburu Community to use their traditional land, natural resources and water points for grazing and maintenance of their traditional way of life is upheld; and,

(vi) the planned establishment of Kirimun Game Reserve and allocation of the land to community residents is degazetted.

Mr. Speaker, Sir, the petition was signed by nine petitioners on 8th October, 2021.

I thank you.

The Speaker (Hon. Lusaka): Hon. Senators, pursuant to Standing Order No.231, I shall now allow comments, observations or clarifications in relation to the petition for not more than 30 minutes.

Sen. (Dr.) Musuruve: Thank you, Mr. Speaker, Sir, for giving me this opportunity to support Sen. (Dr.) Lelegwe. He has brought on the Floor of this House an emotive Petition concerning the Samburu people.

This Petition is about historical injustices that must be corrected. There were wrongs even before pre-colonial times, Independence and the promulgation of the 2010 Constitution that need to be corrected.

The Samburu people approached Hon. Moody Awori when he was in a position to help them, but the issue was not corrected. Now that we have the Constitution 2010, which provides for devolution, the petitioners have a right to present it to this House.

The onus is on us to ensure that historical injustices that were there during that time are corrected. Before the term of this Senate ends, this Petition needs to see the light of day because land is a factor of production.

There is nothing you can do without land. You can use land for economic activities. Land can also be used as collateral in a bank, so as to get more money and develop it. You can use land to plant cash crops and get money to buy food.

We need to think seriously about what Sen. (Dr.) Lelegwe has brought on the Floor of this House. He also talked about compensation, which is an important issue. Land injustices were there even during the colonial times. However, the value of land has gone up. Therefore, if there is any form of compensation, then monetary compensation should be according to the value of land now and not during the colonial times.

It is clear in our Constitution that Kenyans must be protected. For those who cannot afford social protection for themselves and families, the state is obligated by the Constitution to ensure that such individuals are protected.

Mr. Speaker, Sir, the people of Samburu need to be respected and protected for purposes of prosperity.

I thank you.

Sen. Cheruiyot: Thank you, Mr. Speaker, Sir, for giving me this chance to add my voice to this interesting Petition by residents of Kirimun, who are largely found in Laikipia and Samburu counties.

It is a sad story listening to what Sen. (Dr.) Lelegwe presented before the Senate about the things that they have had to put up with. It dates back to pre-colonial days. Post-colonialism, the Blackman came in, but the policies of the Whiteman still reign in that particular part of the country.

It is unfortunate that in the 21st Century, leaders still have to call upon us, but there is a silver lining out of this. I do not believe that it was for lack of alternatives that they brought this Petition before the Senate. I am sure they skimmed through the length and breadth of the Republic, saw the options that are available for them and chose this particular august House as the place where they think their rights can be guaranteed.

Therefore, Mr. Speaker, Sir, it will be a great travesty of justice if the Committee that you will charge with the responsibility of responding to this petition just brushes over without giving the kind of response that Kirimun residents are looking forward to from the Senate. We look forward to a speedy and faster resolution of this particular issue.

I want to imagine how many generations have passed through this particular problem, which is constant marginalization because there are communities that are considered to be backward and not progressing as the rest of the country.

Many times, people ignorantly look down upon communities like the Pokot and the Samburu and those found in marginalized parts of the country and blame them. They ask where their leaders are and why they do certain things. That includes the people in the northern part of the country and lower coastal regions.

If you follow the debate we had here a few months ago, when we were trying to divide revenue, it was controversial how that particular issue was. The Senate captured the attention of the country for 10 weeks. If that was a fight for 58 per cent that we had, what about 85 per cent of the resources?

We asked how resources are distributed and the audit, but nobody has been able to handle that particular issue, not even the Commission on Revenue Allocation (CRA). We asked that question on many occasions when we used to have the first Chair of the CRA, whom we used to refer to as the 48th governor.

He would appear before us on many occasions and we would tell him that his responsibility constitutionally does not end with the 15 per cent. That is the constitutionally mandated body that advises the Government on how to prioritize and share resources at both levels of Government. It does not just end at dividing into two and saying that 30 per cent goes to the counties, while 70 per cent remains with the national Government.

If you read our Constitution and capture the spirit of what the drafters expected, we should know how to push for 70 per cent to reach all the communities of this Republic, such that we do not talk about marginalization anymore in the 21st Century.

The Petition speaks to those particular issues, where the colonialists made a decision about how the Kirumin residents were pushed out of their land, of course, with a very noble idea that we are setting up a disease control zone for their livestock and people gladly made the decision and said: "Ooh, that is a very progressive thought." Unfortunately, when the colonialists left, they have never been able to go back to their land.

You remember the challenges that we had three weeks ago here in Laikipia. The reason people are fighting for scarce resources is because there are people who look at the Government and see all forms of injustices. They do not see a reflection of a government that they put into office.

Therefore, I plead with the Committee that this matter will be referred to because they are mandated to conclude this within 60 days; that they do not have to exhaust all the 60 days. This is a straightforward Petition that they can request for the documents, invite the petitioners and the National Land Commission (NLC). Ten years down the line, what are their fruits? How have they been able to resolve many of these questions?

The Ndung'u Land Report continues to gather dust, yet colossal amounts of public resources were spent. How have they responded to this particular call?

As a House, we are also being put to task because we are the body that oversights government institutions, and I believe the NLC is one such institution. It is upon them to come and table before us how many issues they have been able to resolve.

I do not believe that it was the dream of the drafters of our Constitution for the NLC to be only handling compensation matters. We know what their motivation is for them to expedite those issues.

Even issues that involve poor ordinary citizens such as this, such that the multinational land issues in counties like Kericho and Nandi County and the western part of the country; places like Trans Nzoia where people are still waiting for the NLC to resolve many issues, including the former White Highlands.

They should come to this House, table that report and say how many issues involving ordinary citizens they have been able to adjudicate and give a final verdict, so that if people are dissatisfied they can move to court, we resolve that matter within two or three years and move forward.

This is one Petition I will keep a close eye on with the hope that a well-thought-out resolution to this matter will be found and the residents of Kiriimun will thank their Senator and say it was worth going before them to seek solutions.

Thank you, Mr. Speaker, Sir.

Sen. Omogeni: Thank you, Mr. Speaker, Sir. First, I want to thank the Senator for Samburu who has shown a lot of passion in fighting for the historical injustices of his people. I think that is why we are called the people's representatives.

We all know that in the run-up to the passage of the 2010 Constitution, land was a very hotly debated issue. Chapter 5 of our 2010 Constitution is dedicated to land and environment issues.

We are almost now a decade old with our new Constitution in place and it is unfortunate that we are still hearing this kind of plight that has been brought before the House by Sen. Lelegwe.

Whenever I see the picture of the Samburu people anywhere in the world when I am travelling, I am always proud to be identified with the Samburu people because they depict the culture of Kenya. When you see that picture of a Samburu, you feel proud. It is not something that you should use to paint them negatively.

If a lease of one million acres of land that was in the hands of our former colonial masters, the British, expired, why can the Government not put in place mechanisms of handing this land back to the Samburu people?

Having listened to this Petition presented by the Senator for Samburu, it is a wakeup call that we have still not dealt with historical land injustices in this country.

The Ndung'u Land Commission that was presented is gathering dust in the National Assembly to date. We have not seen any compensation. The CS for Lands and Chairperson of the NLC, Mr. Gerald Otachi, should initiate some urgent measures of addressing some of these injustices. Otherwise, it does not make sense to Kenyans like the people of Samburu who have suffered for many years.

Hon. Moody Awori who was a Vice President in 2004 made promises to the people of Samburu, but nothing has been done to date. The County Council of Samburu made efforts to address the concerns of these people, but nothing has been done.

I recall that in 2008, in Australia, the then Prime Minister apologized. He made an apology on the floor of Parliament to the Aborigines of Australia for the historical injustices that these indigenous tribes had faced in Australia.

Why can we not, as a Government, be courageous enough and come out and admit that some injustice was meted out to some tribes in this country, apologize to them and organize for their compensation, so that we bring this to a close? Otherwise, this is a problem that will remain for many generations to come, and I do not think it is fair.

I hope that the Committee that will be tasked to look into this matter will go into the bottom of it and make recommendations that will bring the suffering of not only the Samburu, but other tribes that are faced with historical injustice to an end.

I fully support, Mr. Speaker, Sir.

Sen. Murkomen: Thank you, Mr. Speaker, Sir, for the opportunity to speak to this very important Petition affecting the people of Kirimun concerning historical injustices touching on the people of Samburu living in Laikipia.

Historical land injustices remains a very thorny issue in this country. The Constitution was passed in 2010 with a view to resolving among others the thorny issue of historical land injustices.

The Truth, Justice and Reconciliation Commission was established and expected to become part of the solution to the problems bedeviling this country. Unfortunately, we live in a Nation where we fear confronting our challenges.

One of the biggest problems affecting this country is conflict of interest. The people elected to public office have a responsibility to defend the interests of the people and not to enrich themselves. Unfortunately, the Government is full of interests and politics. Whether it is Parliament, the Executive or the Judiciary, it is full of conflict of interest.

There are people, who like Sen. Wetangula likes saying, quoting Chinua Achebe, that when you mention dry bones old women get jittery. I am quoting Chinua Achebe; it is not me or Wetangula who said as much. I believe even old men get jittery, for purposes of Sen. Nyamunga who is looking at me with a very serious expression.

Due to the conflict of interest that is affecting this country every time the words "historical land injustices" are mentioned, there are people who become completely

uncomfortable in this country. This is because they know that the land they have, they acquired it illegally. I can almost swear an affidavit that Sen. Rose Nyamunga is not one of them.

We need to reach a stage in Kenya where we confront our challenges, face our giants; where those who are in public office, including us, the politicians here, are willing to have a face to face conversation with the people of Kenya and say: “This is what we have done and the problem ends here.”

However, the problem we have in this country is a lot of hypocrisy.

The people who pretend to profess virtues of accountability and transparency are the same people who are uncomfortable when poor people, particularly those who live in Kirimun Village, Ogieks, the Samburu people and slum dwellers talk about land injustices in this county.

If you go to Nyeri, there are many people complaining because they were pushed from Kieni and other areas away from their clans, so that they could accommodate *mabwenyenye*.

If you go to the Rift Valley, you will hear many communities complaining about their historical lands and how they were moved to benefit a few ‘big’ people who were controlling the Government at that point in time.

Mr. Speaker, Sir, I want to ask young leaders in this country to read the history of this country because very few people read due to the culture of the social media. People need to learn that if we do not read our history to understand where we come from, we may never confront the challenges we are facing in our country now and in future.

As part of dealing with this problem that Sen. (Dr.) Lelegwe has brought, young people of Kenya like Sen. Ngugi and the generation behind him should start by reading. Read the history of the country and biographies of people like Prof. Wangari Maathai. I have a copy that she autographed for me when she came to school in Washington DC some time back.

Mr. Speaker, Sir, I have the one for Mr. Simeon Nyachae, who also autographed his biography for me. It has a very good part on historical land justices.

Every time I travel with Sen. Wetangula and Sen. Orenge, they always have books by their side. They read everywhere they go. If you sit with them to listen to their stories, you realize that these are people who have content because they read. However, our current generation does not read. We are always on *WhatsApp*, *Twitter* and other social platforms. We think we are ‘big’ people because we control some followers on social media.

We need to understand the history of this country and know the land injustices visited on our people from our elders and people who are experienced. I insist that we are losing many Independence leaders, not just Presidents, but people who were working with them in former governments even at our Independence. Few of them have written books and left their histories.

We need to learn and understand that there are people who are suffering because there is a history to it. The conflict that is in Laikipia County is not a conflict of today. There is a history and foundation to it. There is historical marginalization there. There are people whose property was taken away from them. For example, we have small

communities like the Ogiek, Samburus, Rendilles, Tachonis and Sengwers, whose land was taken away from them. These are things we need to confront as a country.

I thank Sen. (Dr.) Lelegwe for bringing this issue of Laikipia. The colonial Government took property from people. We fought for Independence because we wanted to sort out historical land injustices. However, when we got Independence, the same people are still suffering from the same kind of oppression that they faced during colonial times. We are cheating ourselves.

We will never be at peace as a country and sit settled until we confront this problem and settle historical land injustices. I hope the Committee that is going to deal with issue will not come with a window-dressed report to the petitioners telling them what the Constitution says.

They must face the challenge as it is. Let the problem remain at the stage of implementation, but we, as Senators, must come back here with a report that will satisfy the people of Laikipia and Samburu counties for whom Sen. (Dr.) Lelegwe has brought this Petition on their behalf.

Next time, I hope when we bring these petitions, we will also follow through to ensure that there is accountability. Sen. (Dr.) Lelegwe mentioned the former Vice President, Hon. Moody Awori. I am sure he was there for a campaign function and he needed votes. We are now 10 months to elections and many of us will come back again with promises that we will settle your people or we will do this or that. However, after elections, nothing will happen until another year to elections.

I hope, as the Senate, we will come with a comprehensive report. I have a question that I will ask the Committee on Lands, Environment and Natural Resources later because they have many pending reports. I do not know whether they are uncomfortable dealing with historical land injustices issues. There are so many questions brought by various Senators that deal with land issues that have not been answered. Sometimes when they are answered, they are below par. They do not meet the standards required of a House called the 'Upper House' of the Republic of Kenya.

I support.

The Speaker (Hon. Lusaka): Sen. Wetangula.

Sen. Wetangula: Thank you, Mr. Speaker, Sir. I am happy that the distinguished Senator for Elgeyo-Marakwet County has the courage to decry the death of reading. Mr. Pheroze Nowrojee captured it very well. He said that we have reached a stage in our country where people will only read books if they are written in cartoon form. Otherwise, they have no time to read. We must embrace reading.

Mr. Speaker, Sir, I support this Petition. It is extremely weighty because it addresses an issue that has bedevilled this country for the last 50 or more years. Kenyans were brutally uprooted from their land by the colonial administration; some dumped in camps while others were pushed away from their prime grazing and agricultural land to very marginal land where they could barely survive.

Independence came with hope. Independence must have brought restoration of peoples' rights, interests in their land and resettlement. For over 50 years, this country has been talking about land, resettlement, restitution, and it does not happen.

Mr. Speaker, Sir, we have the Truth, Justice and Reconciliation Commission that prepared a report on historical injustices. All these things are captured in that Report. Why the Government has not implemented these problems is a matter that we need, as a House, to speak to.

More importantly, this Petition speaks to very serious issues. It says that there are Government agencies occupying land, African Livestock Marketing Organization, which was transformed into Livestock Marketing Division, which is moribund, as far as I am concerned. We have the National Youth Service (NYS) occupying land. If you look at what is happening in these areas, you will find huge tracts of land set aside for NYS. However, it is the rich people who graze or farm on it because NYS itself has no resources to carry out farming.

This is not right. Mr. Speaker, Sir, you have been a District Commissioner (DC) before and have seen this happen. At this day and age, when there is a serious conflict between herders and farmers, who are settled in those areas, I cannot imagine the County Government of Laikipia is gazetting a game reserve against the interests of local people who can graze on this land.

Mr. Speaker, Sir, Laikipia has enough game reserves and game parks. We do not need to deny people grazing rights to create room. We live in a country that is so bad that if a criminal storms into somebody's home and kills his livestock, nothing happens. If a stray person kills a wild animal, it becomes headline news. This is not right. The issues of this land are not new to us; we know and have read about them. The land in issue is 306,000 acres that ought to benefit the Samburu people, spreading from Samburu County to Laikipia County.

Mr. Speaker, Sir, we went to Laikipia recently with Sen. (Eng.) Mahamud and Sen. Outa. We saw people crammed in small plots next 100,000 acres of land owned by a foreigner being held as a conservancy, and they cannot graze on that land.

If you read the history of this Kirimun Village, you will find that, at Independence, the British Government settled 'Johnnies,' as they are commonly called, on the land of the Samburu, but they are former British soldiers.

They were given titles; they live on this land, bequeath it to their children and that is land they never bought. The locals are there squatting on the periphery of this land, being shot at or arrested when they trespass, prosecuted when they trespass and their animals are confiscated and sometimes auctioned or taken away by 'big' people.

Mr. Speaker, Sir, this is not the kind of country that we want. This cannot be the kind of country that we live in. We want justice for everybody. Justice for a foreign settler must be justice for a local individual. We cannot stand here and talk about Kenya being a multiracial and multiethnic, while we treat our own indigenous people as second hand citizens.

When we went to Laikipia recently, we were told by the locals there that it looks like hell. The people who keep livestock must cross over to Laikipia where there is rain, water and pasture to graze. However, when they arrive there, hell breaks loose. They are told that the land belongs to Kuki Coleman, Ol Pajeta Conservancy, Solio and many other foreign settlers.

I dare say that some of those lands have 100 years leases that have expired. Instead of the Government adhering to the new Constitution of public participation to call the original owners and ask them what they want, the leases are being secretly renewed at the Ministry of Lands. Somebody who lives in London owns land in Kenya. They visit as a hobby or to holiday with their friends, to show off how they own vast land in a place that they do not live, while the ordinary people are suffering. This has to be stopped. I urge the Committee that will look into this particular Petition to be trend-setting.

As Sen. Murkomen has said, we do not want the Committee to come back to this House with superlatives that make no sense to anybody. They will come and say that they have looked at the rights of people and everybody has a right to own land. We know that! What about the dispossessed? Do they not have rights? I sympathize with the people of Samburu. I support the Senator for Samburu and want this matter to be looked at in depth, far and wide, so as to restore justice to the people who have been dispossessed historically and in contemporary times, and that is not right.

Mr. Speaker, Sir, I support this Petition. When it comes to hearing in the Committee, I ask Sen. (Dr.) Lelegwe to invite some of us to come to the Committee as friends of the Committee to offer our professional experience and legal training, to help solve problems that are not necessary to be part of our current history in this country.

I thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Proceed, Sen. Orengo.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, I fully support this Petition. This is one of the things that when brought to Parliament, you get a little ashamed because they are not coming for the first time. Whenever such issues are brought before this House, we talk about them, but nothing is done. If this was an idle problem, it would not have been addressed in the Constitution.

The Chapter dealing with land talks very firmly and robustly about not only historical injustices on issues relating to land, but the need to resolve those historical injustices. Parliament was required to come up with legislation to address the historical injustices. In fact, the categorization of land between community, private and public land, part of that process was supposed to resolve the process of returning land to communities who lost land over the years.

I am proud of the fact that I presided over the drafting of the National Land Policy. That policy was discussed at length both in Government circles, Cabinet and was finally brought to Parliament and passed. If you look at the Chapter on historical injustices; areas where the historical injustices arose, you will find Samburu or the Maasai Community prominently talked about in the National Land Policy. The National Land Policy should be reviewed every five to 10 years. The problem is that those who bore the brunt of colonialism when the white man came to this country, it is the communities that now look helpless that offered the most solid resistance to colonialism.

Mr. Speaker, Sir, if you read history, as Sen. Murkomen has urged us to do, you will learn that the history of colonial intrusion into this country are stories of resistance by our own communities.

Sen. Wetangula: On a point of information, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Would you like to be informed Sen. Orengo?

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, yes, I would.

Sen. Wetangula: Mr. Speaker, Sir, I would like to inform the distinguished Senator for Siaya that what he has said has tickled my brain to understand and realize that, in fact, communities like the Luo, Luhyas, Kalenjins and Kisiis, who live in the hinterland, must forever thank the Maasai Community for killing slave traders, who tried to come through their territory, to capture our people and take them to the market in Bagamoyo and Zanzibar. Sen. Murkomen would probably be in the Bahamas or somewhere like that.

(Laughter)

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, I think the most likely destination for Sen. Murkomen would have been somewhere in Saudi Arabia or Oman.

(Laughter)

Sen. Wetangula is right on point. Without that resistance, communities such as the one that I come from would have suffered a lot. The Talai Community of Nandi that resisted were taken to Rusinga Island and Lambwe Valley. The Talai Community was displaced because of the kind of resistance they gave the colonizers. It is many years since Independence and such communities do not have any piece of land, including from the places they came from.

It is a big shame that up to today, such communities do not have land. Their land is given to private institutions and public bodies in the Rift Valley, particularly where Laikipia is also found. Land that was previously communal is given to private entities and large-scale land owners. I know of a case in Kajiado where for two reasons, the Maa Community gave out land to create corridors for wildlife. They also donated land for public use to establish institutions, but when they demanded the land back, they were not given.

That issue went to the National Assembly; it came to the Senate and went to the National Land Commission (NLC); who said that the land must go back to the Maasai Community in Kajiado. When that order was made and the matter given to the Ministry of Land to deal with, the Director of Physical Planning was instructed to reorganize that parcel of land, do a part development plan and make sure that the land goes back to the community. Instead of doing that, they partitioned the land afresh and gave it to Government institutions and private entities. The community got zero per cent of that land.

We may think that some of these things would go away. In the United States of America, the native communities are still pushing the agenda of restoration of what they lost. Things have gone around and courts and the Government are acceding to some of their request. You go to New Zealand and Australia and these issues will never go away.

Therefore, Sen. (Dr.) Lelegwe, do not give up on this; continue to be pushy. Although the best we can do sometimes is just talk about it, like I have heard Sen. Murkomen and Wetangula talking about it. The more you talk about it, the more some kind of resolution will come ultimately. I remember what Hon. Mwangale said when J.M.

Kariuki was killed, 'you stone' - he was addressing the Government - that although you are not talking, you have heard.

We will keep on talking and I urge us to keep on talking. There is an injustice to the Maa Community even when they are selling their land; their tradition practices have been completely destroyed. They needed large expanses of land. The Maa Community occupied half of this country and they did not move in Kajiado and Narok because they lacked land. They were moved from Trans Nzoia, in fact, up to Lambwe valley. Some of them used to live up to Lambwe valley and they were displaced without justification and justice being done to some of these communities.

When the Committee looks into this issue, they should look at the Truth Justice and Reconciliation Commission (TJRC) Report, which has never been implemented; the Ndung'u Land Report and various reports that have come through Parliament, particularly the National Assembly. Many of the land questions have gone to the National Assembly.

Today is Nyerere Day, and in Tanzania and Africa, people are celebrating. One of the things that Nyerere did was to ensure that the Maasai and the communities in Tanzania that were being seen, as described by Sen. (Dr.) Lelegwe, as only fit for postcards, he made sure that those communities were recognised and given their respect. Africa may be headed to the wrong direction. I am saying this because I remember what Sen. Murkomen has just said. In terms of leadership, the old African leaders who fought for Independence, they used to have a vision. They wrote books. There are many doubts about what Nkurumah stood for. We may have problems with him, but the man was very well read and wrote books, Nyerere the same, even the ones who were in detention like Mugabe and Mandela.

These days, leadership has become something like a commodity. Leadership is a calling. I may not fit the status of some of the leaders that have come before us. Anybody who comes to this House properly has come because it is a calling. I am calling upon institutions and us, as leaders, that we should have a conversation with each other with respect. Whoever is elected to this august House and other institutions, where people come through elections, should be listened to. The fact that Sen. (Dr.) Lelegwe has brought this Petition, people should take it seriously. I am beginning to feel that sometimes people think politicians are just there as people who make a lot of noise.

Sen. Wetangula who has travelled more than most of us, when an issue arises in Parliaments, even if it is a petition like this one, you will have rapid response to this issue. On this Petition, tomorrow, there would be somebody in the Executive trying to make responses to make sure that the record is put straight. However, in this country, until you summon somebody to come before Parliament, you will never get a response. When you call upon them to come here, they will not come. I am glad that both Chambers of Parliament are taking appropriate measures to make sure that those who do not come to Parliament when summoned are treated in accordance with the law.

In conclusion, I hope that the relevant Committee will consider this Petition as quickly as possible and urge Sen. (Dr.) Lelegwe that when you think you are not being heard, continue and eventually the case will not go without resolution.

The Speaker (Hon. Lusaka): I know that our time for this Order is up. Those I am giving an opportunity to contribute, because this is a serious matter, keep it brief and to the point.

Sen. (Eng.) Hargura, proceed.

Sen. (Eng.) Hargura: Thank you, Mr. Speaker, Sir, for giving me the opportunity to commend Sen. (Dr.) Lelegwe for coming up with this Petition on behalf of the residents of Kirimun in Laikipia South.

The issue of pastoral community land is persistent. Pastoralists have been displaced and land has been allocated to other individuals or even for conservancy purposes. Since they are still pastoralists, they are still practising their way of life and the land has been taken, it become a point of conflict and they are always accused of encroaching, while actually, it is their land that has been taken, while they are still around and are still practising pastoralism.

This could easily be attributed to the colonialist mentality, what they called *the la Nelius*, which is that they come here thinking that land belongs to nobody. Those of us living on those parcels of lands did not have any rights and the White men who came first determine the owners. That is how they allocated themselves large tracts of land and pastoralists are being displaced.

The Petition is clear on the effort the community has done in addressing this issue as the Senator has enumerated, what they have done in approaching the national Government leaders in the previous Governments, talking to Laikipia County Council, visiting the then Vice President, Hon. Moody Awori. The most important thing is that once these leases of those conservancies or ranches expired, the Government did not see it fit to return it to the original communities, knowing very well that those are the people whose livelihoods depended on that land.

For those who have the facts in history, I am not a historian, but I read somewhere that the departing point between President Jomo Kenyatta and Oginga Odinga, the Vice President was the policies they had. Jaramogi Oginga Odinga had the policy of restoring the land to Africans, which the President by then, Jomo Kenyatta, did not embrace, and that is one of their departure points.

The colonialist had grabbed African land and the question was what happens to the Africans who had been displaced from their lands after their departure. The best way would have been to restore it back to them. Unfortunately, the first Government did not see it fit and that is why we are still struggling and having these problems.

The first prayer of the Petitioners is that the National Land Commission (NLC) should restore all land in Kirimun Sub Location to the designated Samburu community. That prayer is important. Community land registration is currently going on and these are the lands that can be registered as a block by these communities. When they do that, they will continue with their way of life; pastoralism, which requires the community to own the land. That can only be done through the community land registration. I urge the Committee to look at this matter in that direction.

The second prayer was on compensation. I do not know if this community has benefited from the historical land injustices claims, which were done at the NLC. The deadline of those claims was 21st September, 2021. The Senator should look into that. He

should establish if that community placed their historical land injustices claim with NLC by 21st September, 2021. Those people should be compensated. In Laikipia, we are told that the herders are encroaching private land, yet it is a case of people practicing their way of life on their land. Their land was grabbed, leaving them with no space hence the conflict.

When you fly through that part, from Nanyuki towards Maralal, you will see large tracts of land with no settlement. If you ask someone about them, you will be told that those are the ranches. They are good grazing areas for pastoralists but they have been fenced and nobody lives there. The owners might not even be in this country but the land has been fenced and one cannot access it. If you try to access it, you are referred to as an illegal herder on your own land. That compensation should be done.

The other issue is the pastoralist way of life. The indigenous community rights are recognized by the United Nations. We do have the United Nations Charter for the indigenous communities, which recognizes this. It states that the indigenous communities' lands cannot be used in any way or allocated to any person without free prior informed consent of those people. That was not done and the Government did not consult those communities when those leases expired. We need to look at what the other communities have done.

The other issue is game reserves. There are many conservancies in that area and the wildlife has been given priority over human beings. That area has Ol Pejeta Conservancy, Borana Conservancy, Laikipia Nature Conservancy and others. Why should we create more game reserves? We are now agitating to de-gazette the game reserves for them to form part of community land. There is no need of having a game park in Laikipia, where a lot of land has already been given to wildlife in the name of conservancies.

I fully support this Petition and NLC should clearly address these historical land injustices. I hope that the community has registered the historical land injustices with them. The Government compensation should be given to the communities. However, that rarely happens. In Marsabit, we are struggling and grappling with an issue that occurred in the 21st century where 150,000 acres of community land was given to foreign private developers to start a project called Lake Turkana Wind Power Project. If you follow the stories of that project in the news together with the stories of Kenya Power and the power prices, you will realize that it is a community loss. Money is being lost and power is not being supplied.

I support the Petition and urge the relevant Committee to engage the NLC. It should make sure that the historical land injustices are addressed.

The Speaker (Hon. Lusaka): Those that I will give chance should compress their points because we are out of time.

Sen. Kavindu Muthama, you wanted to speak on this.

Sen. Kavindu Muthama: Thank you, Mr. Speaker, Sir, for giving me the opportunity to support the Petition by the Senator for Samburu County. This Petition is timely because we have had a lot of land injustices in this country.

When I was young, I used to hear about land injustices, especially the land that was leased from the indigenous people like the people of Samburu, Laikipia and Turkana

counties. I also want to include Machakos County in the list because part of our land was leased by the East African Portland Cement Company. Their lease years are over, but they took a loan using that land. The bank has now taken that land and they want to sell it without considering the indigenous people.

I support this Petition, and any land that has an issue in Kenya should be looked into. The indigenous people should be given an opportunity to enjoy their land because that is where they were born and belong. Some of those people do not even have land to cultivate. The concerned Committee should look into this matter. It should not only look at issues in Samburu, Laikipia and Turkana counties, but widen its scope to other counties such as Machakos and other areas where there are land injustices.

Sen. Sakaja: Mr. Speaker, Sir, I truly sympathize with the Committee on Lands, Environment and Natural Resources in this House. As Sen. Murkomen pointed out, this Committee has pending land issues. It has a lot of petitions and Statements because of the nature of land questions. Many times have I suggested that the mandate of that Committee be divided into other Committees or sub committees, but it is what it is.

If the late Dedan Kimathi, the late *Mau Mau* fighters, Maasais and Samburus, who were fighting for independence were to rise up from the dead, they would tell you that we are yet to get independence. The clamour for Independence was a fight for African land. If the bulk of the large tracts of land are still not in African hands today, then I am not sure if we can truly say that we are independent. These are injustices dating back to 1952. Some of them date back earlier.

I sympathize with this Committee. I do not know what the Committee, led by Sen. Mwangi, can do that the Ndung'u Land Report does not address. All these issues are already addressed in the Ndung'u Land Report. The question is: Are we paying lip service to the people of Samburu or should we try and address the real issue that exists in this country with respect to land?

Earlier today, I met residents from Jericho and Lumumba Estate in Nairobi. I have also met chairpersons of more than 10 estates in Nairobi on the issue of urban renewal. The people that I met today asked me a question that I would consider to be more of legal question than a philosophical question. Sen. Murkomen or Sen. Orengo can answer this question. The question was: Who does the land that we refer to as public or county land belong to? They said that the Constitution says that the county holds the public land in trust for the people. Their question was: Are we not the people? They said that they are the people. Who is the county if not us? We are the county.

Mr. Speaker, Sir, this is public land. Are these Samburu people not the public? Are they not Kenyans? Why is it that the people of Sen. (Dr.) Lelegwe are considered by others as second class citizens, and we give preferential treatment to other sections of our society? If we are serious about this---

I can see the prayers by Sen. (Dr.) Lelegwe's people about titles, compensation and historical wrongdoings. There is an entire report, the Ndung'u Land Report, that talks about this area. I do not know what Sen. Githiomi will do about that. It is not that I lack faith or confidence in the Senate, but why do we not bring that Report here and deal with it as a House? It is stuck in the Parliament, and we are Parliament. The people he mentioned are not in this House. We are here. If it came today, we would deal with it.

Mr. Speaker, Sir, Sen. Orenge has been the Minister for Lands, and the issue he was talking about has been there and will be there. The next Senator for Samburu will bring this again. The next one will also bring it again. Therefore, let us deal with other issues.

I would rather that this Committee helps me with the issue of Martin Luther Primary School in Makadara, which I brought yesterday, and other matters that can be sorted out quickly, and not in a report that has already been passed by this House.

We commiserate with Sen. (Dr.) Lelegwe and his people. If he requires any further support, we will be there. However, my heart goes out to those people and how we might be to some extent dishonest that just an interaction of this Committee and the National Land Commission (NLC) will sort out this issue.

We need something bigger. We need to pass a resolution of the House, not just a report. A report is given back to Petitioners within 60 days. Why can the Senate not pass a resolution? A Motion can be brought after the findings of that Committee and we resolve on how to deal with this issue.

Otherwise, a report will be given and Sen. (Dr.) Lelegwe will like the report. I might even have been the biggest recommendations, but there is no resolution of Parliament. Let us convert this into an actual Motion, with the specific prayers turned into recommendations, and we actually resolve on how to deal with these issues as a House.

Mr. Speaker, Sir, I support the Petition.

The Speaker (Hon. Lusaka): Hon. Senators, pursuant to Standing Order 232 (1), the Petition is committed to the Standing Committee on Land, Environment and Natural Resources, which is the relevant Standing Committee, for its consideration.

In terms of Standing Order 232, the Committee is required in not more than 60 calendar days from the time of reading the prayer, to respond to the Petitioners by way of a report addressed to the Petitioner and the laid on the Table of the Senate. If it has to come in another form, it is still open.

Next Order!

PAPER LAID

REPORT ON THE STATUS OF KENYA'S STOCK OF PUBLIC DEBT

Sen. Farhiya: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, 14th October, 2021:

Report of the Standing Committee on Finance and Budget on the status of Kenya's Stock of Public Debt.

(Sen. Farhiya laid the document on the Table)

The Speaker (Hon. Lusaka): Next Order!

NOTICE OF MOTION

ADOPTION OF REPORT ON THE STATUS OF KENYA'S STOCK OF PUBLIC DEBT

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Sen. Farhiya: Mr. Speaker, Sir, I beg to give notice of the following Motion- THAT, the Senate adopts the Report of the Standing Committee on Finance and Budget on the Status of Kenya's Stock of Public Debt, laid on the Table of the Senate on Thursday, 14th October, 2021.

POINT OF ORDER

PROCEDURE FOR PROCESSING THE PAPER ON THE STATUS OF PUBLIC DEBT

The Speaker (Hon. Lusaka): Yes, Sen. Orengo.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, I stand on a point of order and urge you to exercise your authority under Standing Order No.1 to give some directions on the Notice of Motion on the status of the public debt.

You will remember that when this matter came up, many Senators felt that it must be sent to the Committee and we should debate it. It has some urgency because I think we are going on recess.

Although the matter will probably go to the Senate Business Committee (SBC), of which I am Member, I was hoping that some directions could be given, so that this Motion is debated next week, if not today. This is because of its urgency. We need to talk about it when it is the right time. If we are going to talk about the issue of debt much later, the impact of our views get lost. I, therefore, urge you to give us direction that we should discuss this matter before go on the short recess.

The Speaker (Hon. Lusaka): I remember that it had a lot of interest and we did indicate that we wanted to have more time to discuss it. Therefore, I direct that it be discussed next Tuesday when everybody has gone through, it is ready and we are possibly a full House. This is so that all those who have an opportunity to contribute can contribute to it. It is very important that we pronounce ourselves on this matter as a House.

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

The Speaker (Hon. Lusaka): Yes, Sen. Wetangula.

Sen. Wetangula: Mr. Speaker, Sir, in enjoining myself to what Sen. Orengo say, could you also direct that this be the priority business of the day, so that we can have time? I encourage the Senate Majority Leader and his team to also be present. This is not a matter of one side against the other; it is about public interest. Public debt is hurting everybody and we need to talk candidly about it. It should be the priority business on Tuesday.

The Speaker (Hon. Lusaka): You are right, Sen. Wetangula. The SBC had even said that immediately it is tabled, it will be given the first priority. It will be a priority on Tuesday, and everybody will have an opportunity to pronounce him or herself on the report.

Sen. Sakaja.

Sen. Sakaja: Mr. Speaker, Sir, I just want to follow what Sen. Wetangula has said. The discussion of this debt, which is at Kshs7.4 trillion and now 69 per cent of the

Gross Domestic Product (GDP), is not a matter that the Senators from this side need to be encouraged to attend. Rest assured that we are as concerned as the Senators on the other side of the House. We shall come and debate it. That should not have been left unchallenged. We do not need encouragement, we are here.

The Speaker (Hon. Lusaka): Thank you, Sen. Sakaja. It is all mixed now, we do not know which side is which.

Next Order!

STATEMENTS

Sen. (Dr.) Musuruve: Thank you, Mr. Speaker, Sir. I wish to make a Statement on an issue of general topical concern.

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

[The Temporary Speaker (Sen. Nyamunga) in the Chair]

THE INTERNATIONAL DAY OF THE GIRL CHILD

Sen. (Dr.) Musuruve: Madam Temporary Speaker, I rise pursuant to Standing Order No.47(1) to make a Statement on an issue of general topical concern, namely; the International Day of the Girl Child.

On 19th December, 2011, the United Nations General Assembly (UNGA) adopted resolution 66/140 to declare 11th October as the International Day of the Girl Child. It is observed annually and is internationally recognized as a day to celebrate and advocate for the empowerment of girls and amplification of their voices in the society. The theme for this year is ‘Digital Generation, our Generation’, a rallying call for equal access to the internet for girls as well as digital devices.

COVID-19 has highlighted many of the inequalities that weaken our societies, especially those between genders. One of the most destructive of these is the digital divide, which impacts girls from an early age. Indeed, over the past year, many countries have turned to remote learning to control the spread of COVID-19.

According to a recent study by UNESCO, UNICEF and the World Bank, 91 per cent of the 138 countries surveyed used online learning platforms to tackle pandemic-related school closures. However, accessing these platforms depends on accessing the internet and boys and girls are unequal in this regard. In more than two thirds of all countries, girls make up only 15 per cent of graduates in Science, Technology Engineering and Mathematics (STEM) subjects. The internet gender gap is striking, especially in developing countries.

While girls play multiple important roles in the society and in the home, they face restrictive social norms and structural inequalities offline and online, which contribute to discrimination and violence in direct contravention of their human rights. The effects of the digital divide are immensely felt in the areas of education, job opportunities, politics, consumer satisfaction, health information, community involvement, government and emergency information.

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Due to this gender digital divide which existed long before COVID-19, many girls have missed out on educational opportunities during the pandemic. Limited Internet access and a lack of digital skills prevent girls from taking advantage of remote learning. Their online activities are often restrained and monitored because of cultural norms.

The world needs to be alive to the fact that girls have the right to a safe and healthy life not only during critical formative years, but also as they mature into women. If effectively supported during the adolescent years, girls have the potential to change the world.

It is clear that girls are breaking boundaries and barriers posed by stereotypes and exclusion, including those directed at children with disabilities and those living in marginalized communities.

The 2030 agenda for sustainable development and its 17 sustainable development goals adopted by world leaders in 2015 embody a roadmap for progress that is sustainable and leaves no one behind. Achieving gender equality and women empowerment is integral to each of the goals.

As we commemorate this day, I call upon parents to make efforts at ensuring that they empower both the boy and girl child on an equal scale in terms of education opportunities and family inheritance. We have an illustration of gender equality in the Bible. Job 42:15 clearly states that Job gave his daughters inheritance among their brothers. This is a model that parents need to emulate in narrowing the inequality gap amongst their children.

I call upon both county governments and national Government to come up with progressive and sustainable programmes that will enhance multi-sectoral opportunities of the girl child. Girls have equal ability and immense potential and when we empower them, everyone benefits.

Happy belated international day of the girl child.

I thank you.

The Temporary Speaker (Sen. Nyamunga): Yes, Sen. Wetangula.

Sen. Wetangula: Madam Temporary Speaker, I know we agreed that we should not ride on Statements. However, I just want to raise one issue as we celebrate the girl child.

The Senator for Nairobi should be alarmed with this because a man was arrested for kidnapping and killing 14 children. That was about two months ago. It is baffling, disgusting and alarming to hear that the same man escaped from a police station.

If the man had confessed to having killed children more than two months ago, one would have expected that he is charged and taken to a remand. What was he doing in a police station so as to escape? That is a man who is not suspected of killing children, but confessed to killing children in a most brutal and cultist manner. However, all of a sudden, he walked out of a police station.

As we celebrate this day, one would have expected Government agencies responsible for justice to issue a statement to the country. When a man of that nature escapes from lawful custody in comparable jurisdictions like the United Kingdom (UK), United States of America (USA), Australia, New Zealand, Canada and so on, the Government would be on its feet. Here we have not been told anything.

Today there was a scanty news item in the newspapers that two policemen have been suspended because they were on duty when he escaped. What was the man doing in a police station, having confessed to have killed children two months ago?

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, we are not supposed to ride on Statements under Standing Order No.47(1), but I can see some of us insisting. So, I will allow two minutes each. Make your point and be brief.

Sen. Farhiya: Madam Temporary Speaker, gender issues are very important, but we do not talk about them in this country. The Constitution of Kenya was passed over 10 years ago. However, up to now, the Gender Bill has not been passed by Parliament. Despite the former Chief Justice asking for dissolution of Parliament, nothing has happened. That includes the Bill that I have sponsored which is still in the Senate.

When I finished my 'O' Level, out of the top 10, seven were girls' schools. However, if you look at the leadership in this country, the representation is not proportional. We have a lot of work to do in this country in terms of ensuring that gender parity is achieved in all levels of Government, institutions, employment opportunities and elective positions.

The female gender still faces a lot of discrimination in terms of gender based violence, Female Genital Mutilation (FGM) and discrimination at work. Children are also discriminated by their own parents when paying school fees because priority is given to the male gender at the expense of the female gender. That is why girls are the majority at the entry level, but very few finish school.

The other issue is domestic chores. Instead of asking children to share responsibilities, parents make girls to do all the work even when they have homework. However, with all those challenges, girls still excel in school when they are given an opportunity.

I urge any leader in this country, especially during this time when we are expecting an election to happen; we expect the women of this country to support the presidential candidate who will make a woman a vice-president. We should ignore the rest.

I support the Statement.

Sen. Sakaja: Madam Temporary Speaker, Sen. Farhiya's statement is very strange that we should support the candidate who has a woman running mate instead of saying we should support a woman candidate for president.

Anyway, that notwithstanding, I truly support this Statement on International Day of the Girl Child in as much as it has come late. I truly support all efforts that have come to this House to equalize opportunities for both our boys and girls. As a father of both boys and girls, I support this Statement and this position.

I really want to follow up on what Sen. Wetangula has raised. It is a very strange issue and I think our Committees should have the capacity to work on their own volition. I do not think anyone needs to bring a Statement on that.

This Masten Wanjala was arrested in July. He took police officers to more than 10 sites where he has killed children. He confessed to killing. The Committee on Justice and Legal Affairs together with the Committee on National Security, Defence and Foreign Relations, because it is a criminal justice issue must tell us why this man has not been

charged. You cannot be in a police cell for all this time after making a confession. People have been charged for much less, especially on political issues. However, this man has confessed that he has killed 14 children and yet he is still in a cell in Jogoo Road.

The parents of these children many of whom are from Nairobi demand justice. As a Member of that Committee, I will ask our chairperson to summon the DCI and the DPP for us to know where in the criminal justice chain this has fallen off. Is that the DCI has not forwarded files to the DPP or the DPP has not received the charges in court? This cannot go unanswered.

Thank you, Sen. Wetangula for raising that.

The Temporary Speaker (Sen. Nyamunga): The next Statement is by Sen. Farhiya.

STATUS OF PENDING BILLS AT BOTH NATIONAL
AND COUNTY GOVERNMENT LEVELS

Sen. Farhiya: Thank you, Madam Temporary Speaker, for giving me this opportunity.

I rise pursuant to Standing Order No.48(1) to seek a Statement from the Standing Committee on Finance and Budget regarding the status of pending bills in both the national and county governments.

In the Statement, the Committee should address the following:

(i) Provide a comprehensive report on the latest pending bills figures accumulated at both the National and the county governments.

(ii) Provide analysis of the pending bills from 2018 to 2019 financial year to date for both national and county governments, particularly for Wajir County.

In that analysis, they should provide what we call aging analysis meaning what is there for the financial year 2018/2019, 2019/2020 and the current year up to what was audited last time because they had audited up to June.

(iii) Outline the plans the National Treasury put in place to ensure all the contractors who the national and county governments owe money are paid before the end of the financial year.

(iv) State the measures that have been put in place, if any, by the National Treasury and the Auditor-General to ensure that unverified or fraudulent pending bills are not paid at the expense of genuine contractors and that such fraudulent liabilities are not carried forward in the books of both the National and county governments.

I thank you.

Sen. Cherargei: Thank you, Madam Temporary Speaker. I want to congratulate Sen. Farhiya for this Statement. I think all of us agree that we have a problem, especially on pending bills with our national and county governments.

I am aware that pending bills for counties are approaching a figure of more than Kshs110 million. That translates to around Kshs2 billion at an average by 47 county governments.

When you walk around in villages you will find many young people, women and PWDs have taken LPOs to be financed by banks. They have given out collateral security of the land, property and their vehicles and yet they have not been paid. For example, in

my county, you have to be politically correct to be paid. This is the service that has been provided to the county government and the people of that specific county government.

The people who are suffering are people who come from that locality within the same county. These are people who have done construction of ECDs. You might have a pending bill of Kshs1.5 million which you incurred building an ECD centre. These people are yet to be paid.

The suffering that the youth, women, PWDs and the vulnerable in the society undergo and yet they sacrificed a lot to be able to raise the money to do those projects, is very unfortunate. The sad reality is that the Exchequer has released money through the Cash Disbursement Schedule that we passed here, but counties still have pending bills. There is a mystery and paradox because we pushed for allocation, but by the end of last financial year of 2020/2021, all counties had received a full financial disbursement. However, they still have pending bills just like the national Government.

This Statement is timely. We are aware of many people who have invested a lot of money in national Government projects. You remember there was a time I brought a Statement to the Committee on Education and Sen. (Dr.) Milgo who is the Chairperson of that Committee did try to intervene for payment of contractors whose pay had been delayed by secondary schools. They had provided services to the Ministry of Education.

In any Ministry that you go they have pending bills. We do not understand why this is the case yet money has been disbursed by the National Treasury and the National Exchequer.

I remember this issue became a national crisis, especially with county governments. Even at that time, the Committee on Finance and Budget of the Senate had to intervene. I had a privilege of sitting in that Committee in which the CS in charge of Treasury, Hon. Ukur Yattani was in attendance. He agreed that there was a circular that stated that if county governments are not complying in terms of paying their full pending bills then certain action should be taken.

The Committee should question what really happened with the National Treasury circular which was issued saying county governments must pay their pending bills. As I speak, Nandi has pending bills close to more than Kshs2.5 billion yet the full allocation for money has been done for the last four financial years.

I hope the Committee will be able to expedite this matter because most youth, women and PWD are really suffering having used all their savings to do county government and national Government projects.

I support.

Sen. Wario: Asante Bi Spika kwa kunipatia fursa hii. Suala la *pending bills* limekuwa dondasugu katika serikali za kaunti, hasa katika kaunti ambayo ninawakilisha hapa. Kila kona ya nchi hii, wananchi wazungumza juu ya *pending bills*. Kutolipwa kwa hizi *pending bills* kufanya watu wetu kuwa katika hali ya umaskini na ufukara.

Watu wengi walijidhamini na kuweka pesa nyingi katika miradi ya Serikali, lakini hawajui watalipwa lini. Sisi kama Maseneta wakati tunapozuru kaunti zetu, watu wengi ambao walifanya kandarasi ya Serikali wanatufatilia nyumbani wakisema ya kwamba, hali yao imedorora kabisa. Watoto wao hawaendi shule na umaskini umeongezeka.

Wengine waliuza mifugo na mashamba yao ili kufanya kadarasi ya Serikali. Ni uchungu sana kwa sababu mpaka siku ya leo hawajapata pesa zao.

Utakuta wengi wao wamekaa katika majengo au ofisi za kaunti wakidai pesa zao na hawajui watalipwa lini. Mambo haya ni mazito siyo ya kuchukulia rahisi. Ikiwa kandarasi ya Serikali itafanya watu wetu wakuwe maskini na wawe hohe hahe, basi watu hawataweze kuendelea kuishi katika hali hii ngumu iliyojaa shida na uchungu mwingi. Jambo hili linapaswa kuchukuliwa kwa uzito ili suluhisho la kudumu lipatikane.

Kuna wakati Bw. Ukur Yatani. Waziri wa Fedha, alisema pesa hizi zitalipwa na akatuma barua kwa kaunti zetu. Pesa zinafika kaunti zetu lakini watu hawalipwi. Ukiangalia nyuso za hawa watu zinaonyesha watu wanaoishi katika hali ngumu ya maisha.

Bi. Spika wa Muda, jambo hili linafaa kuchukuliwa kwa uzito na Serikali ya Kitaifa na serikali za kaunti. Ni lazima watueleze ni kwa sababu gani watu ambao walifanya kandarasi za Serikali hawajawahi kulipwa. Magavana waeleze ni kwa sababu gani watu hawalipwi pesa zao na ilhali kila mwaka pesa hupelekwa katika kaunti zetu zote.

Sisi tunatoa wito na kuisihi Kamati itakayoshughulikia suala hili, ichunguze kwa makini na waweze kuja na suluhisho ya kudumu. Tuko katika msimu wa pili wa ugatuzi ambao unakaribia mwisho wake. Kama watu hawajalipwa na Serikali iliyopita na bado *pending bills* zinarudikana katika kaunti zetu na wanaendelea kuisha katika hali ngumu ya maisha, watalipwa lini?

Bi. Spika wa Muda, wakati huu ni wa kiangazi na hakuna pesa katika Kenya hii. Taarifa hii imetolewa na Seneta ni ya muhimu sana. Ni Bunge la Seneti peke yake ambayo inaweza kwenda kuokoa watu kutoka janga hili la *pending bills*. Hizi *pending bills* zinawaathiri watu wengi katika kaunti zetu. Watu wa kaunti yangu wameathirika sana.

Ninaomba Serikali ifuatilie jambo hili kwa makini na ijulikane ni nini *pending bills* hazilipwi. Kwa nini watu hawapati pesa zao? Kwa nini watu wanaendelea kuwa na shida?

Bi. Spika wa Muda, ninaunga mkono Taarifa hii. Ninaomba suala hili lifanyike hala hala ili kuokoa Wakenya wengi ambao wamefanya kandarasi ya Serikali.

The Temporary Speaker (Sen. Nyamunga): Thank you, Sen. Wario. Yes, Senate Majority Leader.

The Senate Majority Leader (Sen. Poghisio): Thank you, Madam Temporary Speaker. I support and encourage Sen. Farhiya on this request for Statement from departmental Committee. This is a very timely matter. I know Sen. Farhiya is a member of the same Committee on Finance and Budget. She will put more effort there to make sure that it is pushed and pending bills are paid.

Everybody including the Ministry officials are watching live. Therefore, instead of them waiting until the Committee writes to them, they should start preparing because this is urgent. They should tell us what they are doing about this matter.

The other team that should consider this matter is the Controller of Budget and our own Committee on County Public Accounts and Investments (CPAIC), which deals with this matter in all our counties.

Since the national debts and issues of pending bills might be outside of our concerns, but let us focus on our counties. Each county has the same problem. I appeal to citizens of this country to be more vigilant when electing leaders. A governor who has impoverished people and made it difficult for them to survive, why would he be given a second chance? Pending bills have been accumulated over successive governments, when will they ever deal with them? They have no chance of dealing with these pending bills. They better start looking for people who can deal with this issue head on.

Madam Temporary Speaker, this is an important matter. We have dealt with it at various levels. As a matter of last ditch, this House can consider another strategy. It is not just the report of the Committee, but we must come out and speak boldly about dealing with this matter, once and for all.

I support.

The Temporary Speaker (Sen. Nyamunga): Thank you the Senate Majority Leader. Sen. Wetangula.

Sen. Wetangula: Thank you, Madam Temporary Speaker, I serve with the distinguished nominated Senator who has brought this Statement in the Committee on Finance and Budget. Sometime last year, we engaged the Cabinet Secretary (CS) for Finance. We had a very robust move on governors to pay pending bills to save ordinary *wananchi* from suffering.

Through that effort, one morning at KICC, we had 14 governors who appeared before the Committee. I was happy to learn at that time that Baringo County had no single pending bill. This can be done. Other counties had pending bills in billions. The Finance CS put his foot down and said he was not going to disburse money to any county that did not have a grand master plan on how to liquidate pending bills.

Governors from Narok, Machakos and all over came and gave us the road map. We learnt that some governors at that time, paid the pending bills. It is actually a question of will. Madam Temporary Speaker, you always serve in the same Committee.

The law is very clear. The Public Finance Management Act (PFM Act) says you cannot procure for goods or services without an attendant budget. If that law was followed, there would be no pending bills in this country. This is because you have a budget and you must work within it. If a project you have run across two or three financial years, you should know how much you put in each financial year and pay as and when certificates are raised, if it is services like construction.

There is absolutely no reason for this country to suffer from pending bills. I have heard you passionately speak about this. When you go to the counties, the youth and the women whom we say we must support go to shylocks, borrow money, discharge duties in terms of Local Purchase Orders (LPOs) given to them and eventually they are auctioned. Others, end up getting locked up.

If you know the history of shylocks from *The Merchant of Venice* written by William Shakespeare, shylocks are ruthless people. They will want a pound of flesh next to your heart for not paying their money. Out there, people are suffering.

In other counties like Bungoma where I come from, the governor himself is a proxy contractor in every respect. All his cronies whom he gives work to supply goods or construct are paid promptly on time.

Those who are not his cronies; who compete and get contracts are never paid. We cannot have this. Devolution was meant to change people's lives. However, devolution is now a nightmare to many people in the counties.

I urge the Chairperson of the Community on Finance and Budget to look at what we did in the last year and engage the Ministry of National Treasury and the Controller of Budget. They must put a condition on this governor that if they do not have a clear road map on how to clear pending bills, they will have their disbursement withheld until they convince us that they are paying bills.

I learnt with horror that the Ministry of Transport and Infrastructure owes contractors over Kshs100 billion. Even the celebrated Chinese contractors are now under the auctioneers' hammer. That is not the way that a country should run. We should follow up this issue very seriously.

The Temporary Speaker (Sen. Nyamunga): Proceed, Sen. Kavindu Muthama.

Sen. Kavindu Muthama: Madam Temporary Speaker, I thank you for giving me this opportunity to support this Statement from Sen. Farhiya. This statement is very timely because many of the governors are now going out after doing their 10 years in service. They cannot come back as governors yet there are a lot of pending bills in the counties.

Allow me to speak about Machakos County where I come from. Many of the contractors there are calling me every day asking me to intervene for them to receive their pay. Very recently, the Committee in charge of pending bills invited the Governor of Machakos County to appear before them and he said that he would respond to them in two or three months. I spoke to the Chairperson of the committee dealing with pending bills to find out whether Gov. (Dr.) Mutua has responded because many of the people have not yet received their pay.

Many of the women and youth who get the orders to supply borrow money from banks and other financial institutions. However, they do not receive their pay after that. Many of the contractors have died out of frustration. Others are living in depressions because of stress because financiers are demanding for money.

This is an issue that should be followed up in all the counties so that before the end of the year, all the governors pay the pending bills. I am sure the governors who will take up office after the 2022 General Elections will not pay the pending bills from the previous governors. Our people will continue languishing in poverty after using their money to supply goods and offer other services.

Madam Temporary Speaker, I thank you for giving me this opportunity. I support the statement by Sen. Farhiya.

The Temporary Speaker (Sen. Nyamunga): Proceed, Senator for Elgeyo-Marakwet County, Sen. Murkomen.

Sen. Murkomen: Madam Temporary Speaker, this is a very serious issue. I wonder why this matter of pending bills has not been resolved up to now. I know more than 10 people who because of the promise of developmental devolved system of Government, established businesses at the county level with the desire of providing services to counties using as part of the private sector at the local level.

The promise of a successful devolution gave these people hope that 2013, 2014 up to 2015. The people who were road contractors or suppliers of goods or services to counties expanded their businesses in the hope that in the next dispensation, they would do more. They hired more staff and prepared themselves to become better service providers for the county government. However, as from 2017, many of these business people have been suffering because they have not been paid.

Secondly, many of them have been auctioned because they borrowed from banks at a very high interest rate. Some contractors even borrowed money from shylocks like Sen. Wetangula stated earlier. I liked the phrase that Sen. Wetangula used from William Shakespeare that; ‘They come for a pound of flesh that is next to your heart.’

Madam Temporary Speaker, as a matter of fact, I can tell you that there are so many Kenyans who have committed suicide. Across the 47 counties, there are people who have committed suicide because of county governments failing to pay pending bills.

There are people who have lost their families or divorced because they cannot explain to their families where they took the money. Some of the women contractors borrow money together with their husbands hoping that they expand their businesses and then they fail. Families are broken, people have committed suicide, others have lost their livelihood, their children cannot go back to school and so on due to the pending bills.

This statement by Sen. Farhiya not merely to be discussed here. It might mutate to be a discussion on right to life. The lives and the business of the contractors who are owed are in danger. I saw the CS in charge of National Treasury, Ukur Yatani, giving orders to county government to pay pending bills. However, the governors have become clever. They decided to pretend to be doing some investigation, particularly those who were elected afresh in the second term on projects that were done by first term governors. Once they carry out some investigation or write a letter to the Ethics and Anti-Corruption Commission (EACC), the pending bills are left packed there. They say that they cannot touch those pending bills until they are cleared by the EACC.

Some of the pending payments by the Governors who have served their first and second term are genuinely being investigated by the EACC. However, the investigations being held inordinately for a very long period of time leading to punishment of the local people. There is contribution that is being made by the EACC and the Office of the DCI in forcing the county governments not to pay the pending bills. In the process of doing the same, they are punishing Kenyans.

Why do we not move beyond the statement that has been raised by Sen. Farhiya because the Public Procurement and Asset Disposal (PPAD) Act, 2015 states that you cannot procure if you do not have the money? Assuming counties procure because they had the money, then we need to deal with this issue of investigation, once and for all.

I would rather those people get investigated when they have money and carry personal responsibility. If found culpable, they should be arrested, charged and their property confiscated than to make the assumption that they are thieves until they are proven innocent. Why should we then punish them to the extent that by the time you prove their innocence, they are perhaps dead? We must deal with this issue as a House.

Sen. Farhiya’s Committee on Finance and Budget should move ahead and come up with legislative amendments. I know that there are already discussions about the time

to pay pending bills. There was already a Bill by Sen. Farhiya and Sen. Sakaja as well as another one in the National Assembly on the same subject matter.

We need to deal with the issue of doing investigations. Let us have timelines within which pending payments should be paid if the DCI or the EACC does not conclude the investigation and does not lead to being charged.

The issue of pending bills is even worse in the national Government. If the national Government wants to evade payments for contracts that they have committed or they want to kill a project in your county or region, then the best thing that they do is invite the EACC to do investigations thus stopping those projects.

I really hope that we can deal with this issue because it is a problem that has been bedeviling us for a long time. I hope that like the prayers of Sen. Farhiya, indicating that these payments can be done by December.

Sen. Farhiya: On a point of information, Madam Temporary Speaker.

Sen. Murkomen: I do not know what Sen. Farhiya would like to inform me.

The Temporary Speaker (Sen. Nyamunga): Sen. Farhiya, what is the point of information?

Sen. Farhiya: Thank you, Madam Temporary Speaker. Senator for Elgeyo-Marakwet have suggested some amendments to the Prompt Payment Bill. It is due for the Committee of the Whole. You can move that amendment at that stage to ensure the investigation aspect is addressed.

Sen. Murkomen: Madam Temporary Speaker, you cannot anticipate debate at the Committee of the Whole. My suggestions are that during the Committee of the Whole, we must make sure that those amendments are captured. I thank Sen. Farhiya for capturing the issue on the Prompt Payment Bill and we need to do it expeditiously so that we can sort this issue.

In the meantime, I hope the Cabinet Secretary National Treasury and Planning, the Controller of Budget because they have responsibility of county finances that these pending bills are paid. Lives are being lost every other day when these payments are not paid.

The Temporary Speaker (Sen. Nyamunga): Thank you, Senators. I do not see the Chairperson Committee on Finance and Budget or the Vice Chairperson, but I see three Members in the House. The role of the Senate is clear that it should be protecting the existence of the county governments. Not only the county governments but the people at the counties. This is critical. The Senate cannot be a place of talking, we have talked about this matter for a long time.

I remember there was a time the President made a pronouncement on this matter. At that stage, the Cabinet Secretary appeared to have been doing something about it and then all over sudden, he stopped.

The issue of investigation cannot go on forever. There must be a conclusion. It will be unfortunate if we can come to the end of this Senate term without solving the problem of pending bills. We are going to kill the county governments and our own people.

I refer this matter to the Committee on Finance and Budget and we need a comprehensive report on this. We must dispense with this matter of pending bills, once and for all.

*(The Statement was referred to the
Committee on Finance and Budget)*

The Temporary Speaker (Sen. Nyamunga): The next Statement is by the Senate Leader of Majority.

BUSINESS FOR THE WEEK COMMENCING
TUESDAY, 19TH OCTOBER, 2021

The Senate Majority Leader (Sen. Poghiso): Thank you, Madam Temporary Speaker. Pursuant to Standing Order 52(1), I hereby present the business of the Senate for the week commencing Tuesday, 19th October, 2021.

On Tuesday, 19th October, 2021, the Senate Business Committee will meet to consider and approve the business for the week. Subject to approval by the Committee, the Senate will consider Bills at the Second Reading stage, Bills at the Committee of the Whole stage and Motions on reports filed by Select Committees. The Senate will also continue with business that will not be concluded from today's Order Paper.

As you are all aware, Wednesday, 20th October, 2021, is *Mashujaa Day* and, therefore, a public holiday. No business will be scheduled for that day.

On Thursday, 21st October, 2021, the Senate will consider business that will not be concluded on Tuesday, 19th October and any other business scheduled by the Senate Business Committee, including Petitions and Statements.

There are 26 Bills at the Second Reading stage, six of which are pending division, as indicated in today's Order Paper at Orders Nos. 9 to 14. I urge all Senators to avail themselves for the divisions to make a determination and move these Bills to the next stage.

Additionally, there are nine Bills due for the Committee of the Whole stage, three of which have been captured in today's Order Paper at Orders Nos. 17, 18 and 19. There are also a number of Motions filed by Committee Chairpersons and individual Senators that have been scheduled in the Order Paper.

The following is an outlook of business to be expected for next week –

- (1) Committee of the Whole on the following Bills –
 - (a) The Co-operative Societies (Amendment) Bill (Senate Bills No. 11 of 2020);
 - (b) The County Vocational Education and Training Bill (Senate Bills No. 6 of 2021);
 - (c) The Start-Up Bill (Senate Bills No. 1 of 2021);
 - (d) The Street Vendors (Protection of Livelihood) Bill (Senate Bills No. 7 of 2021);
 - (e) The Prompt Payment Bill (Senate Bills No. 16 of 2021); and
 - (d) The Kenyan Sign Language Bill (Senate Bills No. 5 of 2021).

- (2) Second Reading of the following Bills –
- (a) The County Governments (Amendment) Bill, (Senate Bills No. 38 of 2021);
 - (b) The National Cohesion and Peace Building Bill (Senate Bills No. 19 of 2021);
 - (c) The Preservation of Human Dignity and Protection of Economic and Social Rights Bill (Senate Bills No. 21 of 2021);
 - (d) The Sports (Amendment) Bill (Senate Bills No. 40 of 2021);
 - (e) The Elections (Amendment) Bill (Senate Bills No. 42 of 2021);
 - (f) The Elections (Amendment) (No.2) Bill (Senate Bills No. 43 of 2021);
- and

- (g) The Special Needs Education Bill (Senate Bills No. 44 of 2021);
- (3) Motions on –
- (a) Report of the Standing Committee on Finance and Budget on the status of Kenya's Stock of Public Debt;
 - (b) Parking charges in public institutions offering essential services;
 - (c) Report of the Parliament of Kenya Delegation to the 141st Assembly of the Inter-Parliamentary Union (IPU) and Related Meetings, held in Belgrade, Serbia from 13th To 17th October, 2019;
 - (d) Report of the Third Ordinary Session of the 5th Parliament of the Pan – African Parliament held from 7th to 18th October, 2019, in Midrand, South Africa;
 - (e) Report of the Standing Committee on Health on inquiry into allegations of irregularities by the Kenya Medical Supplies Authority in procurement of pharmaceutical equipment;
 - (f) Report of the Standing Committee on Health on the alleged negligence by the Kenyatta National Hospital in the medical case of the late (Prof.) Ken Walibora, prior to his death;
 - (g) Integrating climate education into school curriculum at all levels; and
 - (h) Promotion of mental health facilities for mothers.

Madam Temporary Speaker, I continue to urge respective Movers to be available in the Senate whenever their business is listed in the Order Paper so as to---

Madam Temporary Speaker, there are consultations behind me.

(Loud consultations)

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, kindly consult on low tones so that we can also concentrate on the proceedings of the House.

The Senate Majority Leader (Sen. Poghiso): Madam Temporary Speaker, I continue to urge respective Movers to be available in the Senate whenever their business is listed in the Order Paper, so as to ensure a smooth flow of business.

Respective Standing Committees are encouraged to hasten consideration of Bills and Petitions referred to them and to table reports thereon within the stipulated timeline.

I thank you and hereby lay the statement on the Table of the Senate.

(Sen. Poghiso laid the document on the Table)

The Temporary Speaker (Sen. Nyamunga): Thank you, Leader of Majority. We are through with the Statements and we go back to Order No.8.

BILLS

First Reading

THE NATIONAL HOSPITAL INSURANCE FUND (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILLS NO. 21 OF 2021)

*(Orders for First Reading read – Read the First
Time and ordered to be referred to the relevant Senate Committee)*
Next Order.

Second Reading

THE DISASTER RISK MANAGEMENT BILL
(SENATE BILLS NO. 14 OF 2021)

(Sen. Sakaja on 16.9.2021)

(Resumption of Debate interrupted on 29.9.2021)

(Division on the Bill deferred)

Second Reading

THE KENYA CITIZENSHIP AND IMMIGRATION (AMENDMENT)
BILL (SENATE BILLS NO. 33 OF 2021)

(Sen. Kang'ata on 30.9.2021)

(Resumption of Debate interrupted on 30.9.2021)

(Division on the Bill deferred)

Second Reading

THE LAW OF SUCCESSION (AMENDMENT) BILL
(SENATE BILLS NO. 15 OF 2021)

(Sen. Halake on 4.8.2021)

(Resumption of Debate interrupted on 5.10.2021)

(Division on the Bill deferred)

Second Reading

THE PUBLIC PRIVATE PARTNERSHIP BILL
(NATIONAL ASSEMBLY BILLS. NO. 6 OF 2021)

(Sen. Poghiso on 5.10.2021)

(Resumption of Debate interrupted on 5.10.2021)

(Division on the Bill deferred)

Second Reading

THE HEALTH (AMENDMENT) BILL
(SENATE BILLS NO. 26 OF 2020)

(Sen. (Dr.) Ali on 5.10.2021)

(Resumption of Debate interrupted on 12.10.2021)

(Division on the Bill deferred)

Second Reading

THE COUNTY BOUNDARIES BILL
(SENATE BILLS NO. 20 OF 2021)

(Sen. Mutula Kilonzo Jnr. on 13.10.2021)

(Resumption of debate interrupted on 13.10.2021)

(Division on the Bill deferred)

Second Reading

THE LIFESTYLE AUDIT BILL
(SENATE BILLS NO. 36 OF 2021)

(Sen. Farhiya 13.10.2021)

(Resumption of Debate interrupted on 13.10.2021)

The Temporary Speaker (Sen. Nyamunga): This order is up for debate and I do not seem to see any interest. Okay, Sen. M. Kajwang', Senator for Homa Bay, you have the Floor.

Sen. M. Kajwang': Madam Temporary Speaker, I can contribute.

The Temporary Speaker (Sen. Nyamunga): Do you want to contribute?

Sen. M. Kajwang': Yes, Madam Temporary Speaker. This Bill came before this House and I spoke passionately about it. When this Bill came before this House, I received a Master's thesis from a student who also works with the EACC. That student had done research on the legislative framework for lifestyle audit in the country. I had also done some academic consideration for the proposed Bill by Sen. Farhiya.

Some of these Bills have come back to fulfill the processes that were defined by the courts of law hence we do not need to reinvent the wheel and repeat the things that we had said in the previous debate. I know that all those issues are sitting somewhere in the HANSARD. We owe this nation a legislation that will ensure that the people who make the decision to go into public service as state officers or public officers know that they are signing up for.

Those of us who serve in churches over the weekend as elders or deacons or deaconess do not expect payment. We go there expecting to render service to the Lord and we commit ourselves to that. My mother, a long standing deaconess, would clean the church every Friday. She would prepare meals for the visitors and would go out to attend the crusades aimed at winning souls. She does not expect to be paid for that role. Why then should state and public officers who take the calling to serve the public want to milk the nation dry so as to enrich themselves in the process?

I still believe that the Ndegwa Commission Report that allowed public servants and state officers to do business with the same entities that they were running was a bad decision. It is the reason as to why children who have studied procurement and supply chain are richer than those who studied law, engineering, information technology and medicine. That is because they become experts in overrunning the systems to their benefit.

The President talked of electronic procurement and we thought that it was going to bring transparency into the process. What we did not know was that there were people who were five steps ahead of everybody else. One would place their bids online on an Integrated Financial Management Systems (IFMIS) procurement platform just to be told if their bid were the most competitive or not by people within that department who were trading information.

The Lifestyle Audit Bill (Senate Bills No. 36 of 2021) is necessary for it will help us audit and see what our state and public officers have been up to during their tenure. One of the recommendations of that student, who also works with the EACC, was that there could be other pieces of legislation that are doing what Sen. Farhiya is attempting to do and that our problem to a large extent, has been implementation rather than the absence of a legal framework.

As we have always said, fish rots from the head. The recent stories that we have heard and the Pandora Papers that are being opened all over are giving the wrong message. I hope that the President will give the nation an account when comes back from the USA, as he had promised. The President said that the Pandora Papers will lift the lid on those who have ill-gotten wealth and those who have stashed proceeds of crime, money laundering, ivory trade and all sorts of things.

I hope that the President will lead from the front by keeping the promise that he has made to the nation. I know that he will come back at a time when we have the simmering issues between Kenya and Somalia. Bigger foreign policy issues and bigger economic issues, but he has to slay the dragon of corruption that is perpetrated by those who have had the privilege of serving the nation in public and state offices. If he does not do so, then the next President will have one hell of a hard time.

We are already on the verge of default of loans yet experts tell us that we just need to reduce our corruption by some percentage. It looks like people have given up on eradicating corruption in Kenya. I do not know if it is genetic that we have to now focus on its reduction.

Initiatives like that of the Lifestyle Audit Bill (Senate Bills No. 36 of 2021) that has been brought by Sen. Farhiya should help us tame our appetite for public coffers and resources with the aim of enriching ourselves at the expense of the masses.

All that I said on this particular Bill in the previous debate is in the HANSARD. My duty today is to support the Bill and to encourage the House to expedite it. Sen. Farhiya has struggled with this matter for a long time. This House has been talking about this matter for a long time. It is time for Sen. Farhiya's Bill to become an Act of Parliament.

The Temporary Speaker (Sen. Nyamunga): Thank you, Senator.

The Senate Majority Leader (Sen. Poghisio): Thank you, Madam Temporary Speaker. It is in the interest of all Members of this House that we discuss and debate this Bill openly. This matter is necessary because we do not see anything happening there. This Bill is moving us away from corruption as a country.

The laws that we have in this country are enough. We have laws such as the Anti-Corruption and Economic Crimes Act, the Public Officer Ethics Act, the Leadership and Integrity Act and the Public Service (Values and Principles) Act, which are all meant to do the same thing.

We have many other laws. We are adding another Bill because we know where we have not covered as a nation. We know that all these things can be done without adding another law, but we are not doing anything about it. Lifestyle audit has been talked about in public and it has been ordered in some public institutions, but nothing seems to move.

Madam Temporary Speaker, this Bill comes to strengthen EACC and all those concerned in tackling corruption. We represent a difficult population. If this Bill goes to the voters, they might resist it because they do not want a corrupt person to be caught. We have heard people say; 'that is our thief. Give us our thief.'

They elect corrupt people because they have money yet they cannot explain the source of their money. If you are in any situation in the village, you will know who needs

to publicly declare that they do not have public resources. Those people live with us and we know them as sons and daughters of so and so.

I am worried because young people are not telling their parents that they want to study procurement. They are so many who are doing that. It is interesting that people want a short way of making money. I was asked the other day by a young police officer if he could go to the traffic department. I wondered why he asked that question. There are places that encourage corruption. Does it mean that we do not know the people who have stolen public resources? Do we need to be told? Why is it hard to allow lifestyle audit? We should start from here.

As leaders, we should speak and act. For one to be elected, he has to prove that he has passed Chapter six of the Constitution. However, that is in theory. I wish to inform the people who head the EACC that we pass these laws to encourage and to strengthen what they already have. They have enough powers to act on lifestyle audit without being prompted.

We talked of prompt payment. We have enough laws in existence to guide prompt payment, but we do not follow the laws that we have hence we have to be reminded by creating another law. Our law books will be so big and it will be difficult for the lawyers, who go to court, to carry them around. I see them buying bigger boxes to carry more laws.

Madam Temporary Speaker, the situation in our country is simple. We have the Constitution, and it is very clear. Our Constitution is one of those constitutions that are very modern in terms of trying to fight corruption. We have the laws that I have already mentioned here already in place. However, I want to support that another law that specifically talks about lifestyle audit at this level and style---

We encourage our Members to support his law. It asks for a lifestyle audit to be carried out on an immediate family member of a public officer. If it is established that property which is subject of a lifestyle audit is owned by the immediate family member or joint ownerships, then action must be taken.

We have made this big mistake where if one steals, they are stealing for their family as well. This is why we get people going to court with their children and wives. It is because we have made this stealing not only institutionalized, but a family affair. Therefore, even the unborn have stolen. For those who are two years old, before they are 18, they already have billions or millions in their accounts, thanks to those of us who do not seem to fear the law. The law is now coming after us. It is even allowing for the lifestyle of a family member to be investigated.

Madam Temporary Speaker, some time back, I asked about our own situation. You can be sitting here and your child who is still in university, comes home driving a brand new car. You do not care to ask how he got the brand new car.

They could dare you saying that they will build you a new house and you are so happy. You know that he is not working. So, where is he getting the money? The lifestyle audit will also catch up with you as a family member who is benefiting from some of these things.

I would like to see Kenyans listen to this matter. It is not going to be business as usual. After this is passed, the law will come after them. It is not a lifestyle audit of the

public officer alone, but anybody associated with that public officer. They have to be investigated.

The Bill, therefore, mandates the EACC to refer a matter to the DPP, where as a result of the lifestyle audit, the Commission is of the view that criminal proceedings should be instituted against the public officer.

The Bill further allows a person who is subject to the lifestyle audit to enter into a deferred prosecution agreement with the DPP, and so on, and so forth. The Bill says to tighten the noose on the requirements, let the people who have obtained monies corruptly feel the heat and know that there is a law that is going after them.

I would like to encourage the Members of this House to pass this Bill. I know that Sen. Farhiya has got a big interest in this matter, wanting to encourage us to play by the rules, so that we can be good citizens and leaders.

Madam Temporary Speaker, the Senate, having initiated this Bill, hopes that it will go through all the stages and become law for the sake of the sanity of leadership in this country.

I support.

The Temporary Speaker (Sen. Nyamunga): Thank you, Senate Majority Leader. Sen. Wetangula.

Sen. Wetangula: Thank you, Madam Temporary Speaker. I support this Bill. I am in the Committee on Finance and Budget with distinguished Sen. Farhiya. This Bill has been discussed and looked at very critically through the Committee, and I have no doubt whatsoever that it is a good Bill. It does not seek to introduce anything new. As Sen. Poghiso has said, it seeks to enhance existing efforts, legal structures and institutions to enhance accountability in this country.

If you look at our country today, I dare say that over 70 per cent of rich people in this country have worked for or are working in Government. None of them can explain their wealth as being a source of their income for working with Government. It is all proceeds of corruption. People get into public offices and do not work for the public, but themselves.

Madam Temporary Speaker, you will remember the good old days when people used to walk into their offices, leave their jackets on the coat hangers and come back at 5.00 p.m. to pick their coats and go home. The whole day, they were busy roaming around picking money from people they were supposed to be working for, and so on, and so forth.

This was so much that cutting corners and taking unjust enrichment is now almost institutionalized in this country. It is now like a norm other than an exception. In fact, there are certain situations where people who have been around in the Senate for some time like ourselves, appear to not have the money that the Johnny come lately have are laughed at as being foolish, non-hardworking and innovative. This is because they do not have the capacity and the ability to carry each finger all over and steal everything on their way.

Madam Temporary Speaker, this is really disheartening. You remember our President telling the country that Kshs2 billion is stolen through corruption every single day. This means that in about 300 working days, we are losing Kshs600 billion to

corruption. This was from the President, the Chief Executive Officer (CEO) of our county himself.

We also have on record the Government saying that one third of our public budget is stolen, meaning that in a budget of Kshs3 trillion, we lose Kshs1 trillion to fraudsters and corrupt individuals.

Madam Temporary Speaker, corruption has been there for a long time. Even in the Bible, Judas Iscariot was corrupted to betray Jesus. It is that old. What we need to do is make it painful and accountable. People must be held to account when they are caught. Even in the Bible, when Judas Iscariot received a bribe to betray Jesus, the punishment was that he hanged himself. God punished him even before Jesus was crucified.

We need to have a situation where people who gain from the proceeds of corruption are dealt with ruthlessly. I agree with Sen. Poghio, that it is not a shortage of laws or institutions in this country. We have institutions of governance everywhere.

We have county assemblies that oversee primarily at the county level. We have Parliament, the Auditor-General, the DCI, the EACC, the Office of the Attorney-General, the Judiciary, the Ombudsman and everybody, who is supposed to be looking at these issues and protecting public property.

Even so, as the good old legal maxim goes who will watch the watchers? Being a lawyer, you know this. The watchers are not watching, so who is going to watch the watchers? That is the big question.

It is not just Sen. Poghio who receives these bizarre requests, but we also get them routinely. A young police officer can walk into your office with shiny and sweaty faces, standing before and saluting you. They tell you that they are suffering in the police and need to be assisted to go to traffic so that they can man roadblocks and collect money. It happens all the time.

You look at these boys and girls and they are from your village. You are probably the one who took them to the police. They see their colleagues whom they joined with doing “tremendous” progression in life, and they are just there.

I am told that in the police service, the biggest punishment is one to be kept at the report office. The second one is to the crime office and the third one is to be posted to Parliament, and so on, and so forth.

It is also considered as a punishment for the police to be assigned to guard Very Important Persons (VIPs) because there is no room to fiddle. If you go along the road, you will see heavy female police officers at roadblocks looking contented with life and openly soliciting and taking bribes from travelers and nothing happens.

From Eldoret to Bungoma, a distance of 87 kilometres, I counted more than 14 roadblocks. At every roadblock, there are about six policemen, all looking hungry and molesting travelers. Everybody is stopped. They will ask why you are speeding when they do not even have a speed gun to determine that you are speeding. All those are ploys to take money from travelers. At that time, I even called the then Inspector General (IG), Mr. Boinett, and asked him what was happening.

There is a roadblock as you enter Turbo and another one when you leave. When you leave Eldoret, there are roadblocks at Maili Nne, Maili Tisa, Kipchoge Keino Farm, Jua Kali and Waitaluk and so on. Every roadblock is a toll station.

I remember during the Government of Mzee Kibaki, President Kagame came to Kenya and we attended a meeting with the Senate Minority Leader here. President Kagame told us that the most painful thing for Rwandese business people is doing business with Kenya. From Mombasa to Malaba, they encounter over 160 police roadblocks. He was telling our President that and Sen. Orengo was with me there. Sen. Orengo, I do not know if you remember.

President Kagame said that his importers through Mombasa told him that they have to leave money at all 164 roadblocks from Mombasa to the exit at Malaba. Whether your truck has a fault or not, or whether you have overloaded or not, it does not matter because it is routine.

When we were vetting the current IG, I asked what he is going to do to stop that and he said that he comes in as a reformist. We want to see that. Everybody comes in as a reformist and then it becomes business as usual. We need to change our psyche.

I have said that and I want to repeat for the umpteenth time. Every time we elect 47 governors as ordinary Kenyans, but at the end of five years, the number of billionaires in Kenya, add by 47. It is because they do not work, but steal from the public. They flush money around hiring hooligans to escort them to public places and do all sorts of things. It is a big shame. We must hold people to account.

Sen. Farhiya, I do not know if we have that clause in the Bill. When you take public office, you must state clearly what you have and every year you must be audited publicly to see what you have added. That includes your family.

Now they have become very sophisticated because their accounts have no money. Money is put in the accounts of their children, wives and cronies and all manner of people. They are doing everything that is against the law.

We impeached a governor here whose daughter had millions of shillings in her account. We impeached a governor here where there was an allegation that his wife had an IFMIS password for his county. These kind of things are revolting to everybody. We need to have a situation where we check our country properly.

Madam Temporary Speaker, I dare say that corruption is domiciled in Parliament. People out there are budgeting corruptly for themselves through the process of Parliament. You come to Parliament and identify something from a Ministry, influence and put in the budget and harass everybody to accept then it goes through and the end product is a proceed of corruption.

People are being paid for services not rendered and works not done and those who genuinely work are never paid. This is the paradox of our country that we have people who do so little and earn so much. We also have people who do so much and earn so little or nothing. It is not the right thing to do because public property must be respected.

We have governors in this country who do not know the difference between public and private property. As soon as they walk into office, they think that county coffers are their private enterprises, county accounts are their personal accounts and county funds are their personal funds. They use them the way they want.

If you are earning honestly, where would you get money to hire hooligans to go to public places with to heckle people, shout and beat up people and do all manner of things? Who in this country has money to use that way?

The Government has honoured you by giving you security, but you still hire red-eyed goons to go with to public places to do all manner of dirty things. That is corruption. I urge the EACC to talk less and do more.

I do not know if you can remember a time when there was a lot of fanfare about arresting people and holding press conferences. That was the first and last you could hear of the cases. At the end of the day, the cases are never prosecuted to the end because the evidence provided by the DPP is insufficient to get any conviction.

Like Sen. Orengo will tell you, being a lawyer and yourself, Madam Temporary Speaker, there is a joke within our circles that you do not need to hire a clever lawyer. You just need to appear before a corrupt judge. You have heard of jokes like; why waste Kshs1 million on a lawyer when you can pay Kshs200,000 to a magistrate? It is disheartening to hear that.

When we started practicing with our contemporaries who were magistrates like Martha Karua and others, we could appear before them. Sen. Orengo here can bear me out. When you adjourn, you would walk together at break time to Trattoria Restaurant and have a cup of tea and go back. If your client was guilty, she would convict and jail them. Being together was simply professional courtesy to each other, but things have now changed. This country needs to have a proper lifestyle audit.

Korea is a corrupt country, but they have made corruption very painful. Do you remember that lady who visited our country two or three years ago? She was treated with a lot of fanfare. Women like Sen. Farhiya here were all up in arms that she was a woman President. She went back and she is in jail for corruption. So, corruption is not a male affair. It occurs across gender.

Dilma Rousseff, the former President of Brazil was impeached and prosecuted for corruption. Sometimes we have the misconception that it is men who are corrupt. In fact, when women become corrupt, they are even more dangerous.

Madam Temporary Speaker, I agree with Sen. Kajwang' that we must revisit the sessional paper by the Ndegwa Commission that allowed public servants to do business with the Government. If you look around, everywhere, people who work for public entities are themselves traders with those entities. When you ask them, they say the law allows it. Where did the law on conflict of interest go? Where did the law on public probity go? Where is the law on public gander? It is all thrown through the window.

Governors think they are clever. You will find a governor in one county trading with a governor in another county and vice versa. That is still corruption because when a governor calls another one and tells them they have a deal of Kshs200 million and ask for another deal, what is that? It is corruption by any other name and it is happening.

Leaders in this country go to homes and towns to open grandiose properties owned by governors without asking them where they got money from. There is no evidence that you borrowed. We know your salary. You have built a property worth Kshs500 million and our leadership go there to open this property and say how hardworking this man is when he is a thief.

It is a shame and we need to stop this. We are ready to be audited publicly by anybody and everybody. Where we have borrowed, we can lay it bare. You find somebody has not taken any loan; he has never won a charity sweepstake; he has never

won a bet; he has never inherited any property; he is not a professional like doctors who go to work at 6.00 a.m. and work up to midnight. He has never done anything but when he goes to a local pub, he conspicuously wants to make sure that everybody sees his latest car. His car is parked by the door for everybody to see. The keys of his car are put on the table where he is sitting for everybody to see. Those are the people we need to look at, our associations.

The Bill is very good because it extends the net. As Sen. Poghio said it is not the individual who is corrupt. It is corruption on behalf of his family and friends. We must extend collateral damage to all those who benefit to the third, fourth levels. If we find that you stole and gave it to A who gave it to B, we must trace. As lawyers, we know the equitable remedy of tracing.

There was the case of Egypt of somebody versus the queen where property stolen by an individual in Egypt was traced up to the third generation and recovered. That is how it should be.

As I conclude, we do not have a shortage of law. We have a shortage of will. If we want the children of this country to have a future and their children to have a future, we must learn how to respect public property.

This country is not poor; this country is rich. This country has resources. This country needs managers. It is very disheartening that even our own church leaders who are supposed to be the custodians of our morals, you are cheered and respected depending on how much money you donate in your church. There is no priest who will ever stand up and pray and say: "I pray for Sen. Poghio to come back next weekend and tell us where he got this money that he is giving us." Instead they will tell you that they are praying for you to get more money where you got that from. So, if you stole they are praying for you to go and steal even more and share with them.

This is the Kenya we have. This is the Kenya we do not want. This is the Kenya we must change because if we do not hold ourselves to account starting from Parliament--

You have heard stories in this House which have been proven to be true where money has changed hands between Members of Parliament in the toilets. It is a shame. Then you are given Kshs10,000 to go and vote to hurt an entire generation. You go and vote for a law that is going to hurt the whole country. You take Kshs10,000 when your salary is Kshs1 million.

What level of greed is this? This is the greed of a hyena that has eaten, it is full, the stomach is bursting but it is still eating. It can eat an elephant and eat a rat at the same time. This has to change.

Lastly as we talk about corruption and accountability we must also stop using the war on corruption punitively and politicizing it. I am saying this because I heard my good friend and classmate the Speaker of the National Assembly cry loudly that the moment he said he wants to vie for the presidency, the next day the taxman was on him opening every page of his life.

If the taxman wants to ask everybody how they have acquired their wealth, he should do so regardless of our status or our intention to be what we want to be. The moment you do it because somebody has expressed interest in joining leadership

wananchi start feeling and rightly so that corruption is being used as a weapon. To the extent that even when you genuinely catch a corrupt person he runs and hides behind the veil, I am being fought because I am running for this office. We do not need to have that in our country.

We must have equality before the law and equal treatment for everybody. An offender whether he is a son of a king or a son of a commoner, is an offender and must be dealt with because the law is blind to class, greed, tribe. The law must be blind to everything including status and deal with us as subjects of that law.

I beg to support.

The Senate Minority Leader (Sen. Orenge): Madam Temporary Speaker, I rise to support this Bill. Before I go to the reasons why I support it, there are already so many laws in this country to deal with not only corruption but also the question of public officers having unexplained assets.

The Anti-Corruption and Economic Crimes Act has very substantive provisions not only for dealing with somebody who has committed an offence but also against public officers or for that matter individuals who may be in possession of unexplained assets. There is a proper procedure that is laid out.

At the end of the day when we come to the Committee Stage the relevant committee should look at both the Anti-Corruption and Economic Crimes Act and this Bill because I think there are a lot of repetitions and certain provisions which may be conflicting.

Let me say what we have to change in this Bill. It is very important because we are very good at making laws but application of the laws is another matter. Any good law made in this country in good faith is always used as a weapon.

Sen. Farhiya, you have brought this Bill in good faith but if it is passed the way it is, you may be the first victim. I had reason to say things like these in the National Assembly, giving a warning that we may be happy about this law because it sounds good but the day when it is used against you, you are going to cry like a baby. There are a lot of people who are crying because of the application of the Anti-Corruption and Economic Crimes Act.

Before dealing with the substantive sections, I want to say that the war against corruption of public officers who are corrupt is not going to be successful until we have institutions of integrity and leadership that has integrity.

For example, in Brazil there was a prosecutor who took a case against the most popular politician in Brazil, President Lula and he served 10 years in prison. The entire State machinery was turned against that prosecutor. When the next president came in office, the one who Lula handed over power to, that prosecutor again took on the next president. The second president got away by way of impeachment. The prosecutor had another war with the current president of Brazil, President Bolsonaro.

I am glad that our prosecutors here under the office of the DPP went to Brazil. That office is a strong institution and fighting against that institution in Brazil is like fighting against an entire government. You need a strong and independent institution as a starting point otherwise, a law like this may give the political class who are in power weapons to use against adversaries or to use against less powerful individuals.

I value the Bill of Rights which is the central pillar of our democracy. Whenever I see some provision which seems to undermine our Bill of Rights, I have to point it out. I hope this will be amended. For example, Clause 8 of the Bill refers to Section 119, 120 and 121 of the Criminal Procedure Code as to the execution of a search warrant shall apply to a search without a warrant under Sub Section (1).

Sub Section (1) of that Clause says:

“A search may be conducted without a warrant in exceptional circumstances.”

That is where the problem is. What are exceptional circumstances? Who would determine whether in all those circumstances are actually exceptional? I think as a democracy, we have come to a time where we must protect the privacy of our homes and the privacy of our possessions. If this piece of legislation, if it becomes law, it will interfere with the rights to privacy.

That somebody can just come in your house and say that I have reason to believe that you have committed an offence or I have reason to believe that there is something in your house and conduct a search. Sometimes they come at four or five in the morning, with the family asleep and they spend the whole day, take everything of value from the house without an inventory, or somebody is forced to sign that inventory.

Sen. Farhiya, this law is not good for lifestyle audit. It is only as good as it protects the Constitution. Let us not give the law enforcement agencies opportunities to invade the privacy of people's homes without a warrant.

If it is a genuine lifestyle audit, there should not be a warrantless search. They should go to court. What is happening in our courts is that you can have a two paragraphs affidavit asking for a search warrant to go and search Sen. Wetangula's house, without giving a proper explanation. Most of the time, the courts give these warrants, without looking at whether a case has been made out.

You will find when those things are taken from your house, you may not see them again. If you see them, you will have fought many cases in court. Sometimes, if they are things of value; there are no inventories taken. This must be made a lot more restrictive. You should explain what those unexceptional circumstances are. Who should be present during a search? What form of inventory should be taken?

There are cases where after conducting a search, there are no return of executions to the courts. They conduct a search; they go make all sorts of allegations that this offence was committed. They are given a search warrant, the officer goes and conducts a search and there is no return to the court.

The person affected is not served or notified. Sometimes, you go back to court and get to fight from the Magistrates Courts, to the High Court and to the Court of Appeal, trying to make up a case and there is no conclusion to it.

I plead with Sen. Farhiya that the provisions found in Clause 8, 9, 10, 11, 12, including the one about freezing accounts, should be thought of very carefully.

(Sen. Farhiya spoke off-record)

If somebody wants to bring your business down, all they need to get is a freezing order and the cases take forever in court. In our country, the exception becomes the rule instead of what you have probably put here.

Sen. (Prof.) Kindiki: On a point of order, Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): Sen. (Prof.) Kindiki, what is your intervention?

Sen. (Prof.) Kindiki: Is Sen. Farhiya in order to talk to Sen. Orengo across the Dispatch Box? She is completely out of order. I plead that you direct we stick to our Standing Orders, rules and procedures of communication in this Chamber.

The Temporary Speaker (Sen. Nyamunga): Sen. Farhiya, you are ruled out of order.

The Senate Minority Leader (Sen. Orengo): Madam Temporary Speaker, I do not take it for granted the fact that Sen. (Prof.) Kindiki is in the House during the debate of this Bill. We want to improve this important Bill. I am very happy that he is here.

I have looked at this Bill in the subsequent sections about informing the persons who the orders are being made. Those similar orders are in the Anti-Corruption and Economic Crimes Act. Those limitations are not good enough.

We should subscribe the activities of law enforcement agencies to make sure that innocent citizens do not suffer because this kind of Bill has given a tool to the law enforcement agencies. I am saying this out of experience. Even today, I was having an argument with somebody. For example, there was a very good law that we argued here. Sometimes when you go to the courts, people do not understand it.

Like we, elected Members of the National Assembly and the Senate, you cannot lose your seat until the appeal process is complete. That was for good reason. You have got this term for five years and within those five years, you are going back to the people to see whether or not you should be re-elected. For example, if we change the law that the moment you are arrested, you lose your seat until you get an innocent verdict. If the case takes five years and you have already been thrown out of Parliament, how do you come back to that Parliament?

There are limitations that are even in the Constitution that are well thought out. A law is as good as what would happen not to your neighbour, but what will happen to you. A lot of times, we, legislators, become the objects of this legislation. When the detention laws were being passed in the National Assembly, people in the Government and the Cabinet were being warned to look at this law carefully because they might be the first victims. Those detention laws were passed and the first victims were the very people who voted for the Bill.

I do not want to make this point again, but I am a believer in the Bill of Rights in the Constitution. I think we have the best Bill of Rights. Whenever you try to claw it back, I become uneasy because I have suffered from these kind of circumstances where you have committed no offence, but people appear in your house at four or five in the morning. There was a time the police came to my house and said I was holding seditious documents. They conducted a search and there was no such thing.

I ended up in a court in Kisii. Can you imagine being searched here in Nairobi and taken to a court in Kisii? I spent one month in prison in Kisii before the case settled

and Mr. Pheroze Norjee stood for me. Sen. Wako will tell you that I had about five sedition cases which were unresolved. In fact, those files are still alive because those cases were not terminated.

When somebody says that you have in your possession seditious documents and on that account, they come to search your house, that type of provision is not good in our type of democracy. When crime is being fought in the United States of America (USA), the people around President Trump at that time, the most powerful person in the world at the time, could not help the people who were around him; most of them ended up in jail. That is when you know that the law is being applied by people of integrity and offices that are truly independent.

The cases that Sen. Wetangula has provided here like in Korea, part of it is because they had people of integrity and they did not start with the small people. They started with the big people; presidents and ministers went to jail. In Kenya, the type of laws that we have like the Anti-Corruption and Community Crimes Act, it basically targets people who are powerless who are taken to court to fight political battles. If we did not have the kind of Bill of Rights that we have in Kenya today, a lot of those people would be suffering. A lot of those cases are not even seeing the light of day. I am not criticizing this Bill from the point of view that I do not support it but I am saying that anything that goes against the Bill of Rights should never be supported. We should never support anything that goes before the Bill of rights.

The English say that, "My house is my castle." That is a statement that is normally made in the courts that for anybody to come to your house to conduct a search, there must be very good reasons. The provisions in Clause 8 in so far as searches are concerned, we are weaponizing the law enforcement agencies that even in the mildest of cases; when they do not have exceptional reasons, they may be groping in the dark. They sometimes have no basis but willy-nilly, they come to your house and find something which you can probably give a justification but by the time you do it, you will have already suffered. Your family is also made to suffer in the process.

Madam Temporary Speaker, in terms of the warrants and the searches as well as the freezing of accounts, we should be very careful. Otherwise, I support this Bill because without lifestyle audits of public officers, dealing with corruption is going to continue to be very difficult because the laws that relate to corruption offences are very difficult sometimes to be proved in a criminal court. If you can obviously see that somebody has assets that cannot be explained, then they need to be audited.

In Kenya today, you can have an officer with myriad homes yet he or she has never done any other job in his or her life. If you compare them to people who do proper business such as those who head multinationals--- compared how much the public officer has made in 10 or 20 years, to somebody in the corporate world who has a job at the highest level. If you look at the salary of the person at the multinational compared to that of a public officer, it is worlds apart yet the public officer can have several homes, farms all over of over 20,000 acres, some of which is bought cash. Some officers have personal fleet of aircraft. That kind of wealth at the hands of a public officer must be explained unless there is justification. If that is not done, fighting corruption will be very difficult. It will be like going after a snake which has already bitten somebody and that bite is fatal.

This lifestyle audit gives you a choice that if you are a public officer, you have to make that choice. You have to live in accordance with Chapter Six of the Constitution and all the wealth that you acquire must be explained so as to give the public confidence that they have leaders who are looking after public affairs and public assets and not messing around. This is the problem that we continue to have in this country. When public officers are in situations where they can opportunistically make money, they then become our heroes. It has gone to the people of this country that they condemn corruption but not necessarily the fruits of corruption.

Madam Temporary Speaker, I want my sister, Sen. (Dr.) Milgo, to come back to the Senate. However, to face that election without resources and assets is extremely difficult. We are in a very difficult situation in dealing with the cancer of corruption. I am sure Sen. Farhiya has heard of a Ugandan who used to be the Mayor of the city of Kampala. He was a very popular political figure but was arrested in the streets of the United States of America (USA), tried and convicted for offences which relate to corruption and money laundering. However, when he came back to Kampala, he was being cheered like a hero. A correspondent of the BBC asked somebody in the crowd on the route between Entebbe and Kampala why he was cheering a man who had just been convicted of very serious offences in the United States of America (USA) like a hero. The person replied that, "We know that he is a thief, but he is our thief. He is our son and he is generous."

There is need to have civic education for us to make this quantum leap where there is public outrage against wealth that is made unjustly. If we do not have civic education, we may not be able to deal with the animal of corruption. When my sister, Sen. Farhiya, drafted this Bill, she went to great lengths. If this Bill is used properly; with men and women of integrity who are supposed to implement this Bill and have institutions of integrity, then that will be a great contribution in the fight against corruption and making sure that there is transparency and accountability within our public service.

I still think that we are in a situation in this country where we deal with corruption at very low levels. We are still not in a situation where we are ready and willing to deal with corruption at the highest level.

Until that happens, the fight against corruption will come in seasons. When you have a new leadership, they say, 'we are going to fight corruption' when they are about to leave office, they say, 'we are intensifying the war against corruption. By the time they leave, everybody is saying this is the most corrupt Government in the history of the country.

Sen. Farhiya, I hope that when this Bill becomes law, we will have the kind of men and women who have integrity and who will fear no one. When they are doing lifestyle audit, they will not come for poor Sen. Farhiya because you have bought a new car but go for those who evidently can be seen to have corruptly made wealth at the expense of the public.

The Temporary Speaker (Sen. Nyamunga): Thank you, Senate Minority Leader. Senator for Elgeyo Marakwet, Sen. Murkomen, proceed.

Sen. Murkomen: Madam Temporary Speaker, I thank you for the opportunity to contribute to the Lifestyle Audit Bill. From the onset, I want to congratulate Sen. Farhiya for attempting to provide a solution to a subject that has been extremely important in the recent past. The discussion around who to fight corruption, particularly using lifestyle audit as a tool. I want to tell Sen. Farhiya that I have a lot of problems with this Bill and I would like to provide the context within which I raise concerns in so far as this Bill is concerned.

First, I agree with Sen. Orengo when he speaks about a nation that we should have, founded on values and principles of integrity, good governance and accountability and we should be a nation that applies the rule of law. Among other provisions, in protecting the rule of law, is the presumption of innocence, that every citizen is innocent until proven guilty. There has been an attempt to have an exception to this principle. The Constitution itself provides grounds within which one can be held before being charged when investigations are going on.

The reason why I have a problem to start with, before I look at the specific provisions is the context within which this Bill is being brought to this House. We are living in a generation and a country where the fight against corruption has been weaponised as a mechanism for political mobilisation and for witch-hunting for specific people you do not like. Today, it is not secret in the country that the fight against corruption for the last three years has been wedged against individuals that are considered to be of different political persuasion from the Government of the day. We know the story of many governors who have been investigated and found culpable or where their reports have been pending and are about to be charged. However, because they have accepted to play certain political tune that is in consonance with the Government and President in office, they have been rescued from prosecution and accountability.

I say so because it is extremely important because this Constitution that we have today intended to reduce the powers of the Presidency and create independent institutions. As we speak, unless you are a visitor in Jerusalem, there is absolutely no independent institution in the country. What we used to call the fifth arm of Government, there is not a single independent commission. How did that happen? The Executive found a window on how to deal with independent institutions. They also found for this House and the Lower House. They found it in so far as the independent commissions are concerned.

What has happened is that, and this credit to the grand coalition Government--- There are many things we can criticise the grand coalition Government for, but the 10 years of President Kibaki Government and particularly the five years which was a grand coalition; they gave us some kind of democracy that necessitated negotiation and checks and balances within the executive itself so that the nominees that came to office between 2008 and 2013 took various independent commissions whether it was the Nyachae led commission which was overseeing transition Commission for the Implementation of the Constitution.

If you look at the appointees to the Human Rights Commission, from the time of Maina Kiai when the Kibaki administration came to office and then transitioned to people like Omar Hassan and the team, you leave the Kenya National Human Rights

Commission and go to the Ethics and Anti-Corruption Commission, even the appointees had challenges and we saw what happened within Parliament, the checks and balances were there. If you look at the appointees to the first Judicial Service Commission under the new Constitution, the appointments were balanced, robust and exercised independence.

What happened when we came to office in 2013? We now had a situation where you have an executive that is homogenous in nature and desirous to control power in every arm of Government. Between 2013 and 2017 and this is a fact, we fought on the Floor of this House to defend devolution because it was under serious attack. It was not under serious attack because money was being allocated to counties. This was not the issue, the issue was the old order the old Presidency was fighting back by trying to return powers that had been donated by the Constitution to devolved units because county governments as a second level of Government is part of checks and balances of reducing presidential powers. We wedged that fight and it started with the Division of Revenue Bill that ended up going to courts who made a determination through an advisory opinion and then you saw the role of the Senate and the negotiations that ensued from there onwards.

Even though I was on the Government side I am on record defending devolution and saying that we are under serious attack, similar to what the first President did in the beginning of federal Government in 1963, 1965 until 1969 when it was wound up. Governors at the moment are not the same because of this history. They do not behave like the first term governors; Isaac Ruto, Hon. Munya and Hon. Nanok to some extent. They are now playing to the tune of the national Executive. How? Because the National Executive have weaponised investigation.

Even where the EACC started to play an independent role to some extent, you have realised that the National Executive bypassed the EACC and found the office of the Director of Criminal Investigation (DCI) who is a direct appointee of the President, friendly and easy to be used, to investigate acts of corruption that were intended to be exclusive jurisdiction of the EACC even though we know that the police and the DCI have a right to investigate all crimes. The intention of drafting and establishing the EACC in the Constitution, to have a specialised agency that can deal with grand corruption.

If the executive succeeded without this law, to punish individuals, make them bow before the executive, make sure county governments cannot fight for resources to come to the county, make sure that there is no commissioner who is exercising independent authority for checks and balances on the executive. How worse will it be when you have a Bill that says, on mere suspicion that a public officer could be living a lifestyle that is not commensurate to his salary---. Out of estimation and suspicion, a lifestyle audit must be done. Look at the provisions of this law. Its working is going to create an environment where every citizen, who is a public officer will be a suspect. I can tell you without any fear of contradiction that if this Bill is to be passed, the first people to be targeted will be the Members of Parliament. We will have a situation where a lifestyle audit will be done on a Member of Parliament when he raises a serious issue.

Clause 8 of this Bill states that one can even---

The Senate Minority Leader (Sen. Orengo): On a point of information, Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): What is your point of information?

The Senate Minority Leader (Sen. Orengo): Madam Temporary Speaker, I regret the fact that Sen. Murkomen came after I had said a few words.

There was a time when we had a robust opposition in the National Assembly and the mileage claims were weaponized against us. In other arms of the Government, one could claim their mileage and nothing would happen to them. There was a circular that was issued that people should not get their mileage claims improperly. We thought that it was a general statement that was putting everybody on notice. Thereafter, a very strong lady in the House, Hon. Chelagat Mutai, was the first one to go. She was followed by Hon. Koigi wa Wamwere, me, Hon. Abuya Abuya and at the end of it all, ten of us had been called.

I agree with you on that one. One should always think of themselves when bringing some of these laws in the House. They should think of what will happen when they buy a new car and someone sitting at Integrity House decides to look at their file. The question then will be; how can Sen. Farhiya buy a Mercedes Benz? When that problem starts, it will warrant a search. They will take the car away and it can seat at the Integrity House for 24 months as one tries to prove how they bought that car. When they go for the car at the Registry, they will find that the file has been taken away and they have no way of proving ownership.

I support this Bill but the things that are being said on the Floor are very critical. It will take another six or seven months and we will see that if those provisions are not changed, they can affect me or you and so on and so forth.

Sen. Murkomen: That is useful information, Madam Temporary Speaker. In fact, I have always confessed my personal admiration for the Senate Minority Leader and it gets better as I get older.

I came here in 2013 with the exuberance of the youth and the excitement that we were now in Government. It was my first time to serve in Parliament and I thought that everything was in order and we were going to fix this country. I thought that we could use the state to fix this country. In a very short time; eight years, I have come to look at things differently. I now look at things from the eye of someone who is not sitting where I am. I think of those who are not the Senate Majority Leader or those who are not in the Government side. That is important. Sen. Orengo has given us a testimony and experience of what happened almost 40 years ago when he was arrested together with Hon. Chelagat Mutai.

Sen. Farhiya is a first time Senator and she has just joined the Senate leadership thus she might be a bit excited with the conversation that is going on in the remaining Jubilee wing that is saying that so and so is the one who is corrupt. What she forgets is that it may be a different person tomorrow. It can be us, who are sitting here. Our opponents, the political competitors, can do that. They will be people who want to derail someone.

It is good that Sen. Orengo has given us an example of a search warrant. Clause 8 states that-

“8. (1) A search may be conducted without a warrant in exceptional cases where there are reasonable grounds to believe that evidence may be removed or destroyed.”

In Kenya, we know that the exceptional cases become the norm. We can have a situation where a search is done without a search warrant just for them to go and profess in the court of law that Section 8 of this law, which was moved by Sen. Farhiya, states so and so. All these will be said when you are on the dock. They will say that this law was passed when Sen. Farhiya was in the Senate and she knows that there are exceptional circumstances that do not need a warrant. Sen. Farhiya lives in Wajir and we needed to rescue this document because we are dealing with someone who is a security risk or someone who can run from the jurisdiction of the Ethics and Anti-Corruption Commission.

Let us have this law for posterity. Let us not focus on the governor or the Cabinet Secretary that we do not like today. I do not like several Cabinet Secretaries but I do not want a situation where a law is made for the short period that I am in the office or out of office.

Clause 12 states that-

“12. The High Court may at any time vary or discharge an interim freezing order on application made by the Commission or a person affected by the order.”

This means that the High Court can just wake up and vary an application made *ex parte*. It can decide to freeze one's assets. All these things involve rights of citizens under Chapter Four of our Constitution.

We are now debating this Bill, and I know that the Second Reading will continue then we will have the Committee of the Whole. I implore Sen. Farhiya to relook at this Bill from a human rights perspective before we move to the Committee of the Whole where we will make amendments. The law should be in consonance with the Constitution. If this law is not in consonance with the Constitution, we might pass, it then it fails to go through in the National Assembly. The law can even pass all the stages just for it to be declared unconstitutional by the courts of Kenya.

I am not saying that we should not fight corruption. Corruption is the biggest problem that we are dealing with. Our counties are struggling to deliver services because individuals have enriched themselves. The fight against corruption is not weak because we do not have laws. We do have laws and institutions that are mandated to deal with the fight against corruption.

The problem against the fight against corruption is that there are too many people who are conflicted yet they are the ones who are presiding over the fight against corruption. Therefore, conflict of interest is all over the place. From the reports that I hear, many governors who are serving their last terms will be running for the Senate seats next year yet we have investigations going on in their counties. You can imagine what will happen if ten of them are elected as Senators, then they get to serve in certain Committees.

We need to think of that. Those of us who will come back here might out of principle say that the Senators, who are former governors, should not serve in the County Public Accounts and Investments Committee. If they serve in that Committee, the

exercise might just be seen as a joke. At the moment, we have a problem yet they are not sitting here. We will even have a bigger problem when they are elected to become Senators.

I am not denying the fact that we are dealing with a big monster called corruption. Neither am I saying that the monster is only manifested in certain counties. That monster is manifested in the national Government and county governments. However, we should apply the law to those that we like and those that we do not like in the same way for the results to be something that we can be proud of as Kenyans.

We must also continue being vigilant so as to deal with the issue of conflict of interest. I do not know what will happen if we continue to weaponise corruption for purposes of political gain.

What will happen? I speak to a number of governors, who are now at a very politically difficult situation because they are being told: “You must support so and so for presidency, otherwise, we will charge you. Your file is ready.” Some of them are even sent a *WhatsApp* message about a copy of their files. I wonder what will happen.

Madam Temporary Speaker, some have told me that they will have to choose between being charged and losing the seat. This is because supporting the person they are being told may not help them become governors again. They are between a rock and a hard place. They know that in this country, once you are charged, even if you are innocent, the case is dragged for six years or so. Your accounts are frozen and your children suffer; you are in trouble.

Some of them just make practical human decisions like any other human would do for survival to say, “let me live to fight another day and comply with the order of the day.” Sen. Farhiya, you know these things because you are sitting with those who are now threatening those governors.

Madam Temporary Speaker, I support this Bill with the amendments that I have suggested.

Thank you.

The Temporary Speaker (Sen. Nyamunga): Thank you, Senators. That brings us to the end of the deliberations on this Bill.

Mover, would you want to reply?

Sen. Farhiya: Madam Temporary Speaker, I beg to reply. I wish to thank all the Senators who have contributed. I just want to make some clarification. When I started processing this Bill, it was October, 2018. Our Senate Majority Leader then was the Senator for Elgeyo-Marakwet County, Sen. Murkomen.

I oppose the assertion that because I am in leadership now, I have sponsored this Bill. Fighting corruption is a passion I have. I had it even before I joined this Senate. I have fired many people on grounds of corruption before in my former job. Even the Prompt Payment Bill, despite it being towards paying promptly, there are some clauses that are also fighting corruption.

Madam Temporary Speaker, we have to start somewhere. You cannot say that this Bill does this and that. Any Senator can bring an amendment to a Bill through the Committee. If anybody has a problem with this Bill and they think it violates the rights of people, then they need to bring the correct amendments. However, it should not dilute

this Bill in such a way that it becomes like any other Bill that is made with a lot of loopholes that does not help anybody. If we have to do a proper Bill, we have to help this country.

My fear is that the way corruption is going in this country, very few years to come, there will be nothing to steal and you will deal with many people who are disgruntled about that government. This country might become ungovernable if we are not careful with corruption. Honestly, you are given a job to do. If the great people of Wajir County elected you as a governor, earn your salary and deliver services to them. That is what you are supposed to do. Then, you do not need to fear lifestyle audit.

Madam Temporary Speaker, today if you ask me whatever little that I own, I can tell you to the cent where I got that money from. What is so difficult about doing that? We would not need this Bill if we had people of integrity. If we have to fight corruption to conclusion, in my view, lifestyle audit is the way.

I want to thank the Senators who contributed to this Bill. I thank Sen. Omogeni for seconding this Bill. In part of his contribution, he had reiterated that they tried to bring this Bill when he was the Chair of Ethics and Anti-Corruption Commission (EACC). They could not succeed because of different interest groups.

Madam Temporary Speaker, I also wish to thank Sen. (Prof.) Kindiki for articulating issues around corruption, and passionately for that matter, and supporting the Bill. I thank Sen. Mutula Kilonzo Jnr. who also supported this Bill. Sen. M. Kajwang' mentioned about an academician who had done research around this area. The suggestions of that researcher are also with the Committee on Justice, Legal Affairs and Human Rights, who ought to use that to bring an amendment that makes this much more powerful.

The Senate Majority Leader, Sen. Poghio, felt that people are stealing on behalf of their two-year olds. Of course, Sen. Orengo, given his experience as well, I wish to thank him for giving us wealth of experience because all of us are not endowed with the kind of experience he has. He has been everywhere in terms of being fought, and fighting for his space for democracy and all that. He is widely quoted for saying that the governments eat their own children. That trended at some point.

Madam Temporary Speaker, I also wish to thank Sen. Wetangula for articulating the same issues. Last but not least, I wish to thank the Senator for Elgeyo-Marakwet County, Sen. Murkomen, also for giving a lot of valuable input. I wish all the Senators could bring their amendments without diluting this Bill. The problem with having a Bill that is diluted is that it becomes like any other Bill and so, it does not help anybody. If we do not fight corruption, this country will go to the dogs.

Kenyans are generally hardworking people. All they need is a government in place that does not condone corruption and deals with it effectively. This is so that people can get the services they deserve because they are the taxpayers.

Madam Temporary Speaker, the other issue is that if corruption is not addressed, these people who are stealing from the public, at the end of the day, there will be no Kenyans who are making money because you have stolen all their wealth. You will have no one even to steal from even if you wanted to steal now. There will be no country where you can steal from. I wonder if that is the kind of future we want for youth.

Let us be fair. About 70 to 75 per cent of the population of this country is youthful. Youths lack employment and livelihoods. These are people who are qualified and have done everything that any good citizen could have done, but are at home because their future has been stolen by leaders who are corrupt. We must address this monster called corruption.

I find it interesting that people talk about how we are going to empower the youth, put money in their pockets and how things will be great in this country. Whatever economic slogan and 'big' words you throw around and big words, if you do not address how your leadership is going to address the corruption aspect---

Madam Temporary Speaker, I am speaking to those people who are aspiring to be President, governors and Members of Parliament (MPs). Senators and Members of County Assembly (MCAs) do not have any resources, so they do not have anywhere to steal from anyway. There is no opportunity because there are no funds allocated to them.

However, any person who has some funds for the public that he allocates, the National Government Constituencies Development Fund (NG-CDF) of this world, county governments and everything--- If that person who is contesting for those positions does not give you as a Kenyan a very good strategy on how to fight corruption, he is cheating you before he even goes to that house for that seat. He is just telling you his plans to steal from you in the future. That is the fact of the matter.

Madam Temporary Speaker, let us even address procurement. When I look at the procurement in Government institutions, there are too many laws and tightening of screws everywhere. There are other institutions with less restrictive procurement requirements yet they do much better than Government institution. Let us be honest with each other on where corruption is concerned.

Sometimes I feel so disheartened that in this country there are so many people who are willing to work hard and do everything. There are Kenyans who are really patriotic. What I do not understand is that those patriotic Kenyans, why do they not find themselves in the right offices? Let me make it very clear to Kenyans. Kenyans, you are corrupt yourselves to the core. Let me be honest with you.

Madam Temporary Speaker, in the first place, when somebody is asking for a seat, you ask them to buy your vote. That means you have sold yourself to that person who is corrupt and going to steal from you. They say that society gets the leaders they deserve. It really pains me to see how some of these things Kenyans are less concerned of the future of this country. Does anybody think of their children or grandchildren?

If we continue having the kind of leaders that are selling our future. Like Sen. Wetangula has said we elect 47 Kenyans as governors and we have 47 billionaires through corruption. This is because you can never be a billionaire using the salary that you earn as a governor. There has to be a leader who says this is enough and Kenyans need to demand for that person. Kenya need vote for that person who does not have a coin to give because he has only lived within his means.

I am passionate that this House should support this Bill. This House cares for the future generation of this country and what will happen to our children and grandchildren. Otherwise, we will become hunters and gatherers. We would have consumed all our resources through corruption in this country.

I wish to reply. Pursuant to Standing Order No. 61 (3), I wish to request that you defer the putting of the question on this Bill to a later date.

I support.

The Temporary Speaker (Sen. Nyamunga): Thank you, Senator. On the same Sanding Order, I will not put the question today and defer it to another day that the Bill will be listed for debate or conclusion.

(Putting of the question on the Bill deferred)

The Temporary Speaker (Sen. Nyamunga): Next Order.

Second Reading

THE HERITAGE AND MUSEUM BILL
(SENATE BILLS NO. 22 OF 2021)

(Sen. (Dr.) Milgo on 12.10.2021)

(Resumption of Debate interrupted on 12.10.2021)

The Temporary Speaker (Sen. Nyamunga): Sen. (Dr.) Milgo, you had a balance of 32 minutes. You can continue with the moving of your Bill.

Sen. (Dr.) Milgo: Thank you, Madam Temporary Speaker. I had started moving this Bill and I was almost bringing it to conclusion. I was already at Part IX of this Bill dealing with exports. This part shall play a critical role in this Bill to protect our monuments, artefacts and animals from those people who would otherwise want to export.

Sometimes back we saw some people suggesting that some of the animals can be exported elsewhere. If we are not careful, we shall have such animals being exported. By so doing, we will lose income and make our people to lose employment. Therefore, this part shall ensure this one is protected.

Madam Temporary Speaker, Clause 67 of this Bill speaks to offences if somebody is found culpable, there is a fine to the tune of one million shillings to be paid by such offenders or one year imprisonment or both.

Part X of this Bill speaks to powers of enforcement of the national museums and heritage. This provides for the museum to ensure that there is provision to appoint inspectors to be inspecting artefacts and heritage sites to ensure that they are well protected.

Madam Temporary Speaker, Clauses 69, 70, 71, 72, and 73 speak to inspectors that are appointed by the National Museums as well as customs officers. They shall play a critical role in ensuring that any criminal that touches on issues belonging to the museums and heritage of Kenya are arrested. They are searched in case they become suspects. The customs officers will have the power to intercept things that would otherwise be exported.

Clause 74 of this Bill speaks forfeiture in case such monuments are seized when someone tries to export in whatever nature. The materials that are seized will be forfeited to the State. It does not matter whether the same individual had bought it or something to that effect. Therefore, this Bill will ensure that we protect our heritage once it is assented to.

Madam Temporary Speaker, Clause 77 speaks to county inspectors. This Bill is providing the second level of National Museums at the county now that we have another county government. We shall have county museums. Clause 77 provides for the provisions of appointing inspectors at the county to play a similar role of ensuring that they assess compliance to the legislation. They will also manage museums, maintain the property that is of cultural values in the county as well as take action against every culprit that tamper with issues that are of county importance as cultural heritage.

Part XI speaks to heritage tribunal. When it comes to national heritage and monuments, more often than not you find that they can be found under individual ownerships, communal land, or various areas.

A tribunal shall play a critical role in compensation and offences pertaining to non-compensation. For a long time, we have had a lot of complaints when it comes to compensating people who have been injured. Their properties have been affected as a result of maintaining matters that belong to the National Museum.

Madam Temporary Speaker, the compensation that has been in place, it was set when this country gained Independence. Normally, sometimes we have somebody who is injured and even killed. We have lost a life and then the compensation sometimes is maybe Kshs1,000. The Kshs1,000 in 1963 was so much money and the same amount is still there to date.

This Bill will change and ensure this one is updated to ensure the compensation is in line with the current value. That is Clause 82.

Clause 83 all the clauses 86, 87 and 88 speaks to how the tribunal shall conduct their issues and how to appoint the tribunal itself.

Madam Temporary Speaker, Part XIII speaks to miscellaneous provisions. This is where the Cabinet Secretary (CS) shall provide for regulations to manage heritage and archaeological sites. These regulations shall ensure that whatever is provided for in this Bill shall be managed and conducted, for example, returning some of our cultural artefacts that had been exported without due process. Regulations to deal with burden of proof of such important artefacts.

Regulations to deal with exemption from stamp duty that could have been charged to the National Museums at the cost of conducting their research and whatever information that they are undertaking. Regulations to deal with maybe mining activities in protected areas. Regulations to deal with access and payments of fees in national heritage sites.

Madam Temporary Speaker, regulations to deal with penalties that shall come into play when we have culprits pertaining to this. Also, regulations to deal with issues that affect preservation, protection of heritage sites or alteration of monuments. Regulations to deal with protection, preservation, alteration, access and use of protected buildings and monuments.

All the way up to Clause 99 deal with regulations. Clause 99 plays a critical role in transitional provision. As I said earlier, this Bill is now separating the powers that are applicable to the national and county museums.

Madam Temporary Speaker, Clause 99 speaks to issues of separation. Where is the boundary? Which monuments belong to the national government? Which cultural issues shall be taken care of by the county governments? The CS shall provide for regulations to delimitate and the methodology of separating powers to manage the county and national museums.

With those very many remarks, I beg to move and call upon Sen. Cherargei to second.

The Temporary Speaker (Sen. Nyamunga): Sen. Cherargei, proceed.

Sen. Cherargei: Madam Temporary Speaker, thank you for this opportunity to make a few comments before I second. I congratulate the Mover of the Bill, Sen. (Dr.) Milgo, for this wonderful Bill, the Heritage and Museums Bill 2021. This Bill is long overdue. As a country, we need to be innovative on how we can continue to increase revenue in the country and expand. For us, when you talk about the heritage and museums, it is one and synonymous of the history we have.

They are so many. When you look at the United Nations Educational, Scientific and Cultural Organization (UNESCO), they have five sites across the world. Those sites that are being mentioned from the Great Wall of China to Peru, among others, they are being visited by most of the tourists. Therefore, it translates to the revenue.

Madam Temporary Speaker, as a country, it is important that now we are including county governments to be part of the establishment of the county and country museums. The bottom-line is to increase the revenue that we get from such sites. The UNESCO has tried and I think it goes to many ideals. When you look at the mandate and mission of UNESCO, it is to create reasoning within the exchange of intercultural in terms of scientific in a way to eradicate issues of poverty.

The UNESCO in itself has given a good basis where internationally, when you have such a legislation that is in place, it will give a legal framework on how international partners apart from UNESCO can assist. You remember a few months ago; a very famous site was burnt down in Paris. Even as they do renovation at the moment, they make sure they try and retain its originality. These places also wear and tear because of weather, fire and manmade issues.

We have seen people that--- because of insatiable appetite towards personal aggrandisement, you see people even want to bring down very important sites. This is because they want to build hotels and personal commercial ventures. At the end of the day, it is a short-term agenda. Somebody somewhere wants to gain and get the money. They decide that they want to destroy very important heritage that we have in this country.

Madam Temporary Speaker, one significant thing is that we will now have county museums where it will be run and managed by counties. We shall have national museums so that they increase the bracket of revenue collection.

Next week on 19th October, we commemorate around 119 years since the death of Koitalel arap Samoei, the famous chief who led Nandi resistance against the

British colonial rule. It was during President Kibaki's government that they decided to build a mausoleum in Nandi Hills Town. These are people we would like to see like Mekatilili Wa Menza.

Madam Temporary Speaker, now we are celebrating 119 years since Koitalel arap Samoei was killed. I am happy during President Kibaki's government his personal regalia was brought back. That is what we can see in mausoleum because somebody had decided to shoot him and take away. It is very significant.

When you go to that mausoleum that we have in Nandi Hills Town, you will see what has been done. You will learn the history of the Talai, Koitalel arap Samoei and the culture of the Nandi. We find a way we need to protect. When you go to that mausoleum, there is no direct funding. The funding that comes from the Ministry is not sufficient to ensure that as we commemorate---

Madam Temporary Speaker, I thank Sen. (Dr.) Milgo. This Bill comes at a time when we are celebrating Mashujaa Day or Heroes Day. Personally, I have organised heroes' tournament for this weekend. I will be only honouring volleyball maestro people who have worked hard and the heroes in field and track. This weekend, I and other colleagues and sponsors have come together with Heroes Volleyball Tournament to award heroes who have also succeeded in the volleyball.

This Bill is timely. As the country celebrates on 20th October Mashujaa Day, it should behove us that we need to celebrate the heroes. We need to recognise and preserve the heritage sites that have been given. You go here to the National Archives. We need also to see how we can preserve. Some of them were written in papers. How do we preserve?

Madam Temporary Speaker, the number of documentation were carried away by the British. How do we get those documents? They say when you want to see the future, you must look at the past so that as a country we understand why we are having certain ways in this country.

How can we get documentation, for example, from London how they were writing newspapers and what happened in colonialism when the fight for *uhuru* was there? You remember there was a time the father of the Former Prime Minister came to Nandi all the way and met some chief somewhere in Chivundu. As a country, when we are celebrating Mashujaa Day---

The Temporary Speaker (Sen. Nyamunga): Sen. Cherargei, you will have a balance of 14 minutes to complete your secondment of the Bill.

ADJOURNMENT

The Temporary Speaker (Sen. Nyamunga): Honourable Senators, it is now 6.30 p.m., time to adjourn the House. The Senate therefore stands adjourned until Tuesday, 19th October, 2021 at 2.30 p.m.

The Senate rose at 6.30 p.m.