

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 11th March, 2020

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

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

PRAYER

PETITION

LIQUIDATION OF MOI UNIVERSITY SAVINGS AND CREDIT SOCIETY (MUSCO)

Sen. (Prof.) Kamar: Thank you, Mr. Speaker, Sir, for giving me the opportunity to present a Petition on behalf of Moi University Savings and Credit Society (MUSCO). As I begin to do this Petition, I want to declare interest.

I joined Moi University in 1996 and for 22 years, I was a very active member of this society. Although I have not been active since I left in 2007, I think my shares are still lying somewhere. So, I can declare that I may be a member of this group.

The Petition before us concerns the liquidation of MUSCO. The members of MUSCO would like to draw the attention of the Senate to the following-

(1) That MUSCO is an established Sacco.

(2) That the Sacco began its operations in the year 1995 when the university began, making it 35 years old. The Sacco currently boasts of over 3,000 members in various institutions including Moi University, University of Eldoret, Maasai Mara University, University of Kabianga, University of Karatina, Bomet University College, among others, including those who are currently in Government.

(3) That the Sacco purchased 0.14 acre leasehold property known as Eldoret municipality Block 43121 for a term of 50 years with effect from 1st August, 2009.

(4) That as per evaluation report dated 2017, the property known as MUSCO Towers was valued at Kshs650 million, Kshs200 million which was charged to the Cooperative Bank of Kenya.

(5) That MUSCO was a very attractive economic investment.

(6) That MUSCO received an operating license in 2014 and got its renewal later from the Sacco Societies Regulatory Authority (SASRA) to operate as a deposit taking business.

(7) That the establishment of SASRA as a strong regulatory framework instilled confidence that it would ensure members' funds were very secure.

(8) Further, that following the completion of the MUSCO Towers building, the Sacco began to experience liquidity problems.

(9) That the problems were compounded by failure of Moi University to remit its members' deductions from June 2015 to the time when the license was revoked.

(10) SASRA sought to revoke the deposit taking license regardless of measures MUSCO outlined to get the Sacco back on its feet when the University had failed to remit the deductions from the members.

(11) The Senate should note that SASRA issued a notice of intention on the 7th of March, 2018 to revoke the license pursuant to Section 27(1) of the Sacco Societies Act, requiring the MUSCO Board to show sufficient cause that would stop the revocation of the license.

(12) Further that on the 27th March, 2018 that is 14 days later MUSCO gave their 2017 audited accounts which showed that it was recovering given its reducing deficit in 2017 compared to 2016 which allowed the Sacco to grant school fees loans to its members worth about Kshs30 million without any external borrowing. This was because the University started to pay for them partly.

(13) MUSCO only needed a little more time to stabilize, thereafter, but SASRA did not respond to the letter that was sent by MUSCO showing that they were on a recovery path.

The Senate should note that the same letter dated 22nd March, 2018 stated that the SACCO intended to open tender bids on 28th June, 2018, when they realised that the university was backtracking again in paying, to sell the Moi University Savings and Credit Society (MUSCO) Towers building so as to clear the Cooperative Bank loan and use the balance of the amount to carry out other SACCO operations.

Mr. Speaker, Sir, further that, SASRA did not consider the letter written by MUSCO and went ahead to revoke the deposit talking license on 27th June, 2018. A letter was written by MUSCO on 22nd March, 2018 with the intention to sell MUSCO Towers and gave the tender bids of 28th but SASRA went ahead the day before the tenders were opened to revoke the deposit taking license.

Several factors in the process of liquidation show that there is mischief and bad faith on the part of SASRA. It is good for the Senate to note that:

One, the closure of the SACCO on the eve of the planned sale is suspect.

Two, the Commissioner of Cooperatives unlawfully cancelled the registration of MUSCO and appointed liquidators without carrying out an inquiry or reporting findings to the Annual General Meeting (AGM) of the society before implementing its recommendations as stated in Section 58 of the Cooperatives Societies Act.

Mr. Speaker, Sir, further that, the speedy deregistration and non-procedural appointment of liquidators cast doubt on the intentions of SASRA and the Commissioner of Cooperatives.

Further that, the Cabinet Secretary (CS) failed to grant MUSCO a hearing concerning the decision to appeal the decision by SASRA to revoke the license pursuant to Section 69 of the Cooperatives Societies Act.

Apart from the aforementioned letter to the CS, MUSCO has sought other interventions.

Further, therefore, Senate should note that after the failed attempt to seek audience with the CS, MUSCO moved to court to apply for judicial review orders against

the decision to revoke the license by SASRA via application, namely in the Eldoret High Court Miscellaneous Civil Application No. 66 of 2018.

Mr. Speaker, Sir, the court dismissed the application stating that the procedure did not follow the right channel which should have involved going through the CS before going to court. MUSCO, therefore, appealed again to the CS on the 18th July, 2018 but was not granted any hearing or response.

Further, MUSCO then sought audience with the CS again to no avail. They went back two times. Further, it is good for the Senate to note that MUSCO then went to the Inter-Governmental Technical Relations Committee (IGTRC). This was informed by the fact that cooperatives is a shared responsibility; it is partly in the national Government and partly in the county governments.

They went to the IGTRC after the county government had raised a dispute with the national Government. The IGTRC recommended that MUSCO, SASRA, the Commissioner for Cooperatives, and the liquidators come together to formulate proposals to ensure that the SACCO continues to run and members do not lose their money. I wish to note that the county government was very willing to work with and support this SACCO at the time.

Mr. Speaker, Sir, pursuant to IGTRC's recommendations, the county government requested the liquidators to provide access to the financial documents that would make it possible for the county government to salvage the situation through financial assistance but the liquidators did not do so. They refused to provide the documents completely. This shows that they were set on liquidation despite the fact that it is usually a last resort in such matters.

Senators should also note further that following a stalemate due to lack of consensus between the parties involved, MUSCO moved to court again via an application dated 30th October, 2019 to get a temporary injunction from the sale of MUSCO Towers which the auctioneers were announcing for the 31st January, 2020. Further that, after the ruling, the auctioneers went ahead to issue a notice showing their intention to auction the property on 3rd March, 2020.

Mr. Speaker, Sir, further that, MUSCO has made the best efforts to have these matters addressed by the relevant authorities all of which have failed to give a satisfactory response or intervention.

Finally, that none of these issues raised in this Petition is pending in any court of law, constitutional or any other legal body. Wherefore, your humble petitioners pray that the Senate-

(i) Given the apparent non-procedural, unscrupulous and suspicious behaviour of SASRA, the Commissioner of Cooperatives and the CS, Ministry of Industry, Trade and Cooperatives, we would like to request the Senate to summon the aforementioned parties and grant us all hearing to resolve the clear failure by the former to perform their duties as state officers;

(ii) To stop the auctioning of the building because it is a hurried sale of an undervalued property since it is being sold for around Kshs250 million yet it is worth over Kshs650 million thereby causing irrevocable loss to the shareholders. There is a valuation to that effect in 2017 of Kshs650 million;

(iii) The Senate uncovers the possible canvassing involved by SASRA, the Commissioner of Cooperatives and the CS in charge of the Ministry of Industry, Trade

and Cooperatives as is seen in the mismanagement of MUSCO in breach of their fiduciary duties which includes failing to give any information concerning the process of liquidation;

(iv) Demands for the MUSCO financial documents; since there is no other way to prove the financial issues present, this secrecy has led members to be in the dark concerning the amount of money currently being collected from MUSCO Towers as rent; how the money collected is spent, and how loans taken by members are being recovered.

In fact, it is believed that the money is being channeled through a Kenya Commercial Bank (KCB) account which has been quoted as Account Number 1235103706, Eldoret Branch. However, this requires investigations since it cannot be proved. Also, there is no proof that the Kenya Revenue Authority (KRA) remittances are being made by MUSCO management currently; and,

(v) The petitioners are praying to the Senate that they expedite the process of investigations and resolution in the interest of justice and public interest because they are bound to lose their hard-earned money and it will set a terrible precedent.

I thank you.

The petition is signed by five members, that is, Mr. Jack Willis Okumu Abok, Mr. David Thuo Kamau, Ms. Rose Koima, Mr. Michael Kangogo and Ms. Pamela Moraa on behalf of the 3000 members of MUSCO.

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.

I see a lot of interest. Therefore, I will give you three minutes each.

Sen. Ochillo-Ayacko: Thank you, Mr. Speaker, Sir, for giving me an opportunity to make a few appropriate remarks regarding this Petition.

I congratulate my sister, Sen. (Prof.) Kamar, for raising this issue which speaks to the purpose for which people come together to set up a Government to offer security for themselves against all manner of affliction. It is not just about physical security; it is about financial, welfare and medical security.

The members of MUSCO came together to try and join and assist the Government in securing themselves financially. However, from the presentation, it appears that the Government has abandoned them. It is complicit and has joined hands with the people who are trying to create financial insecurity for these cooperators. This is an urgent matter that requires the attention of the Senate.

Mr. Speaker, Sir, in Migori County where I come from, we used to have a cooperative society called Sonyaco Housing and Cooperative Society. We also had another cooperative society for farmers called SOC. However, they went under and there was no Government intervention. The ripple effect of poverty and loss of savings by these cooperators is a story that is yet to be told.

I support this Petition. The sooner these culprits are brought before us, the better. I hope that Members of the Committee will put hard questions to them and cause them to intervene positively in the lives of members of MUSCO. Those are hardworking Kenyans who are part of this nation and must be secured.

(Interruption of debate on Petition)

COMMUNICATIONS FROM THE CHAIR

VISITING DELEGATION FROM TANGAZA
UNIVERSITY COLLEGE, NAIROBI COUNTY

The Speaker (Hon. Lusaka): Hon. Members, I would like to acknowledge the presence, in the Speaker's Gallery, this afternoon, of visiting students from Tangaza University College, Nairobi County.

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

(Applause)

VISITING DELEGATION FROM EALA

I would also like to acknowledge the presence, in the Public Gallery, this afternoon, of visiting members of staff from East African Legislative Assembly (EALA) being led by Mr. Ezekiel Migosi.

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

(Applause)

Sen. Cheruiyot: Thank you, Mr. Speaker, Sir. This is an important issue that has been raised by petitioners who have sought the assistance of the Senate in trying to resolve---

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

The Speaker (Hon. Lusaka): Sen. Pareno, what is your intervention?

Sen. Pareno: Mr. Speaker, Sir, I thought you would give us time to appreciate those that are in the Public Gallery. However, I can do it after he finishes.

The Speaker (Hon. Lusaka): When I give you an opportunity you can use it to acknowledge them and also make your contribution.

Sen. Pareno: Thank you, Mr. Speaker, Sir. I appreciate students from Tangaza College for being here.

The Speaker (Hon. Lusaka): Sen. Pareno, you are out of order. Sen. Cheruiyot is on the Floor. Do not ride at his time.

Proceed, Sen. Cheruiyot.

Sen. Cheruiyot: Mr. Speaker, Sir, in light of your additional guidance, I welcome the visitors that are before us this afternoon. I wish them a fruitful engagement with us in terms of listening to the debates.

May they find what they sought when they came to this House.

I welcome them.

(Resumption of debate on Petition)

The long standing dispute between SASRA and a number of SACCOs, for example, MUSCO that are before us seeking the guidance of the Senate in trying to resolve this issue is one such example.

I know this SACCO well having schooled at Moi University. I know what it means to the people who contribute their savings to it. The day that I saw that this well to do and thriving SACCO had gone down, my heart sunk. I realised that we are living in difficult times.

Mr. Speaker, Sir, I made a further inquiry from the Chief Executive Officer (CEO) of SASRA to find out what the issues that are bedeviling this particular institution are. I was more concerned because my county also has a number of SACCOs. I know what SACCOs mean, especially to ordinary Kenyans that we represent. Most of them put their life savings in these institutions. Therefore, if we have weak regulations in this sector, we are putting the lives of millions of Kenyans in danger.

Mr. Speaker, Sir, to my surprise, they told me that they had proposed regulations on how we can manage our SACCOs better. Unfortunately, our Committee on Tourism, Trade and Industrialization has not hurried the process or put in place proper regulations. I do not know how true this is. Perhaps, Members of the Committee will get an opportunity to respond.

One of the key issues is seeing the competence of men and women that are charged with the responsibilities of sitting in boards that run these institutions. 90 per cent of the SACCOs are failing due to governance issues where members of the board award themselves loans or employ their children. Therefore, it is important for the Committee on Tourism, Trade and Industrialization to deal with this issue that is before us. More importantly, so as to save other SACCOs, it should hurry and expedite the process of completing that exercise that is before them of considering the proposal from SASRA in terms of legislation.

Sen. Wetangula: Thank you, Mr. Speaker, Sir. I also join you in welcoming the students from Tangaza College and members of staff from EALA to the Senate.

Looking at this Petition, it casts a sorry state of affairs. This country is littered with frustrated, collapsed and defrauded SACCOs everywhere. SACCOs are drawing members from workers who surrender a portion of their income with a hope that it will make a better tomorrow. However, what turns out is often a nightmare.

I come from very close to Eldoret. The Moi University SACCO Towers in Eldoret is one of the most prestigious towering structures in the town of Eldoret. Besides that, I have no doubt that that structure is worth anything in excess of Kshs700 or 800 million.

What is worse is that the bank has put in place a liquidator who is now becoming a problem instead of helping to save the SACCO. From the information available, the liquidator is collecting rent of up to Kshs2 million a month and is not accounting to anybody.

We know that Petitions take much longer than 60 days in the Senate. Now that it is on the Floor of this House, it does not automatically injunct the liquidator and the bank from disposing of the assets fraudulently in an undervalued manner to choice buyers and to disenfranchise the petitioners and their members even more. I heard her say that there is an injunction application in court.

I urge the Committee that you will direct to deal with this Petition to save these members who have put their sweat in this process to immediately call the Cabinet Secretary (CS) responsible for Industry, Trade and Cooperatives to ensure that he gives a ministerial order to Cooperative Bank of Kenya which is also owned by cooperatives including MUSCO, that no remedial action is taken against the assets of this cooperative until the Senate finishes this transaction and files a report.

In fact, now that the Petition has landed here, those fraudulent characters will dispose of this property to themselves even tomorrow.

So, we need very clear direction from this Floor. The Cabinet Secretary (CS) for Industry, Trade and Cooperatives must be made to appear before the responsible committee that you will direct this matter to as urgently as tomorrow or Tuesday, to ensure that through his executive authority, the matter is left in abeyance until this Senate pronounces itself formally on this matter. This is because I know many people who are suffering as a result of the instability---

The Speaker (Hon. Lusaka): Your time is up. Proceed, Sen. Farhiya.

Sen. Farhiya: Thank you, Mr. Speaker, Sir, for allowing me to contribute. I also thank Sen. (Prof.) Kamar for taking up this Petition because, seriously, where will people run to? I mean, how can the Government block everything of this cooperative society? For example, when there was an evaluation and they wanted to sell the building so that they settle their bills, there was an intervention, but they hurriedly sold the building. This Senate should know who has the interest in this building.

The other issue is that as the CS is summoned, the university must also be summoned. If they deducted money from the employees, why are they keeping it? The university should be declared insolvent. Why are they not able to meet their obligation?

In my view, there is the fact that someone is refusing to submit deductions and the fact that when people make remedial measures to stop the SACCO from being liquidated, yet someone else does not want to renew their license. Who is this person who is interested in the SACCO and has high linkages that nobody can touch? Whatever that is going on is illegal.

As the Senate, we need to sympathize with those people who have put their savings in SACCOs to save for their future, yet they are being blocked from everywhere. If we are supposed to help somebody, this is the time, so that it is a lesson to everyone else.

Mr. Speaker, Sir, I also join you in welcoming students from Tangaza University College and members of staff from the East African Legislative Assembly (EALA).

(Loud consultations)

The Speaker (Hon. Lusaka): Order Senators, there is a lot of movement. Conclude, Sen. Farhiya.

Sen. Farhiya: Mr. Speaker, Sir, this is the right time to tame corruption at whatever level that it is.

I thank you.

Sen. Olekina: Mr. Speaker, Sir, I rise to support the Petition by my good friend, Sen. (Prof.) Kamar.

I was going through the Co-operative Societies Act. When I was listening keenly to the Petition as it was being read, I was a little bit confused. I would like clarification on who appointed the liquidators. This is because the Co-operative Societies Act is very clear on liquidation of certain societies. It provides that the Cabinet Secretary may order, publish in the Gazette, appoint a person to be the liquidator of a society, or that has had its registration cancelled, or is exemption receded under Part III, or has otherwise ceased to exist. So, it will be important for us to get the clarification of who appointed the liquidator.

Secondly, the CS has a very important role. I was saddened to hear that he denied audience to the members of a society. This begs the question; why do people come together to form a SACCO? It is because they want to better their lives. It is because it is an easier way in a country like Kenya where interest rates have sky-rocketed, where the members can get easy cash or money available. I am sure most Members of Parliament (MPs) belong to a SACCO. This is a very important matter. As the defenders of the counties and the people of Kenya, we must take action.

Mr. Speaker, Sir, I appeal to you that when you direct this to a committee, it is imperative that the CS be asked to stop, because there are procedures laid out in the Co-operative Societies Act that must be followed.

Thirdly, I am also perturbed to hear that the university failed to remit the contributions of the members. Even though we are going after the Ministry, the CS and the financial institution, even the members---

(The red light at the timer was switched on)

Mr. Speaker, Sir, I request just 30 seconds to wind up because I have a very important message. The administrators of Moi University should also be taken to task. Why is it that money is contributed to the SACCO and they do not remit it? They are the people who are causing institutions to collapse.

We have been dealing with that issue in the county governments, where employees contribute money and even statutory deductions but that money is not remitted. So, this is criminal in its nature.

Mr. Speaker, Sir, allow me just 30 more, please?

The Speaker (Hon. Lusaka): Okay, please wind up.

Sen. Olekina: Mr. Speaker, Sir, it is important that in responding to the prayers, the first thing that should happen is that the auction must be stopped. This is because what is happening is quite suspicious. Most public buildings which are sold are mostly undervalued. Unless this Senate stops that action, people who have been contributing money to better their lives will end up languishing in poverty.

Finally, Mr. Speaker, Sir, I would like to join you in welcoming the students from Tangaza University College, where I made an address, and also the staff of the EALA. I played basketball with them in Tanzania and I am glad that they are in Kenya to see how we carry out our business.

I thank you.

Sen. Zawadi: Asante Bw. Spika, kwa kunipa nafasi hii ili kusema maneno machache kuhusu Malalamishi ambayo yako mbele yetu.

Kwanza, nampongeza Sen. (Prof.) Kamar kwa kuleta Malalamishi haya kwa wakati ufaao. Ni kweli kabisa kwamba watu huwa na miungano kwa ajili ama kusudi la kunufaika.

Nitapeana mfano wa Kilifi. Tulikuwa na mtambo wa korosho na kulikuwa na miungano ama *co-operatives* ambazo zilianzishwa wakati huo. Wengi ambao walikuwa wakichanga pesa walikuwa kina mama kwa sababu mtambo huo uliwaandika kina mama wengi sana. Hata hivyo, pesa yao ilienda hivyo na hakuna anayejua kwa kuwa mtambo wenyewe ulisambaratika. Wahenga walisema; yaliyopita si ndwele, tugange yajayo.

Mambo yaliyoko mbele yetu yanafaa kutiliwa mkazo na kuchukuliwa ya muhimu. Kamati itakayohusika inafaa kufanya haraka kuhakikisha kwamba haitasambaratika kama vile zingine zilivyosambaratika.

Vile vile, ningependa kuzungumza machache kuhusu EALA na pia kuwashukuru wafanyikazi wake kuja kututembelea.

Nikiwa mwanakamati wa Kamati ya Uwuiano na Utengamano, nina jambo la kuzungumzia kuhusu Bunge letu la Afrika Mashariki. Hii ni kwa sababu tulitembelea Bunge lakini tuliwakosa waheshimiwa Wabunge kwa vile walikuwa likizoni wakati huo.

Tulifanya ziara Afrika Mashariki yote. Katika mizunguko yetu tuliona kuna sehemu kadha wa kadha ambazo zinahitaji mkazo. Kwa mfano, tulitembelea Zanzibari, tukakuta maafisa wenu pale hawaielewi lugha ya Kiswahili kabisa. Afadhali sisi angalau tunajaribu. Tulishangaa jinsi wanavyofanya kazi na watu wengine. Ninawasihi mtilie mkazo Kiswahili ili kiwe kikitumika katika nchi zote za Afrika Mashariki. Hii ni kwa sababu kuna biashara inayoendelea baina ya mataifa haya ya Afrika Mashariki. Kwa hivyo, ninafikiri Kiswahili kingedumu zaidi katika nchi zote husika za Afrika Mashariki.

Kuna mambo mengi ambayo yanaenda sawa na mengine hayaendi sawa---

The Speaker (Hon. Lusaka): Your time is up.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. This is a very sad Petition. It is a sad Petition to the extent that it appears that the members of these SACCO have been ring-fenced by authorities, both at county, national level and to some level of extent, the Judiciary to frustrate them.

Mr. Speaker, Sir, our Constitution is clear and maybe, Sen. (Prof.) Kamar can hear this. Our Constitution allows people to get injunctive relief in anticipation of violation. The court cannot dismiss a suit simply because a procedure was not followed. It is an anticipated violation.

Mr. Speaker, Sir, Schedule IV is clear that the cooperative societies fall under county governments. How is it that the county government allowed the Commissioner of Cooperative Societies, in this Petition, to interfere and attempt to revoke the license of this society? Where I come from in Makueni County, the Commissioner would first report to the Director in Makueni before such an action was taken. However, what is criminal and happens all the time is when somebody has an interest in a property like this belonging to a society, they under-value it for purposes of paper work. The bulk of the money is paid outside the transaction.

How is it that no court can see that when you sell a property like this belonging to 3,000 members, you have violated their rights? How can a Senator who taught in a school and Moi University, where we are proud of the work that he did--- How can the university refuse to remit the deductions of SACCO members? That is the worst. When I say that sometime this country has become the land of Karl Max, it is true because we have the

haves and the have nots. The people who matter people most and those who do not matter at all. The rights of 3,000 members are being violated.

This is such a serious Petition on violation of economic and social rights that---

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

The Speaker (Hon. Lusaka): What is your point of order, Sen. Olekina?

Sen. Olekina: Mr. Speaker, Sir, it is a point of clarification because I heard my colleague saying that a Senator had refused to remit the deductions. Can he clarify that?

Sen. Mutula Kilonzo Jr.: Mr. Speaker, Sir, I said a university where our Senator taught. That is Moi University. You are an Alumni of Moi University.

From wherever they are listening, it is an anathema. It is a violation of values and principles of public service to do this to ordinary Kenyans. Who will save Kenyans from Kenyans themselves? Who will speak for ordinary Kenyans?

The days of Rural-urban Credit Bank when the Government used to prey on SACCOs and banks which were managed by people are long gone. SACCOs is one alternative method of members saving their money and operating in a quiet manner away from the merchants called banks.

When you start selling property worth Kshs650 million for Kshs250 million, what will happen is that they will pursue the members directly for the balance. It is a tragedy.

Sen. Milgo: Thank you, Mr. Speaker, Sir, for giving me this chance to speak to this matter of great concern. Members of MUSCO are becoming helpless in their own country.

It is quite unfortunate that these members have gone to the Cabinet Secretary, to courts and they have even looked for a liquidator. However, all of them have never assisted them. It is even quite unfortunate that the liquidator himself or the institution is actually deregistering the SACCO and wanting to sell the structure that has been put up by these SACCOs.

Mr. Speaker, Sir, this is outright corruption. This rampant corruption must stop as a matter of urgency. I agree with this liquidator to tell us why he did not follow the right procedure.

This is not the only SACCO. In fact, one of largest SACCOs in my county collapsed with millions of shillings belonging to its members. This particular amount of money was supposed to be used to pay school fees, medical bills, food and basic use in the family. Right now, these people are at the mercy of courts. In this case, it seems they are being taken round in circles.

Mr. Speaker, Sir, I thank Sen. (Prof.) Kamar for bringing such a very important Petition. I would like to request that the Committee that will consider it takes it as a matter of urgency because these members are suffering.

The Speaker (Hon. Lusaka): We do not have a lot of time. I am only giving one opportunity to Sen. Omogeni. Our time for Petitions is over.

Sen. Omogeni: Thank you, Mr. Speaker, Sir. This is one of those issues that should evoke some urgency from this House. It is a tragedy to hear of a situation where savings from poor 3,000 hard working Kenyans stands at a risk of having a property valued at Kshs650 million being auctioned at a meager Kshs250 million.

If there is a matter that should receive urgency and attention from this House, then it is this one. You can imagine even if it is from us Senators, we save our money in a

SACCO, we buy a property, then we wake up one day and find somebody auctioning it at Kshs250 million and it is valued at Kshs650 million.

Mr. Speaker, Sir, for some of us who practice in courts of law, there are some matters that are handled with a certificate of urgency. Though we do not have such a term in our Standing Orders, I think this is a matter that should be disposed of with some urgency so that the people who have brought this Petition to this House can have some hope in it.

I do not want to belabour the issues that have been put forth by my colleagues, but I am urging the Committee that will be privileged to look into this matter, to give it some urgency so that we have a report as soon as possible, so that we can forestall the loss that these 3,000 members are eminently going to face.

I support.

The Speaker (Hon. Lusaka): There are special requests. Therefore, because of interest, Sen. Pareno has served in the East Africa Legislative Assembly (EALA), I will give her the chance.

Sen. Pareno is so excited to see the staff from the East African Legislative Assembly (EALA) in the Public Gallery. Let me give her one minute to welcome them. Sen. (Dr.) Musuruve will also have two minutes to comment on the statement by Sen. (Prof.) Kamar.

Kindly proceed, Sen. Pareno.

Sen. Pareno: Mr. Speaker, Sir, I thank you for noticing that I have a special attachment to the EALA. I stand to welcome members of staff from EALA. I can see a Mr. Migosi, the Serjeant-at-Arms, Mr. Victor Manzi, Ms. Maria and many others.

I would like to passionately appeal on their behalf. The last time we visited the headquarters of the East Africa Community (EAC) in Arusha, we found that all the contracts of the staff members that were there were about to expire and that there was no more recruitment due to institutional review. I hope that the situation has improved. Mr. Migosi, who is a Kenyan, together with the other staff members from other East Africa countries are very hard working, but they need help from the partner States.

Mr. Speaker, Sir, I headed a delegation of the Committee on National Cohesion, Equal Opportunity and Regional Integration to Arusha where we visited all the East Africa Community (EAC) institutions. All the institutions urged us to speak on their behalf. The partner States should be more committed in making their financial contributions.

I am glad to see the members of staff of the EALA here. I know that they have a lot to learn from the partner States. I hope that they will also visit other partner States and learn more. I wish them well in their journey.

Sen. (Dr.) Musuruve: Mr. Speaker, Sir, I thank you for this opportunity. Allow me to join you in welcoming the students from Tangaza University. I also welcome the members of staff of the EALA.

I commend Sen. (Prof.) Kamar for bringing this Statement. Moi University is an institution that has been in existence for over 35 years. This is a reputable institution and so it is unfortunate that the 3,000 workers who are members of that SACCO are affected by a few cunning individuals. The prayer of Sen. (Prof.) Kamar is genuine and legit. She wants the Senate to intervene so that the property of the Moi University Savings and Credit Society (MUSCO) is not sold. The property was valued at Kshs650 million yet is

going to be sold for Kshs200 million. It is unfortunate that a few SACCO officials decided to sell such a property. The Cabinet Secretary, the management of Moi University as well as the officials of MUSCO should appear before the relevant Committee to respond to this issue.

Mr. Speaker, Sir, SACCOs play a very important role in the lives of Kenyans. SACCOs bring monies together so they are able to offer their members loans at a reduced interest rate. Kenyans benefit from SACCOs because they can take loans---

The Speaker (Hon. Lusaka): Your time is up, Sen. (Dr.) Musuruve.

Sen. Madzayo, you have two minutes.

Sen. Madzayo: Asante sana, Bw. Spika. Nashukuru ndugu zetu ambao wameweza kufika hapa kutoka Bunge la Afrika Mashariki wakiongozwa na Serjent-at-Arms, Bw. Migosi pamoja na Bw. Kikwae. Natumaini ndugu zetu wamejifunza mambo mengi katika Bunge la Seneti. Ni matumaini yangu kwamba wakirudi nyumbani, watapata ufahamu mzuri.

Bunge la Afrika Mashariki ni Bunge muhimu sana kwetu sisi kwani huleta watu wote wa Afrika Mashariki katika kikapu kimoja ili tuwe na kuelewana na utangamano mzuri. Nawaomba wapeleke salamu zetu huko Jumuiya ya Afrika Mashariki. Tunaomba kwamba Bunge letu la Afrika Mashariki lizidi kudumu na kuleta uhusiano mwema katika Afrika Mashariki.

Asante sana, Bw. Spika.

The Speaker (Hon. Lusaka): Hon. Senators, from the contributions, you realise that this is a weighty matter. The Senate is here to protect public interest. Since the matter is now with us, pursuant to Standing Order No.231, the Petition should be committed to the relevant Standing Committee for its consideration. In this case, I direct that the petition be committed to the Standing Committee on Tourism, Trade and Industrialization and that the CS be called immediately to take up the matter so that public interest can be protected.

In terms of Standing Order No.232, the Committee is required in not more than 60 calendar days from the time of reading the prayer to respond to the petitioner by way of a report addressed to the petitioner and laid on the Table of the Senate.

I thank you.

*(The Petition was committed to the Standing Committee
on Tourism, Trade and Industrialization)*

Sen. Mutula Kilonzo Jnr.: On a point of order, Mr. Speaker, Sir?

The Speaker (Hon. Lusaka): What is your point of order, Sen. Mutula Kilonzo Jnr.?

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, Sen. Omogeni said that we do not have the process of something called a certificate of urgency. In a certificate of urgency, one would ideally get an interim relief. The 60 days period is a long period. The Committee should come back to you with an interim report next week the same way we did an interim report through the Chairperson of the Committee on Justice, Legal Affairs and Human Rights on the issue of extrajudicial killings. The question of sale of a SACCO property must be handled as a priority so that we can save the poor SACCO members from tenderpreneurs.

The Speaker (Hon. Lusaka): Hon. Senators, I direct that the CS be summoned immediately so that we get an interim report in the next seven days.

Next Order.

NOTICE OF MOTION

MEASURES TO ADDRESS DESERT LOCUST INVASION IN THE COUNTRY

The Speaker (Hon. Lusaka): The Chairperson of the Committee on Agriculture, Livestock and Fisheries is not in the Chamber. I, therefore, direct that the Order be deferred.

(Notice of Motion deferred)

The Speaker (Hon. Lusaka): Hon. Senators, let us move onto the next Order.

STATEMENTS

CLOSURE OF KIBOS SUGAR COMPANY BY NEMA

Sen. Cherargei: Mr. Speaker, Sir, I rise, pursuant to Standing Order No.48 (1), to seek a Statement from the Standing Committee on Agriculture, Livestock and Fisheries regarding the sudden closure of Kibos Sugar and Allied Company by the National Environmental Management Authority (NEMA).

In the Statement the Committee should –

(1) State the reasons that led to the sudden closure of the Kibos Sugar and Allied Company despite the fact that it had been in operation for many years.

(2) Explain why the Ministry of Agriculture has done nothing to rescue the company from closure, especially considering the fact that this was the only operational sugar company in the region after Chemelil and Miwani sugar companies went under.

For the benefit of the Members of this House, Kibos Sugar Company serves more than three counties; that is Nandi, Kisumu, Kericho, Vihaga and Kakamega. It serves the entire region. The biggest supplier of cane to Kibos Sugar Company is Nandi County, followed by Kericho County then Kisumu County and lastly Vihiga County.

(3) State the fate of sugarcane farmers in the region as well as the staff who worked in the company; and,

(4) Outline the measures, if any, that the Ministry will put in place to ensure that the company returns to full operation in order to sustain the livelihoods that are currently at stake.

Mr. Speaker, Sir, with the indulgence of your office, I request action on this matter because it is matter of great urgency, especially to my region; Nandi, Kisumu, Kericho and Vihiga counties. Two days ago, farmers were on the streets in Kisumu and Nandi Counties protesting delay in payments. It should be noted that the only operational sugar

company in that region with a distillery and was ready to open a fertilizer plant is Kibos Sugar Company.

Farmers in Nandi, Kisumu, Vihiga and Kericho counties are now suffering. This is a source of their livelihoods. It is like the Petition that Sen. (Prof.) Kamar brought. These are the small people and farmers who depend on cane supply---

The Speaker (Hon. Lusaka): Order, Senator! I know you are passionate about it. I also worked at Kibos in my earlier life, but you are not discussing the Statement.

Sen. Cherargei: My apologies, Mr. Speaker, Sir. You know my sugar levels went up because of the suffering of the people that supply sugarcane to Kibos Sugar Company.

(Laughter)

I request that this matter is handled expeditiously so that farmers can continue to supply cane and sustain their livelihoods.

The Speaker (Hon. Lusaka): Okay. Let the Senator for Kisumu County also assist you because he is a director.

Sen. Kajwang': On a point order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Sen. M. Kajwang', what is your intervention?

Sen. M. Kajwang': Mr. Speaker, Sir, the Statement is requested from the Committee on Agriculture, Livestock and Fisheries on the actions taken by the National Environment and Management Authority (NEMA) on Kibos Sugar Company. Would it be in order to either have a joint committee looking into this matter? This is because some of the issues raised relate to agricultural policy, but others are environmental.

Those of us who have read a little about the background of the closure of Kibos Sugar Company know that it is because of environmental concerns. I request that you direct the two committees to handle the matter so that it can be canvassed appropriately.

The Speaker (Hon. Lusaka): Noted.

Sen. Outa, proceed.

Sen. Outa: Thank you, Mr. Speaker, Sir. I also rise to support the Statement by my neighbour and---

The Speaker (Hon. Lusaka): Sorry, Sen. Outa. I can see another intervention.

Sen. (Dr.) Musuruve, what is your intervention?

Sen. (Dr.) Musuruve: On a point of order, Mr. Speaker, Sir. Kindly allow me to suggest that the Committee on Labour and Social Welfare to be involved in this investigation because there has been---

(Loud consultations)

Kindly allow me to explain myself. From last year but one, there have been many complaints that we have a school for the blind at Kibos. Generally, these children have a problem with eyesight. There has been a lot of pollution from there, which even makes the situation worse.

Mr. Speaker, Sir, it will be good to amalgamate all these Committees, to ensure that we are sorting out these issues in the best interest of everyone else.

The Speaker (Hon. Lusaka): Okay. Sen. Outa, proceed.

Sen. Outa: Thank you, Mr. Speaker, Sir. I could see there is a lot of interest. This afternoon, a number of farmers from Nyando sugar belt came to my office. The reason they were there is that the only operational company, which is Kibos Sugar Company and that has served farmers for a number of years, was ordered closed by NEMA.

A number of farmers have taken their produce there for the last one week, but nothing is happening in the Kibos Sugar Company factory. As you have heard from my neighbour, Sen. Cherargei, Kibos Sugar Factory is the only one, after Chemelil, Muhoroni and Miwani sugar factories went under.

We are requesting for this Statement because livelihoods are threatened. That is why many farmers are on the streets striking. We are here to stand with our farmers and Kibos Sugar Company so that the factory should be opened to allow farmers continue with their livelihoods.

This is a matter of urgency. I request that you order the Committee concerned to report within one week.

The Speaker (Hon. Lusaka): Sen. Poghiso, proceed.

Sen. Poghiso: Thank you, Mr. Speaker, Sir. Let me also join my colleagues in supporting the Statement being sought. It is important that national interests be balanced very well with some of the decisions that are made.

If NEMA wants to close down an institution or a business like this that affects so many people, that participation by the concerned people should be sought. This is another urgent matter. Can they even just understand the gravity of the effect of people who will suffer?

Is it possible for this Committee to investigate what can really be done to keep the place open, notwithstanding NEMA and environment issues? This is just so that livelihoods are not affected in these difficult days. Just as they said of the Moi University SACCO, this is another urgent matter that we should now begin to stop the trend of investments like this one going down the drain. This is a huge company that affects the livelihoods of so many people.

Mr. Speaker, Sir, I know you will give this opportunity to the Committee to discuss. I hope it can be done urgently and that your orders should be those that make the committees work and bring the results faster.

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

The Senate Minority Leader (Sen. Orengo): Thank you, Mr. Speaker, Sir. Before I support the Statement, let me declare my interest. At one time, I have acted for the Kisumu County Government on a matter concerning Kibos Sugar Company and some individuals who had taken that factory to court on account of environment questions.

Mr. Speaker, Sir, normally to get an investor to pump in money to the magnitude to which Kibos Sugar Company has done in Kisumu County, is not easy to come by. Right now, with the collapse of nearly all the state-owned sugar factories in what used to be a thriving sugar belt to the farmers and other allied vocations around the lake, you would find that the death of Kibos Sugar Company can bring down the only major investment in that part of the world. If I am not wrong, they are, in fact, the biggest taxpayer in terms of rates and others to Kisumu County Governments. Sen. Outa is here.

Mr. Speaker, Sir, whereas environmental questions are important – and I am an avid supporter of the protection and conservation of the environment – I think NEMA should do things properly. Many times, you find that a decision is made and it does not

comply with the law. If it does, it has been made for the wrong reasons. In relation to the Kibos Sugar Company matter, I think this issue has been in court and every time, the court has criticized the manner in which NEMA people have acted.

All in all, I support this Statement and hope the Committee will delve into this issue. Other committees have been formed before by the National Assembly and by the Kisumu County Assembly. I think as a matter of urgency, the Committee should get to work and come out with the real facts around this constant dispute between NEMA and Kibos Sugar Company.

The Speaker (Hon. Lusaka): Sen. (Eng.) Maina, proceed.

Sen. (Eng.) Maina: Thank you, Mr. Speaker, Sir. I rise to support this Statement on the closure of Kibos Sugar Factory. Whatever the reasons that the NEMA may have, they need to weigh it against the national interests.

Today, you can see that the life of the people in the whole of the Western belt, which used to be a sugar belt, is very pathetic since our sugar factories collapsed. A place like Mumias that used to be very vibrant when the sugar industry was active is today a graveyard of its past and people are suffering.

Again, one of the major problems we are facing in this country is the cost of living of the ordinary man. The other one is employment for our youth. This factory was definitely providing employment to some youth and livelihood to some ordinary Kenyans.

Before coming to the point of declaring a closure, there are other measures that I believe should have been taken, like advisory measures and even trying to see that things are turned back. We should not have blatantly closed the factory hence affecting the people who depend on it for a livelihood.

Mr. Speaker, Sir, today, when you go to the Industrial Area within this city, it is like a graveyard of many factories. There used to be many industries in Industrial Area. This country must have a policy to encourage the factories that are working. If they are not working efficiently and injuring the environment in one way or another, let them be advised on how to get things done right.

Secondly, when NEMA rushes to Kibos and closes a factory, I wonder what they are doing in Nairobi. There is a lot of environmental abuse all over. They should have taken the Nairobi City Government to court because Nairobi City is filthy. There is a lot of environmental abuse all over and yet nothing is being done.

Let us not just be talking about the need for this or that committee taking action. Let the Committee on Agriculture, Livestock and Fisheries, for example, move quickly and ensure that the factory is re-opened. That should be the first thing.

They should then be relooking into the matter. We cannot keep on waiting for a report for one or two months. We will not achieve much. We would want to see a way of reopening the factory, make it work the way it was, and then look into the matter.

Sen. Faki: Asante, Bw. Spika kwa kunipa fursa hii kuchangia Taarifa ambayo imeletwa Bungeni na Sen. Charargei. Ni jambo la kusikitisha kwamba NEMA imeamua kufunga Kiwanda cha Kusaga Miwa cha Kibos wakati ambapo wakulima wengi wanategemea kiwanda hicho kuuza miwa yao na kupata riziki ya kuwasomesha watoto wao ambao wako shuleni na vyuoni vikuu. Na pia kukimu mahitaji ya maisha.

Ni lazima NEMA ifanye kazi katika hali tunayoita *public interest au* faida za jamii. Wajibu wao mkubwa ni kwa kusaidia umma kusonga mbele. Kwa hivyo,

wanapofunga kiwanda wakati ambapo hakuna kiwanda kingine karibu na hapo ambapo wananchi wanaweza kupeleka miwa yao, ina maana kwamba wanajaribu kuhujumu haki ya umma kupata huduma sawa katika eneo lao.

Kwa hivyo, kitendo hiki cha NEMA kinafaa kikemewe na hatua za haraka zichukuliwe. Hii kwa sababu wakulima wengi hawana matumaini hivi sasa. Viwanda vingi vya miwa katika eneo la Magharibi vimefungwa, kikiwemo kiwanda kikubwa cha Mumias. Kwa hivyo, wasiruhusiwe kuwadhalilisha wakulima ambao tegemeo lao kubwa ni kuuza miwa ili wapate mapato.

Asante, Bw. Spika.

Sen (Prof.) Onger: Thank you, Mr. Speaker, Sir, for allowing me to ventilate my support for this Statement. The issues in this Statement are that NEMA has closed down Kibos Sugar Factory. Who is suffering? It is the suppliers of the cane to Kibos who are farmers cutting across more than three counties.

I thought that, that is the best way of demonstrating the Building Bridges Initiative (BBI) approach in getting all farmers from Nandi, Kakamega, Kisumu and Kericho to converge in Kibos. This, therefore, enhances the debate of BBI to continue living together peacefully while harnessing the economic potential of that region that is at stake now that this factory has been closed down.

Sadly I have been following this event and the last I heard is that they wanted to close down Kibos Sugar Factory because of water pollution. They went round and they managed to clear that point by working closely with the management of NEMA and the company management. That issue was resolved. The next stage was the accusation of air pollution; giving them 30 days to close down that factor.

Mr. Speaker, Sir, you will appreciate that if you are accusing a factory of that magnitude because of the size of the particles being emitted to the atmosphere, there is an argument whether these are liable or non-liable. It is neither here nor there, even if they wanted to follow the law to the end.

These are issues that can only be resolved through both the management of NEMA and the management of the factory. It takes time because it is a process of engagement. I would suggest that now that some of us are conversant with NEMA laws and regulations, because I was one of those who created NEMA when I was in the United Nations Environmental Program (UNEP)---

Whereas I am persuaded that they should take action at an appropriate time, I think that the time they have decided to take action is very inopportune. This is simply because they have locked out farmers who have already cut their cane and it has been rotting out there. There is no other alternative factory where they can take their cane to. Therefore, they have caused these farmers to suffer great loss because cane is drying up.

I urge that the Committee moves with speed to create a temporary seizure of any action and allow the farmers to continue delivering this process. This is because I am persuaded that the particles that are being emitted to the air are not very dangerous at this stage. They do fall within the given omissible law. I suggest that whatever Committee you refer this matter, it should first of all seek to persuade NEMA to remove the caveat of closure. It should allow the farmers to continue delivering cane while they are managing the process of how they can agree on an arrangement of the factories to continue functioning.

Sen. Olekina: Thank you, Mr. Speaker, Sir. When it comes to tackling issues that affect the *wananchi*, these are some of the things that make me a proud Member of this House. It saddens me when I hear that there are over 3,000 employees and over 10,000 farmers who are now rendered jobless because of actions from NEMA that I consider selective.

We have had serious issues with NEMA. When I sat in the Committee that was investigating the Solai Dam tragedy on a daily basis, NEMA failed Kenyans. When I see that NEMA does not give a hoot about young farmers, the *boda boda*, people who have small transport businesses and the *mama mboga*, who sell food to the people, it worries me.

Today has been a very interesting day in this House because the first Petition dealt with people's lives being affected. There is a time that I got in touch with NEMA on certain activities of people destroying the environment in Narok. The first response that I got was that they had decentralized their operations. When I hear that the order for the closure of Kibos Sugar Factory came from the headquarters then it is quite suspicious for me.

I now believe it is true that it is a cartel and it is not being done because of the interest of the environment. Let us be honest; NEMA does not give a hoot about the environment. Where I live, a 100 metres away from my house, people are harvesting volcanic ash. When I call NEMA, they say they cannot come.

We have to worry about the poor Kenyans who are on the streets. These are poor Kenyans who cannot supply their cane to a sugar factory because of two things. One, is the fact that NEMA has closed down the factory that has been supporting them. Secondly, because of the laws that govern the sugar industry like zoning, for example, if you are growing your cane in one area, you cannot sell it in another area.

Mr. Speaker, Sir, these are matters which I would like to beseech you to move expeditiously to ensure that once you assign this task to the committees, action is taken immediately. This is because soon, we will have students going home because their parents cannot afford to pay school fees. Our people are dying because they cannot afford to pay medical bills since the economy they depend on has been destroyed.

We cannot allow greed. Whenever we have industries that come and setup, the only thing we should do is to ensure that they employ locals. This industry, Kibos, apart from another one which is in Narok which is employing all foreigners, the one in this area is employing the local people; 3,000 factory employees and 10,000 farmers supply sugarcane there. Where do you want them to go?

These are things that lead to a revolution. We cannot be proud to say that we can afford our lives, drive our 100,000-dollar cars, yet farmers who are working hard, the ones who vote for us, we allow actions of certain individuals, particularly coming from the headquarters, to hurt them.

What business does a person coming from the headquarters have in going down to a centralized operation and closing it down? I am concerned. This is why we need to amend our Standing Orders. This is because earlier on, Sen. Omogeni said that we do not have a certificate of emergency in this House. This is an emergency. We may need to ask ourselves the actions---

The Speaker (Hon. Lusaka): Do you mean certificate of urgency?

Sen. Olekina: Sorry, certificate of urgency. However, this is an emergency because we cannot allow action of an individual to hurt others. What was NEMA doing for that pollution to escalate to that level?

These are things that when you go down there you are told you can operate as long as you give us an envelope then after eight months, it comes back to the same level.

We need to set standards. I also want to appeal to the operators of Kibos - I do not know them - to take care of the environment. If there is anything that you are doing, go through the environmental impact assessment. The law is clear in terms of the procedures that need to be followed and NEMA has to be clear.

If you have decentralised your operations, you have no business issuing orders from the headquarters such that when the inspector - I think his name is Richard Korir - was being given the petition by the farmers, he said that he could not do anything and that the matters should be referred to the headquarters. I will refer the matter to the headquarters and let them respond because the matter has been taken away from him; it is too big. It is all about money.

Mr. Speaker, Sir, I plead with you that you assign this to the Committee and ensure that they move expeditiously. Maybe on Tuesday or even tomorrow, they can make sure they summon the Director General of NEMA and directors of that company so that we can save these poor Kenyans who depend on that factory for sustenance.

The Speaker (Hon. Lusaka): Sen. Farhiya, your headgear blends very well with the seat. I am not sure whether you are there or not.

It is your opportunity.

Sen. Farhiya: Thank you Mr. Speaker, Sir, for giving me this opportunity.

According to the Jubilee agenda, we have four things that we need to accomplish. One of them is industrialisation or having factories across the country. If we are closing the factories we have, then we are retracting on the agenda.

The other issue is the forming of an *ad hoc* committee although I hear there are four Committees that need to handle this issue. In joint committees, there are usually quorum issues. It is very difficult to get quorum for all the committees at the same time. I recommend that we have an *ad hoc* Committee so that this issue is handled expeditiously. When we are constituting the *ad hoc* committee, my recommendation is that we should deal with the people who come from that area so that they can handle the matter very well because they are passionate about it.

Mr. Speaker, Sir, due to environmental issues, there is a big problem and there is need for a balancing act. If we continue with degradation of the environment, we will put this country in trouble. In addition, I do not recommend closure of an industry because industrialisation is what we need. Therefore, there is need to have a framework whereby people have a clear agenda on what needs to happen until the environmental issues are addressed. Meanwhile, this factory should be opened as soon as possible.

(Sen. (Prof.) Kindiki consulted the Speaker)

Mr. Speaker, Sir, I am not sure you got my point. I wanted you to consider constitution of an *ad hoc* committee because there are four Committees involved namely; Trade, Environment, Agriculture and Labour. There are four committees and getting quorum for all of them might be a challenge. Therefore, if formation of an *ad hoc*

committee will not be a challenge, then that is the route to go because getting quorum for all those committees will be a challenge.

Sen. Mwaruma: Thank you, Mr. Speaker, Sir, for this opportunity to add my voice and support the Senator for Nandi, Sen. Cherargei, because of this Statement that concerns the closure of Kibos Sugar Factory by NEMA.

For starters, the Government's Big Four Agenda is industrialization. Therefore, closing Kibos negates the realisation or success of the Big Four Agenda.

Secondly, the trend of closing factories in Kenya when we want to open many more factories to create employment is not laudable. It is only the agri-based factories that can be viable.

We cannot produce toothpicks and other items; we rely mainly on imports from China. Therefore, if we start closing agri-based companies, I do not know where we are going. It has been stated clearly that the type of employment that we are going to deny our people is almost 13,000 who are directly employed by the company and those who are indirectly employed in the farms.

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

*[The Deputy Speaker (Sen. (Prof.) Kindiki)
in the Chair]*

Before recommending the closure of Kibos Sugar Company, I think NEMA should have done very wide consultations with the mother Ministry that is the Ministry of Environment and Forestry and also the Government at large because in the Big Four Agenda, industrialization is one whose time has come.

It is very worrisome because we have seen the cotton industry based companies closing down and we are now closing down sugar industries which were the ones that were remaining. What else will remain?

It means that people in Kenya will remain poor and they will be impoverished. People have spoken to the issue of unemployment - the spiral effect that would be brought by unemployment, including spiraling of poverty and loss of quality education. When the employees of Kibos Sugar Company go home, this means that their children will be unable to get quality education. This issue is affecting more than three counties, including Nandi, Kericho, Kisumu, among others.

Mr. Deputy Speaker, Sir, what should happen is that the national and county governments need to closely look into this issue of closure of Kibos Sugar Company so that they can have interventions.

Sen. Farhiya has spoken very well and said that we need to look at both sides, that is the closure of the company because of environmental issues and also at the environmental issues that have been addressed here.

NEMA is domiciled within the Committee which I sit in, that is the Senate Committee on Lands, Environment and Natural resources. I would be glad if I was involved in the adjudication of that Statement. We need to call the county government, all the stakeholders, the directors of Kibos Sugar Company and the directors of NEMA and the mother Ministry of Environment and Forestry to tell us the overall effect of the

closure of Kibos Sugar Company. Otherwise, we need to condemn this act. It needs to be slowed down so that the people who benefit from Kibos Sugar Company continue to do so.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Senator of Taita Taveta. Proceed, Sen. Halake.

Sen. Halake: Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! Is anything the matters Senator for Kilifi? I see some bewilderment of sorts.

Sen. Madzayo: I am sorry, Mr. Deputy Speaker, Sir. It is not in my habit to interrupt, but I pressed the intervention button, so I was wondering whether my name is appearing.

The Deputy Speaker (Sen. (Prof.) Kindiki): Yes, it is appearing, but you will be not the next contributor.

(Laughter)

Sen. Madzayo: I thank you, Mr. Deputy Speaker, Sir.

Sen. Halake: Mr. Deputy Speaker, Sir, I rise to support this Statement by our colleague, the Senator of Nandi County. It is really sad that all we are seeing is closures and SACCOS going under. It is a very gloomy day considering that we are supposed to be a middle income nation as per Vision 2030. By now, we should be a prosperous middle income country. I am wondering where the middle income status will come from if every industry is being closed down. Is this again another manifestation of corrupting where perhaps importing sugar and taking the proceeds directly is more lucrative than having people providing these services where the sugar industry is thriving and the money being distributed to the farmers, workers and everybody else? Distribution of wealth will ensure prosperity for that matter.

This is very sad. We have seen that this country used to have such robust cotton and sugar industries. I think we had one of the best sugar belts in this country. All those farmers seem to be impoverished. We used to have the coffee, tea and flower sectors that were next to none. We are now seeing a decline in our agricultural sector. The agricultural sector provides more than 24 per cent of the Gross Domestic Product (GDP). We saw what happened with the coffee, maize and sugar cane farmers.

Everything is closing around us. I do not know what this House needs to do to save this country from collapse because we cannot be net importers of everything. We import toothpicks, eggs and everything. I do not know what is happening because the fundamentals of the economy that are holding our middle income status are not there. Our strategic direction with the Big Four Agenda cannot be supported in the absence of even the basic manufacture of some of these things.

I think this country is in a bad state when it comes to its manufacturing sector and factories. It begs the question, when these industries were going on was there no environmental impact assessment or plans that were being followed? Where was NEMA all this time as these industries went on to pollute the environment to the level where they have to be closed down?

The culpability is not just with the factories, but NEMA itself should take responsibility for having slept on the job. This House should, therefore, hold NEMA to account as to why it let the industry---

(Several Senators walked into the Chamber)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! Sen. Linturi. I have noticed your new outlook and I am of the opinion that it is better. Sen. Sen. Cherargei, take your seat. You seem to be very excited. You must have come from a very fulfilling exercise.

(Laughter)

Proceed, Sen. Halake.

Sen. Halake: Mr. Deputy Speaker, Sir, I do not quite remember what I was about to say, but suffice to say, I support.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Your colleagues caused it because they came in excitedly led by the Senator for Kericho who is known for many things.

Sen. Madzayo: Asante sana, Bw. Naibu Spika kwa kunipa nafasi hii. Ningependa kumshukuru ndugu yangu Sen. Cherargei ambaye ni Seneta mtenda kazi kutoka Nandi kwa kuleta Taarifa hii katika Bunge la Seneti, kuhusu kufungwa kwa kiwanda hiki cha Kibos.

Ni jambo la kusikitisha kwamba mwaka 2020 ulipofika tuliambiwa ya kwamba watu 3,000 wamepoteza kazi zao na wakulima zaidi ya 10,000 wamebaki na mimea ya miwa katika mashamba yao. Hawana mbele wala nyuma na hawajui waende wapi na miwa yao inaozea mashambani.

Si vyema kutojali wengine wanavyoumia kwa sababu hatuna mashamba kule. Mtu aliye na ekari zaidi ya 10 za miwa sasa hajui afanye nini. Hakuna faida tena ya miwa kwa sababu itaozea kwa shamba.

Bw. Naibu Spika, hiyo ni dhuluma iliyofanywa na *the National Environment Management Authority (NEMA)*. *The NEMA* ilipewa jukumu la kukaa na wakulima wa Kiwanda cha Sukari cha Kibos na kampuni nyingine ambazo zinaendeshwa na Wakenya ili kuwaeleza watu jinsi ya kufanya biashara zao zifaulu. Jambo kama hili ni la kusikitisha kwa sababu Kenya ni miongoni mwa mataifa yanayotegemea ukulima.

Jambo kama hili lilitendeka katika Kaunti ya Kilifi ambako ninatoka. Kulikukwa na wakulima kutoka maeneo bunge ya Ganze, Magarini, Kilifi Kaskazini, Rabai, na Kaloleni. Wakulima hao walikuwa wakipanda korosho. Mimea ya korosho ilikuwa imetapakaa kila mahali. Hali ya uchumi wa Kilifi ilikuwa juu sana kutokana na uuzaji wa korosho, kwa sababu kulikuwa na ofisi za *Kenya Cashew Nuts Exporters and Suppliers* kule Kilifi.

Vijana zaidi ya 5,000 wakiwemo akina mama walikuwa wakifanya kazi. Kampuni hiyo ilifungwa kwa njia sawa kama ilivyofanyika katika Kibos Sugar Factory. Kampuni hiyo ilipofungwa, zaidi ya wakulima 20,000, akiwemo baba yangu aliyekuwa akipanda korosho, waliathirika. Alikuwa anauza mazao yake kupitia kwa shirika hilo lililokuwa na ofisi kule Kilifi na kupata pesa za kumwezesha kukimu mahitaji ya familia yake na kusomesha watoto wake kama sisi tulivyosomeshwa.

Najua kuwa wakulima ambao wamekuwa wakipeleka miwa katika Kiwanda cha Sukari cha Kibos wana majukumu mbalimbali. Sasa ufukara ama umasikini utaingia katika eneo hilo. Haya yote yanaletwa kwa sababu mashirika kama haya yanafanya mipango na mabepari. Kuna kampuni nyingine ambazo ziko huko na hakuna haja ya kuzitaja.

Ni dhahiri kuwa ni mpango wa kufunga Kiwanda cha Sukari cha Kibos ili mwingine apate faida zaidi. Ikiwa huo ndio mpango, Seneti hii lazima isimame imara ili kuzuia mipango yote ya *NEMA* kufunga kampuni hiyo. Tunafaa kumwita Waziri anayehusika na ukulima aje hapa atueleze kama amekubaliana na mambo hayo. Watu wengine husema; kama si sasa, basi ni sasa hivi. Wahenga walinena: Chelewa chelewa, utapata mwana si wako. Kwa hivyo, ni vyema Seneti hii kuchukua hatua haraka ili kuhakikisha kuwa mpango huo umesimamishwa.

Ndugu yangu amesema kuwa lazima tuwe na *certificate of emergency*. Alichomaanisha ni kuwa hatua inafaa kuchukuliwa kwa haraka lakini akatumia neno “*emergency*”. Neno mwafaka ni “*urgency*” ambalo maana yake ni kwa haraka zaidi. Hatua tunayofaa kuchukua ni kumwita Mkurugenzi wa *NEMA* kesho ili atueleze sababu. Ikiwa ni Waziri, aje hapa hata kama ni kesho ili atupe maelezo.

Bw. Naibu Spika, naomba uamuru kwamba hatua yeyote isichukuliwe mpaka utakapotoa uamuzi. Mipango yao isimamishwe ili wale waje kutupa majibu kabla ya hatua kuchukuliwa.

Asante, Bw. Naibu Spika.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. Madzayo.

Proceed, Sen. Kwamboka.

Sen. Kwamboka: Mr. Deputy Speaker, Sir, I rise to support this Statement by Sen. Cherargei on the closure of Kibos Sugar Company by the NEMA. It is important to protect the public from harmful and dangerous gas emissions, black smoke and fly ash, among others, which supersede the international acceptable standards.

While the sugar company is closed down as a health hazard, the other side of the coin indicates that there will be grievous suffering by the employees of the company, the sugarcane farmers and the community as a whole. Huge losses will be experienced since the harvested sugarcane and the one due for harvesting will rot as it will have no market.

Mr. Deputy Speaker, Sir, there are indications that NEMA is not just undertaking. For example, they claim to protect the public against noise pollution, but if some payment is made, it becomes legal to make noise, yet those purported to be protected from the noise are never consulted whether they want the noise or not.

The Nairobi River has been featured several times in the news and documentaries on how organizations, companies and landlords contaminate the river by releasing chemical waste and sewerage---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Beatrice Kwamboka Makori! Are you conversant with the Standing Order on reading materials? You can only do what you are doing with the discretion of the Chair, which I have not exercised. However, if you request, I can exercise it. That request must be justified.

Sen. Kwamboka: Mr. Deputy Speaker, Sir, I am the one who made these notes.

The Deputy Speaker (Sen. (Prof.) Kindiki): It does not matter the maker of the notes. You are not allowed to read. You can make references to the notes, but not to read like you are reading a speech, except with permission of the Chair.

Sen. Kwamboka: Mr. Deputy Speaker, Sir, I beg to---

The Deputy Speaker (Sen. (Prof.) Kindiki): Do you want to be permitted to read?

Sen. Kwamboka: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Why?

Sen. Kwamboka: Because I am the one who made them.

The Deputy Speaker (Sen. (Prof.) Kindiki): That is not very convincing, but proceed.

Sen. Kwamboka: Thank you, Mr. Deputy Speaker, Sir. I wish to urge the Committee to push NEMA to be fair and not wait for the damage to happen so that they take action. The NEMA needs to be proactive and the officials should always remember that prevention is better than cure.

I support.

The Deputy Speaker (Sen. (Prof.) Kindiki): We need to bring this to a closure. Be brief, Sen. Cheruiyot. I hope you have recovered from whatever you were doing outside.

(Laughter)

Sen. Cheruiyot: Mr. Deputy Speaker, Sir, this is a very important issue. There is a reason why I had to rush back into the House, despite the fact that I was engaged in another very important national duty.

The residents of Kericho County are the second leading suppliers of sugarcane to Kibos Sugar Company. The people I represent in this House, especially residents of Soin and Kipkelion, depend on this particular sugar factory to eke out a living. They pay school fees for their children, get medication when they are unwell and get along with their lives.

The closure has not only affected their livelihood, but also scared them stiff on where else they can turn to. This is because Chemelil, Muhoroni and all the other sugarcane factories around closed a long time ago. Even though operational, the last time any sugarcane farmer was paid by any of those two factories that I have mentioned is more than a year or two.

Kibos Sugar Factory had brought some form of stability. A sugarcane farmer was assured that upon delivery of crop, they would receive payment within 30 days. This is the kind of normalcy that our residents are clamouring for.

Therefore, it would be extremely difficult for me as their leader to accept this move by NEMA. I do not know what reasons they may have. However, I wish that they would have, at least, enlightened the communities that live around the sugar factory on why they felt that this was the only available solution.

I am sure the law prescribes what should be done if, for example, there is infringement of environmental laws and that kind of thing. There are other avenues through which they could have forced the factory to comply.

I heard the Managing Director of this factory say that this was their first point of interaction. The issue had not been brought to their attention and they failed to comply. Closure should be an option if there is willful failure to comply. Therefore, I humbly request the Committee of this House that is charged with the responsibility of looking

into this matter to hit the ground running so as to save the lives of the people of Nandi, Kisumu, Kericho and all others areas that depend on Kibos Sugar Factory.

Mr. Deputy Speaker, Sir, for your information, sugarcane farming is a not a small business. Sugar is one of the most consumed products in this country on a daily basis. How its farmers, just like tea, milk and coffee end up living in abject poverty is something that we will never understand. There are cartels that conspire to kill all factors and means of production of this industry so that they can cheaply import sugar into the country and make a kill. We should not allow them. NEMA should not aid importers of sugar as opposed to building the capacity of our local farmers. Therefore, as a House, I humbly plead on behalf of the people that I represent, that justice is done and stability brought back to that factory.

Sen. Pareno: Thank you, Mr. Deputy Speaker, Sir. I also support this Statement by Sen. Cherargei.

This afternoon, we have talked about closure or liquidation of a cooperative society and how the livelihood of people is affected. So, it is sad that, again, we are talking about closure of another institution which will leave over 3000 employees jobless and over 10,000 farmers with no livelihood because they will have nowhere to supply the sugarcane.

Mr. Deputy Speaker, Sir, we have ways of winding up companies that are no longer visible and of no economic value. If there were things that were wrong, they should have been done in the right manner.

NEMA does things upside down. When it is called upon to close down factories, for example, in the case of Solai Dam, they failed to inspect and uphold the standards or give notices for people to comply. They create another disaster in the name of closing a factory that will affect a lot of livelihoods. So, it is time for NEMA to shape-up or ship out. We cannot have ---

The Deputy Speaker (Sen. (Prof.) Kindiki): You do not want to recommend that they do both?

Sen. Pareno: Mr. Deputy Speaker, Sir, it is not a joke to affect over 3,000 people and 10,000 farmers. So, NEMA is not doing its job well. If it is trying to flex its muscle, it has done it the wrong way. They should have given farmers an opportunity to be heard on how to improve on whatever standards that this factory was not complying with. So, this is sad and should be corrected.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Seneta, I will give you one minute because you are late.

Sen. Seneta: Thank you, Mr. Deputy Speaker, Sir. The Committee needs to look at the policies that guide NEMA, its actions and what they have been doing. This is something that might happen in all our counties if we are not keen. The closing of companies is a worrying trend because we are already facing the issue of unemployment in the country. This is an indication that the levels of unemployment will go up. I request the Committee to look at how we will strengthen the mandate of NEMA and what they should be doing. Right now, there is pollution everywhere yet they are running to close down these big institutions. This is just a way of earning money for themselves.

Workers should also be worried about the Secretary General of Central Organization of Trade Unions (COTU) who is politicking---

(Sen. Seneta's microphone went off)

The Deputy Speaker (Sen. (Prof.) Kindiki): Add her one more minute.

Sen. Seneta: Mr. Deputy Speaker, Sir, I sympathize with the workers of this country. Every other day, I see the Secretary-General of COTU politicking instead of talking about workers who are laid off everyday in all our counties. It is a worrying trend that our Committee needs to urgently look at.

(Interruption of debate on Statement)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM TERIGE
BOYS HIGH SCHOOL, NANDI COUNTY

The Deputy Speaker (Sen. (Prof.) Kindiki): We have visitors in the Public Gallery from Terige Boys High School, Nandi County. I welcome them to the Senate and Parliament.

(Sen. Cherargei stood in his place)

(Resumption of debate on Statement)

Sen. Cherargei, I know you want to tell your constituents something. However, before you brought this request for Statement, you might have done some homework. Are you aware from your findings why NEMA took this action?

Sen. Cherargei: Mr. Deputy Speaker, Sir, NEMA has not communicated formally. They just issued a notice of closure.

The Deputy Speaker (Sen. (Prof.) Kindiki): They must have said the reason for closure under the Environmental Management and Coordination Act, 1999 which requires such a notice to be given when certain aspects of environmental damage is going on. They should specify and give notice as is described in the Statute. So, you have no information as to the actual reason for closure?

Sen. Cherargei: The Environmental Management and Coordination Act, 1999 is correct. However, they have failed. According to reliable sources, they came up with a notice for closure and ordered the factory to be closed. I am not aware of any information and they have not shared it with the public or the media.

The Deputy Speaker (Sen. (Prof.) Kindiki): So, you are not aware whether an environmental audit had been carried out under Section 69 of The Environmental Management and Coordination Act?

Sen. Cherargei: Mr. Deputy Speaker, Sir, that had already been done and the company and stakeholders were involved. However, the issue of closure was abrupt. The factory had been closed in December for maintenance to comply with those standards.

The Deputy Speaker (Sen. (Prof.) Kindiki): I am not talking about environmental impact assessment which happens before a project starts. I am talking

about environmental audit of an ongoing project or institution to find out whether there is some environmental damage occurring. You are not aware?

Sen. Cherargei: Mr. Deputy Speaker, Sir, I am not aware. That factory is within my county and no such information has come to my attention.

The Deputy Speaker (Sen. (Prof.) Kindiki): Is it not in Kisumu County?

Sen. Cherargei: Mr. Deputy Speaker, Sir, we share the border with Kisumu and Nandi counties.

According to statistics, the leading supplier of sugarcane to Kibos Sugar Company is Nandi County followed by Kericho and Vihiga counties.

The Deputy Speaker (Sen. (Prof.) Kindiki): Okay. I will give you one minute to welcome your constituents if they are still around.

Meanwhile, Sen. Wamatangi, approach the Chair.

(Sen. Wamatangi approached the Chair)

Sen. Cherargei: Thank you, Mr. Deputy Speaker, Sir. I take this opportunity to welcome our boys from Terige Boys High School, Emgwen Sub-County in Nandi County for visiting the Senate. On behalf of my colleagues and myself, I want to extend my warm welcome to them.

Terige Boys School is one of the academic giants in Nandi County. It is the second to Kapsabet Boys High School which is a national giant in Nandi County. I wish them the best in their learning and I urge them to work hard. I have many friends who come from Terige. One of my sons was a student in Terige Boys High School. So, I am proud of you. Once they step out, I will ensure that we share one or two things and have a memorable photo with them.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator! I think that you can talk to your constituents after leaving the Chamber through SMS or *WhatsApp*.

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

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Sen. Wamatangi.

Sen. Wamatangi: Mr. Deputy Speaker, Sir, I want to join the Senator for Nandi in welcoming the students from his county. It is a good coincidence that the students from his county are visiting when the Senator for Nandi was on the Floor on an important matter that affects Nandi County. This matter does not only concern Nandi County, but most counties, as contributors to the Statement have said.

One of the Senators asked a very important question whether the Senator for Nandi County had prior information of what was happening. NEMA is one institution that is threatening to run rogue in this country.

If you remember during the time of demolitions - I want to say with all humility that I was a victim. NEMA went wild and demolished people's buildings without giving them notice. They would come one morning and leave a letter at your place directing you to demolish your building within seven days. At the expiry of seven days, the next thing you hear is them demolishing your building.

These guys are threatening not only the wellbeing of Kenyans by depriving them of livelihoods where they are employed, but even of fairness and unconstitutionality. One of these fine days, I would love to get the opportunity to move that this House look at some of the misdeeds of NEMA. How can they explain such actions like they have taken in Nandi to close a factory? In my neighborhood, they would come and demolish a building in Kileleshwa and leave another one on the opposite side of the river coming up. How is that possible? There is no explanation.

Look at what they did at Nairobi West along the Mbagathi Roundabout. They demolished a building worth millions of shillings, but on the other side, a similar building is coming up. Now, the one that they left is higher than the one they demolished. This House and leadership must speak about these misdeeds by NEMA.

The other day in Thika, can you imagine a multi million investment by a Kenyan was disabled by police officers who took away machines in pretext that the owner had not paid taxes. I asked them who dismembered the plant and took the machines to the police station. I wondered whether they will continue manufacturing what he was manufacturing to recover the unpaid taxes. This is something that this House must speak about.

I want to congratulate the Senator for Nandi for bringing such a matter to this House because we need to ensure that when power is given to State agencies, they do not misuse it the way NEMA and other agencies are doing.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well.

Hon. Senators, I have listened to the observations that have been made first by the Senator for Nandi who brought this request for Statement and the other Senators who have made observations. I also note that this matter touches on the livelihoods of so many people. I also take note that it does not appear clear why this action was taken. *Prima facie*, it appears arbitrary based on the information that we have.

I have also noted that this matter, although it is the Senator who made the request for the Statement, I direct it to the Committee on Agriculture, Livestock and Fisheries, where the issue of sugar factories is situated in the organization of Government. In addition, I have noted that it also involves other issues, including industrialization, which is in a different Ministry. I have also noted labour issues because of the welfare of staff that are likely to be laid off, if they have not been laid off already because there is no work.

Hon. Senators, to be able to maximize on the resources that we have in this House because we have finite resources - human and financial resources, we cannot have all those committees looking at this issue. There are so many other issues on the table of many committees. I, therefore, direct that this matter be seized of by the Committee on Agriculture, Livestock and Fisheries.

I want to commend action that they took recently on the issue of locusts by engaging the Cabinet Secretary. I want to encourage all committees to be accountable to the people of Kenya. Whenever you are seized of a job, we want to see some results and progress.

So, I hope that this Committee will similarly address this issue because it is quite a serious matter. If we do not address it, then the remaining few factories that we have

across the country are going to be shut down and we are going to be a backward country very soon.

This matter also touches on several counties such as Kisumu, Kericho and Nandi. For this reason, I direct the Committee on Agriculture, Livestock and Fisheries to call the Director General of NEMA. Today, I will spare the Cabinet Secretary because it is clearly an issue of NEMA. The Chairperson of this Committee must work with the Chairperson of Lands and Natural Resources to informally have his views and input as the business of looking for the Director General of NEMA is on the Committee of Agriculture, Livestock and Fisheries.

Since the Senators who spoke have highlighted that they have challenges with this institution, I now direct that the Director General of NEMA to appear before the Committee on Agriculture, Livestock and Fisheries of the Senate on Wednesday, 18th March, 2020, at 10 a.m. The Director General shall not give excuses whatsoever why he cannot appear.

It is so ordered.

(Applause)

When that job is done, I direct the Committee to look for ways either under Standing Order No.51 or any Standing Order to give the Senate and not just the Senator for Nandi feedback. We want that matter dealt with. That is what will strengthen this House and maintain our space and mandate. Thank you.

*(The Statement was referred to the Committee on
Agriculture, Livestock and Fisheries)*

Hon. Senators, we are way past Statement Hour, but in the Order Paper, we still have listed Statements, pursuant to Standing Order No.48(1), from a Senator who spends a very short time requesting for Statements ordinarily. Because of that, I will give Sen. Iman an opportunity to request for a Statement because I know she will take two minutes or less. Unfortunately, I will not allow observations. We will move to the other items in today's Order Paper.

Sen. Iman, kindly proceed.

OUTBREAK OF TUBERCULOSIS IN KENYAN PRISONS

Sen. Iman: Thank you, Mr. Deputy Speaker, Sir. I rise pursuant to Standing Order No.48(1) to request for a Statement from the Standing Committee on Health regarding the outbreak of Tuberculosis (TB) in Kenyan prisons.

In the Statement, the Committee should-

(1) State the current status of the 21 inmates who were diagnosed with Tuberculosis at the Embu prison.

(2) Outline the emergency response services, if any, that have been put in place in the prison facilities across the 47 counties to prevent further cases of TB.

(3) Explain the capacity of the current health facilities in the prisons to deal with any disease outbreak such as Cholera or TB; and,

(4) Outline measures, if any, which have been put in place to expand prison facilities in order to reduce congestion that pose a health risk to prisoners.

I thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): Well done. The observations of the Chair were right. Therefore, the Standing Committee on Health, follow up on that matter. Our prisoners are also human beings. They still have human rights. Even if someone is in prison, they are still human beings and human rights are inalienable, inherent and you cannot dispense with fundamental rights and freedoms of the individual. We are hearing weird things from prisons like outbreak of TB and others. So, the Standing Committee on Health, deal with the matter.

Order Senators! I now apply Standing Order No.40 to defer the following items in today's Order Paper: Order Nos. 8, 9 10, 11, 12, 13, 14, 15, and 16. Accordingly, I direct that Order No. 18 be deferred.

BILLS

Second Reading

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

(Bill deferred)

Second Reading

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

(Bill deferred)

Second Reading

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

(Bill deferred)

Second Reading

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

(Bill deferred)

COMMITTEE OF THE WHOLE

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

(Committee of the Whole Deferred)

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

(Committee of the Whole Deferred)

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

(Committee of the Whole Deferred)

THE KENYA MEDICAL SUPPLIES AUTHORITY
(AMENDMENT) BILL (SENATE BILLS NO. 38 OF 2018)

(Committee of the Whole Deferred)

THE CANCER PREVENTION AND CONTROL
(AMENDMENT) BILL (SENATE BILLS NO. 9 OF 2019)

(Committee of the Whole Deferred)

MOTION

ADOPTION OF REPORTS ON VISITS TO THE
MALABA BORDER POINT/KITUI ROAD PROJECT

THAT, the Senate adopts the reports of the Standing Committee on Roads and Transportation on the visit to the Malaba International Border Point (OSBP) and the inspection visit and familiarization of the Kibwezi-

Athi-Mutomo-Kitui Road Project in Kitui County laid on the Table of the Senate on Wednesday, 4th December, 2019.

(Motion Deferred)

The Deputy Speaker (Sen. (Prof.) Kindiki): Let us move on to the next Order.

BILL

Second Reading

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

(Sen. Farhiya on 5.3.2020)

(Resumption of debate interrupted on 10.3.2020)

The Deputy Speaker (Sen. (Prof.) Kindiki): Who had the Floor yesterday? This is the Lifestyle Audit (No.2) Bill (Senate Bills No. 21 of 2019). The Senator of Homa Bay, whom I see in the Chamber had the Floor when this matter was interrupted in the debate. Sen. M. Kajwang', you have a further 15 minutes, if you may.

Give Sen. M. Kajwang' the microphone.

Sen. M. Kajwang': Thank you, Mr. Deputy Speaker, Sir. I do not intend to consume the 15 minutes because this is a Bill that has attracted a lot of attention from Members. Yesterday, at the last count, 17 Members of this House had contributed to the Bill, which tells you that this House is serious when it comes to strategies and issues of dealing with corruption.

Yesterday evening, in my office, I received a master's thesis done by one Mr. Erick Munyao Ngumbi. He has been awarded a Master in Law by the University of Nairobi. He has done a study on the viability of lifestyle audits as an anti-corruption strategy in Kenya, a critical assessment of the policy, legal and administrative framework. This is a very timely study. I want to offer that I will hand over a copy of this report to Sen. Farhiya so that she can also look at some of the findings that came out of the University of Nairobi study that can help make this Bill better.

Mr. Erick Munyao Ngumbi established that Kenya indeed has in place some legal framework for lifestyle audits. Some of those frameworks include those Acts that have been cited or that have been referred to in this Bill by Sen. Farhiya, including the wealth declaration approach which is in the Public Officer Ethics Act, the Unexplained Assets Framework that is in the Anti-Corruption and Economics Crimes Act, and the issue of monitoring of bank accounts held outside Kenya that is provided for in the Leadership and Integrity Act.

Mr. Erick Munyao Ngumbi also identified other frameworks which could be developed to enhance lifestyle audits. In mind, he mentioned the tax reporting framework under the Kenya Revenue Authority (KRA), the anti-money laundering framework under

the Proceeds of Crimes and Anti-money Laundering Act and the prudential guidelines of the Central Bank of Kenya (CBK).

We all know the discomfort that many people have had when it comes to reporting requirements when moving money in banks. This researcher believes that if we tighten some of those frameworks, it can help to deal with unexplained assets and ill-gotten wealth.

Mr. Erick Munyao interestingly, reviewed the Lifestyle Audit Bill of 2019. His conclusion is that it falls short of an ideal framework that can help in conducting lifestyle audits. In his place, he has proposed a Public Officer Lifestyle Audit and Wealth Audit Act. I think that what he is trying to do is to look at what Sen. Farhiya has done and what this House is doing. It is great to note that the work of this House, Bills that are still under consideration, are being considered at the citadel of learning, the University of Nairobi, and that, there are researchers who are already looking at what we are doing to ensure that we tighten the noose around and around the corrupt.

Sen. Farhiya, I will share with you a copy of that report by Mr. Erick Munyao Ngumbi. However, I thought it was important for our students, researchers and faculty at the universities to know that this House just does not pick issues from the air when debating. Even when research reports come to our desks, we, as Senators, busy as we could be, we will spend some time, read them and also acknowledge that those ideas are not ours. Sometimes, in certain spheres and other Houses, there is a lot of plagiarism. Those views that I have expressed in the last three of four minutes are derived from the work of a researcher from the University of Nairobi.

Mr. Deputy Speaker, Sir, yesterday, I made some comments. I said that sophisticated corruption might be difficult to track using a lifestyle audit. There are many of us in this society who are experts at hiding affluents. They would rather walk on foot, drive a probox, drive the smallest of cars and yet they have got billions of shillings stashed in accounts either locally or in foreign nations. Tax heavens and the Panama papers have told us of how things are happening and how people are creating very sophisticated webs of deception to hide ill-gotten wealth.

Perhaps this Lifestyle Audit (No.2) Bill (Senate Bills No. 21 of 2019) should go beyond the obvious display of consumption, opulents and ensure that we also have a framework for tracking some of the wealth that could be stashed abroad. That researcher that I cited earlier and the Leadership and Integrity Act already has certain provisions for monitoring of bank accounts and assets held outside Kenya. As a researcher tells us, some of these frameworks are well documented and well refined, but the problem is on implementation.

Mr. Deputy Speaker, Sir, in the last few days, I have been spending sometime at Strathmore University, having conversation with faculty on issues to do with public policy management. The question has been, we are not short of laws. Sen. Farhiya has a Bill---

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Sen. Farhiya?

Sen. Farhiya: Thank you, Mr. Deputy Speaker, Sir, I wish to seek clarification.

I do not know whether Standing Orders allow us ask especially while Sen. M. Kajwang' is still on the Floor so that it is captured in the HANSARD; in terms of the researcher, is there a specific recommendation to this Bill that we can improve, which I

beg you to either sponsor or let me have because I think we need to move it to the next level?

Thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): Okay.

Sen. M. Kajwang: Mr. Deputy Speaker, Sir, the researcher proposes a Public Officer Lifestyle and Wealth Audit Bill. He proposes that the Bill should not just address lifestyle audit, but the issue of wealth declaration so that we tighten it, make it practical and remove the anonymity that goes with it. I believe that in his report, the recommendations will be there. I had earlier offered to hand over the report to you, so that you can see what people in the intellectual community have to say around this issue.

Mr. Deputy Speaker, Sir, I was on the point that certain conversations are ongoing at the Strathmore University, where the question is: why do policies fail in Kenya? Why is it that the town plan of Kuala Lumpur was based on the plan of Kenya's capital city, yet Nairobi is a mess? Why is it that Singapore based a number of their policies on Kenya's policies, back in the 1960s, yet Kenya is stuck? Why is it that the Botswana Meat Commission (BMC) is thriving, yet it was based on the Kenya Meat Commission (KMC) which is stuck? Why is it that in certain South American countries such as Costa Rica, their coffee sector was based on the Kenyan coffee plan, yet the Kenyan coffee plan is failing? The question is: Do we have an issue with implementation or poor policy design?

It is emerging that sometimes we design policies and legislation in a manner in which implementation becomes impossible and troublesome. I believe that Sen. Farhiya has done a lot of consultation. This issue has attracted a lot of interest from Members in this House. When we legislate on this Bill, let us have a tool that will be effectively used to fight corruption. Let us not have a tool that will be weaponized. Let us not have another toll station that beyond the usual Ethics and Anti-Corruption Commission (EACC) officers, you have an additional process of lifestyle audit. In the additional process, the Kenya Revenue Authority (KRA) has been given powers to conduct lifestyle audits. The Directorate of Criminal Investigations (DCI) is also conducting lifestyle audits now.

Mr. Deputy Speaker, Sir, I hope that the final version of this Bill will clarify and simplify that process by reducing the toll stations that are involved in the fight against corruption. Nowadays, if they want to fix you depending on your political views or activism, you can have a lot of people knocking on your door. There will be an investigative agency after you every other day, drawing its mandate from certain laws that Parliament has passed. When a Member of Parliament (MP) is on the spot, he will be reminded at every turn that they are the ones who passed the laws and so, they must apply.

We should find a way of using technology to assess lifestyle. The KRA has invested in a data warehouse out of which they are doing serious business intelligence. They are linking up with utility companies and all sorts of transaction providers in the economy. They are able to tell the kind of financial activities that you are undertaking. The only question is whether it is strictly legal. The other question is whether within the KRA Act and the statutes that establish the KRA they have the power to do that investigation and use that information to pursue people in a manner that seeks to be investigatory, prosecutorial and judging.

Mr. Deputy Speaker, Sir, out of that information, the KRA is known to issue demands to individuals and businesses. If you go to tax tribunals to dispute the demands that are sometimes made by the KRA officials, you come out worse off. Today, Keroche Breweries Limited has suffered a Kshs9.1 billion tax blow. I sometimes wonder whether some of the institutions that we have put in place are facilitating business or whether in their thirst to achieve targets they are frustrating businesses.

The Assets Recovery Agency is doing a job that is fairly commendable. The Judiciary has pronounced itself because it was at one time cited as an obstacle to assets recovery effort. The Court of Appeal cleared some of the issues that were murky in an earlier ruling when the EACC went to court seeking to recover assets from certain individuals. I support this Bill and the principle behind it. However, I believe that it can still benefit from additional input from different stakeholders. I do not know whether public participation has been done on this Bill. I believe that this Bill will benefit immensely from a properly structured public participation exercise.

Let the public participation on this Bill not be similar to when we post a notice in the newspapers and then go to the Red Cross Building to sit and wait for whoever comes. I hope that the relevant Committee will write actively to stakeholders such as the Assets Recovery Agency, the Financial Reporting Centre and all the other relevant stakeholders. If possible, the relevant agencies should be summoned. I believe that on sensitive issues like this one, we should not just sit and hope that someone will come for public participation. The Committee can compel the production of witnesses or any stakeholder if we feel that it is going to add value to the legislative effort of this House.

Mr. Deputy Speaker, Sir, with those remarks, I beg to support the Bill.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Senator for Homa Bay County. I am assuming that since there is no other request, it is time for the Mover to reply.

I call upon the Mover to reply.

Sen. Farhiya: Mr. Deputy Speaker, Sir, I wish to thank the Senators who have contributed to this Bill and made far-reaching recommendations. At the end of this debate, I will request the HANSARD team to print for me all the contributions that were made to this Bill, so that the Bill can be improved. I am open to improving the Bill. However, I do not want it to be diluted in such a way that it is not better than all the other Bills that we had.

Corruption needs to be fought. This Bill will benefit even the corrupt. Corruption is rampant not only in the Government, but in private companies as well. I am shocked that the Kenya Private Sector Alliance (KEPSA) did not request to make amendments to this Bill. I hope that they will forward their amendments to this Bill because employees continue to steal from employers and do business with the stolen money. There is no end to corruption. Corruption keeps on mutating every other time. I once attended a conference where members of different boards were being inducted. An official from the EACC said that corruption keeps mutating. In reply, I told the EACC official that if they do not also mutate their ideas in such a way that they are ahead of the corrupt individuals, then the taxpayers are wasting their money on the EACC.

Mr. Deputy Speaker, Sir, I wish to thank Sen. Mutula Kilonzo Jnr. for seconding this Bill. Other Senators who gave far-reaching recommendations are Sen. Pareno, Sen. Kang'ata, Sen. (Dr.) Musuruve, Sen. (Dr.) Milgo, Sen. (Dr.) Kabaka, Sen. (Dr.) Zani,

Sen. Mugo, Sen. (Prof.) Ongeru, Sen. Omogeni, Sen. (Prof.) Kamar, Sen. Ochillo-Ayacko, Sen. Halake, the Senate Minority Leader, Sen. Orengo, Sen. Were, Sen. Wetangula and finally Sen. M. Kajwang. I welcome all the recommendations they made.

One of the questions that was posed is: Since statutes cannot apply retrospectively, what ideas are there for people who were previously corrupt? I hope to receive recommendations from Members and stakeholders on what can be done to individuals who were previously corrupt. Recommendation was also made---

The Deputy Speaker (Sen. (Prof.) Kindiki): The Chair can assist you, Sen. Farhiya. You cannot have a statute suggesting penal sanctions applied retroactively. The lawyers say *nulla poena sine lege*. There are no two ways about it. You can only deal with the future. However, past corruption is still punishable under the law that was existing at the time of the corruption.

At the time when that corruption took place, and there is no statute of limitations to say--- In some civil matters, you cannot punish something that has happened in a certain period. For crimes, you can even punish a crime that occurred in 1963, but using the law that was in force at that time, and not the law that we are making now.

I hope that helps you.

Sen. Farhiya: Thank you, Mr. Deputy Speaker, Sir. That helps very much. I will not waste time asking people to make the correct amendments.

The other thing was around the second section of this law, which is, deferred prosecution agreement. Some people said that it would be better if the plea bargaining should have been taken care of. However, I think these procedures are more detailed and finance oriented. So many countries have used the kind of deferred laws that I am talking about. Some of them are the United States of America (USA), United Kingdom (UK), Singapore, Canada and Australia. They have similar laws in terms of deferred agreements.

Yesterday, Sen. (Prof.) Ongeru asked about deferred agreement. If you say what your crimes are and give back all the proceeds you got from that financial malpractice, then there is an opportunity to negotiate, so that you are not made criminally culpable. You then return all the assets that you acquired as a result of that.

Secondly, if you wronged a third party in that process, then you need to retribute that person. This is about the deferred prosecution, and there is a bigger process that takes care of that. There is a very clear procedure on how that should be done, including having a lawyer to represent you as you negotiate the deferred agreement. You also have an option of refusing that deferred agreement, so that you get out of it and let the court take its course. Those are available options.

Some Senators commented that whenever Bills are brought here, they are always creating new institutions. This Bill is using the existing institutions to ensure that we make them work better, instead of creating new ones to do what these ones can do. I got compliments for that. Thank you.

There was also a suggestion on the Floor that I should give this Bill to the Building Bridges Initiative (BBI), so that it comes as a recommendation for a constitutional amendment. However, I feel that it will not help because the Constitution can just become a framework and not as detailed as this Bill. I feel that this House still needs to continue with this Bill, so that we get maximum benefits out of it.

Mr. Deputy Speaker, Sir, Sen. M. Kajwang' suggested that we should have transnational justice as well. If there is transnational crime, this law should provide for a framework where the people who have committed--- Someone commented about what happened in the 'Chickengate' scandal. Those people who witnessed there can be compelled to give witness here, so that all loose ends are tied up.

Many people also said that people are employed to serve and not enrich themselves. So, the Bill is good. It also discourages theft, and people gave an example of some police officers who had over Kshs200 million in their accounts, while if you calculate their income---

The Deputy Speaker (Sen. (Prof.) Kindiki): Were the examples from people or Senators?

Sen. Farhiya: I am Sorry, Mr. Deputy Speaker, Sir. They were from Senators. I apologise; Senators said that.

As Senators contributed, I also found a gap in this law. While it is very clear when the account is frozen and how cash is handled, it is not clear in terms of assets transfer. Of course, some of it will come under deferred agreement, but in terms of the legislation, it needs to be tightened up so that asset possession is also clear the way cash handling is very clear. I am not a lawyer, but the people who helped me prepare this law thought that, that is in another law and it was not necessary to have it here. I will make a clarification on that.

Some Senators mentioned that it will make the process of lifestyle audit to be a real issue instead of a street issue. Others felt it can be used to witch-hunt. If it is used to witch-hunt now, whoever is politically aligned will survive, but as long as this Bill exists, even those who are politically 'correct' now might not be 'correct' in the next or subsequent election.

Mr. Deputy Speaker, Sir, if that is the fear of the people, there is always an avenue. We cannot fear making laws because people feel they will be victimized. Who said there is someone who will be the president of this country or in power permanently? There are never permanent positions. Things change; if they victimize you, you can also use that if they have acquired, and get them as well. For me---

The Deputy Speaker (Sen. (Prof.) Kindiki): Are you admitting that there are chances that through your Bill, people will be victimized, but there is a remedy because they will also victimize others? Is that your argument? Be careful, Sen. Farhiya, with the kind of arguments you pose.

If I were you, I would say that it is a good law and nobody will be victimized, and leave it at that. It is not an academic exercise. You do not have to tell the country that: "Yes, you might be victimized, but tomorrow you will use the same law to victimize other people."

Sen. Farhiya: Mr. Deputy Speaker, Sir, all I am saying is that there is no permanent---

The Deputy Speaker (Sen. (Prof.) Kindiki): We know that. Your Bill is okay because I have looked at it. I do not think anybody will be victimized.

Sen. Farhiya: Mr. Deputy Speaker, Sir, because there are enough clauses protecting people's rights.

The Deputy Speaker (Sen. (Prof.) Kindiki): Absolutely. That is it.

Sen. Farhiya: Mr. Deputy Speaker, Sir, I am just trying to settle their fears. Corruption, whether from this side or the other---

The Deputy Speaker (Sen. (Prof.) Kindiki): You can settle that in the lounge, and not on the Floor of the House. Whatever you say is on record. It cannot be on record that the Senate is processing a Bill that has loopholes, which can be used to victimize people. Our argument as a House is that there is no problem because when those people who are being victimized today ascend to power, will also victimize other people. That cannot be the case. In the lounge, you can deal with those things. Do you get the point?

Sen. Farhiya: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): The Bill is okay because the Speaker has also looked at it. He thinks it is a very good Bill that protects everyone. If anyone has views on how we can further protect people from victimization, they can see you before the Bill is finally enacted.

I think that is important for the record. You can move on with your remarks.

Sen. Farhiya: Mr. Deputy Speaker, Sir, I withdraw. All I was trying to bring across is that the corrupt should not have an excuse, whichever side of the House they belong. That is what I was coming to. My apologies, that it never came out the right way.

There is a clear procedure in terms of deferred prosecution. There is also a way to track money wherever it is. Some Senators said that there is a lot of wisdom in this Bill.

The Bill also gives the right to representation at whatever level. Some Senators were of the view that the process should start from the magistrate's court. Others were of the view that if it starts from the magistrate's court, any person can go to a magistrate's court quickly, get an order and charge people. I think that, that also needs a right legal mind like that of the professor who is sitting as the Deputy Speaker today.

We need to review that because some think that it should start at the High Court, while others think that it should start from the magistrate's court. Those who did not want it to start from the magistrate's court said that it is very easy to get the accounts closure and all that. Therefore, when we put the threshold higher, then they are likely to demand for more evidence before they allow a search, seizure of account, or any other thing. Our legal minds can help us in that.

Some were of the view that we should create specialized courts to hear these cases because they are unique in their nature. There were so many contributions to this Bill. That is why you are seeing me looking for more information.

The Deputy Speaker (Sen. (Prof.) Kindiki): No problem. If you noted them, that is good enough. You do not have to reply to each and every issue. As I said, it is not an academic exercise; just make broad comments. I think you are almost exhausting your time, and I do not want to close you out. Today, I am fairly flexible. Of course, I am always flexible. Are you okay or do you want to say a few more things?

Sen. Farhiya: I want to say a few more things, Mr. Deputy Speaker, Sir.

The other issue that Senators mentioned is that in other countries, the people with great ideas are the ones who are wealthy. Unfortunately, in this country, those who serve in public offices are the wealthy. Through this Bill, we want to see a situation that will reverse that, so that our youngsters can aspire to innovate. At that point, there will be an opportunity---

Someone told me informally that the brilliant people in this country do not have the opportunity to grow. In some cases, people will steal from them or do all sorts of

other things. Therefore, they prefer working with other countries, so that they make maximum wealth out of their innovations and great ideas. Others do not even pick those ideas because they are busy stealing instead of supporting those people who are innovative.

(Sen. Murkomen spoke off record)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senate Majority Leader!

Sen. Farhiya: Mr. Deputy Speaker, Sir, some Senators also felt that this Bill will reduce conflict and competition. They also feel that the social norms of this country will change once the ‘big guys’ who are corrupt are brought to book, and there is a conviction, or whatever assets were for the public are repossessed. That way, people have examples out there; that fighting corruption really works and it is not just theory. This is because there are also enough laws that protect people from corruption. To simplify, this Bill is doing just that in terms of procedure. Therefore, there is a lot of buy-in because of those ideas.

Mr. Deputy Speaker, Sir, finally, allow me to read the procedures for coming to an agreement in terms of a deferred prosecution.

The Deputy Speaker (Sen. (Prof.) Kindiki): Proceed.

Sen. Farhiya: Thank you, Mr. Deputy Speaker, Sir.

The Director of Public Prosecutions shall, in inviting a person who is the subject of a lifestyle audit into negotiations under this Part and in writing—

(a) identify the factors for consideration in determining whether to offer an agreement at the conclusion of negotiations;

(b) explain to that person the manner in which the negotiations shall be conducted and the responsibilities of the parties during the negotiations;

(c) inform the person of the rights and obligations of the parties to the negotiations;

(d) outline the manner in which the agreement shall come into force and cease to be in force;

(e) identify the date by which that person shall submit a notice in writing on acceptance of the invitation to enter into the negotiations and any conditions attached thereto;

(f) outline the process for withdrawing from the negotiations and the agreement;

(g) explain to that person the effects of a deferred prosecution agreement;

(h) advise on the confidentiality requirements and the manner in which information obtained during negotiations may be disclosed and used; and,

(i) inform the person of the right to institute criminal proceedings in relation to the matters contained in the agreement, where the person materially contravenes that agreement, where the person materially contravenes the agreement.

Mr. Deputy Speaker, Sir, I want to request this House not to kill the baby in the bath because of certain fears.

The Deputy Speaker (Sen. (Prof.) Kindiki): Kill the baby in the bath or throw the bath water? You should throw the bath water and leave the baby? Is that your view?

Sen. Farhiya: Yes.

The Deputy Speaker (Sen. (Prof.) Kindiki): Proceed, Sen. Farhiya. The message is home.

Sen. Farhiya: Mr. Deputy Speaker, Sir, I have dealt with corruption investigations in my previous rule. It is extremely difficult to prove beyond reasonable doubt that somebody has stolen. This is because stealing does not happen in the glare of cameras, the way I am right now. It is an underhand deal. Despite knowing that someone is corrupt, to get the evidence is extremely challenging.

For the first time, through a very clear process outlined in this Bill, it will show how to persecute people with flashy lives and all that. We have an opportunity now. I seek the support of this House for this Bill to pass.

There are enough deterrents. Actually, someone from one of the institutions called me and said that I had put too many deterrents in such a way that the Lifestyle Audit Bill may not be possible. My response was: if we have to protect peoples' rights, so be it. At least, there is a framework.

My request is that my fellow Senators, please, read this Bill before they decide to throw it away or not. This is because it is a good Bill, and if there are amendments to strengthen without diluting it, we welcome them as a House, but let us not kill this Bill.

Mr. Deputy Speaker, Sir, I beg to reply. Pursuant to Standing Order No.61 (3), I request that the putting of the question be deferred to a later date.

I thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Farhiya, before you resume your seat there are two things in this Bill. There is the crime part, where people steal and they must be investigated for committing the crime of corruption, and then there is the punishment part, where if they are found guilty, certain punishment has to be given.

For my curiosity, did you consider the punishment part, things like lustration where people are banned from holding public office if they are found culpable?

Did you think about that?

Sen. Farhiya: Maybe that is one of the amendments that we should bring.

The Deputy Speaker (Sen. (Prof.) Kindiki): There is the crime part and the punishment part. A good Bill should be able to look at that.

Sen. Farhiya: Most of the punishment is in regard of misuse of the Bill, in terms of officers charged with this for misusing their position.

The Deputy Speaker (Sen. (Prof.) Kindiki): What about the results of the lifestyle audit?

Sen. Farhiya: The result is that if people admit, according to this Bill, there is a certain time where deferred prosecution might not be accepted because of the level of crime or the crime that was committed against another person.

Right now, my interest is having this country recover what was stolen from it. In my view, if you admit that you stole, you return, but if you repeat the offence, then that is the time you should be punished. However, for now, I am more interested---

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Sen. (Dr.) Zani?

(Sen. (Dr.) Zani spoke off record)

You are not on record.

Sen. (Dr.) Zani: On a point of information Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Farhiya, would you like to be informed by Sen. (Dr.) Zani?

Sen. Farhiya: Yes, I want to be informed.

Sen. (Dr.) Zani: It is a bit of information and a bit of clarification because the penology part of the aspect that you are talking about has been covered in the Bill in terms of the punitive measures. I think it is both a fine and imprisonment for up to two years.

The Deputy Speaker (Sen. (Prof.) Kindiki): Is she saying for the results of the audit or for the---

Sen. (Dr.) Zani: That is where I am coming to because in terms of lifestyle audit, there is no institution as such which has the capacity to do it separately. Therefore, this Bill has conferred that responsibility to these three different institutions and commissions, where there are already Acts in place.

It sort of borrows to have those specific Acts to be used. Those Acts already have specific punitive provisions. Therefore, this leaves only the State officer.

The Deputy Speaker (Sen. (Prof.) Kindiki): I think that is important. Before we wind up because we are almost done, the comment I made about non-retroactivity of criminal law applies both to the crimes and the punishment.

Even the punishment cannot be backdated. So, if you have to punish somebody for previous laws, you have to apply punishment which was in force at the time when the crime was committed. The lawyers will tell you that it is both crime and punishment; *nullum crimen sine lege, nulla poena sine lege*; both crime and punishment.

I think we have exhausted this.

Sen. Farhiya: Thank you, Sen. (Dr.) Zani. In the Bill itself, there are punitive measures for officers or any individual who misuses this.

However, in Section 2 of this Act, it says that alleged offence means an offence under this Act, the Anti-Corruption and Economic Crimes Act, the Public Officers Ethics Act, the Leadership and Integrity Act, the Public Service, Values and Principle Act, the Bribery Act, The Proceeds of Crime and Anti-Money Laundering Act, The Public Finance Act and The Public Procurement and Assets Disposal Act applies in this in terms of those other punitive measures.

For this one, because there is no procedure in terms of deferred prosecution in this Act, we are giving people opportunity to return money and assets belonging to the Government, then you go into an agreement. However, there are cases where that cannot happen.

The Deputy Speaker (Sen. (Prof.) Kindiki): Belonging to the Government or the public?

Sen. Farhiya: The public.

The Deputy Speaker (Sen. (Prof.) Kindiki): Government has no property. Government is a trustee of the public property.

You have done very well, Sen. Farhiya.

Sen. Farhiya: I wanted to say that the people are the Government.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. Farhiya. I direct that the putting of the question be on such a date as shall be decided by the Senate Business Committee (SBC).

(Putting of the question on the Bill deferred)

Next Order.

MOTIONS

NOTING OF REPORT OF THE 141ST ASSEMBLY OF IPU AND RELATED MEETINGS

THAT, the Senate notes the 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 -17th October, 2019, and laid on the Table of the Senate on Wednesday, 4th March, 2020.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Kihika is not in.

Next Order!

(Motion deferred)

PROVISION OF CEMETERY, FUNERAL PARLOURS AND CREMATORIA IN ALL COUNTIES

THAT, AWARE THAT under Article 61 of the Constitution of Kenya, land in Kenya is classified into three categories, public, Community and private land;

FURTHER AWARE THAT , public land is vested in both the County and National Governments and is managed on their behalf by the National Land Commission, and that Article 62 (2) clarifies the distribution of public land between the two levels of government.;

COGNIZANT THAT, the Fourth Schedule of the Constitution delegates cemeteries, funeral parlours and crematoria as a function of County Governments;

CONCERNED THAT, cemeteries in the Country are filling up, and counties are finding it increasingly difficult to identify land to allocate as “public” for use as a cemetery with the knowledge that any cemetery or burial-place that is crowded and therefore dangerous to health is defined as constituting a nuisance in the Public Health Act;

NOW THEREFORE, the Senate calls upon the county governments to ensure that funds are allocated in the County Annual Development Plans for FY 2020/2021, towards the planning and development of cemetery, funeral parlours and crematory facilities.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. (Dr.) Milgo is also not in.

(Motion deferred)

Next Order!

NOTING OF THE REPORT OF THE 3RD ORDINARY
SESSION OF THE 5TH PAP

THAT, the Senate notes the 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 and laid on the Table of the Senate on Tuesday, 10th March 2020.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. (Dr.) Ali is also not in.

(Motion deferred)

DEVELOPMENT OF LEGISLATION AND POLICIES BY COUNTY
GOVERNMENTS TO PROTECT THE ELDERLY

THAT, AWARE that in 2006, the National Government initiated the Older Persons Cash Transfer (OPCT) Programme, popularly known as *Pesa ya Wazee*, which is an unconditional cash transfer programme to destitute elderly persons above the age of 65 years to cater for their subsistence needs;

NOTING THAT the beneficiaries receive a monthly stipend of Kshs.2,000, delivered every two months through appointed payment agents, and also entitled to medical insurance through the National Health Insurance Fund (NHIF);

CONCERNED HOWEVER THAT the programme's credibility is marred by issues of delayed payments to beneficiaries, difficulties in processing of payments through the stipulated agents and payments to unregistered persons;

NOW THEREFORE, the Senate recommends that the County Governments complement the efforts of the National Government and assist in resolving these challenges by:-

1. Developing legislation and policies to protect the elderly including ensuring all elderly persons in their counties are registered in the OPCT programme; and
2. Organise value addition mechanisms such as financial training to help the beneficiaries of the programme to efficiently utilise this allowance.

The Deputy Speaker (Sen. (Prof.) Kindiki): I will defer Order No. 22 at the request of the Sponsor.

(Motion deferred)

COMMUNICATION FROM THE CHAIR

PROCESSING OF BUSINESS IN THE HOUSE

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senators. Today I will be very brief.

Any Senator who has business listed in this House and has reasons not to be available to move that business, must inform the Chair in advance. Failure to which, action as may be determined by the presiding officer, will be visited.

Those are the orders.

ADJOURNMENT

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators, there being no other business in the House, the Senate, therefore, stands adjourned until, tomorrow, Thursday, 12th March, 2020, at 2.30 p.m.

The Senate rose at 5.28 p.m.