

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 24<sup>th</sup> July, 2019

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

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

### PRAYER

### COMMUNICATION FROM THE CHAIR

Many years ago, communities used to benefit from projects that were run by the Kenya Wildlife Service. Unfortunately, all those projects were run-down because of the revenue challenges that they are facing but it was an initiative that encouraged people to nurture wildlife. The Government and KWS should revisit those projects for the members of public to benefit. The committees, at the county level, that are supposed to compensate the families of those who lost their lives have not sat for many years and something needs to be done about that.

**Sen. Olekina:** Thank you, Mr. Speaker, Sir. I rise to support this timely Statement by Sen. (Dr.) Milgo.

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

**The Speaker** (Hon. Lusaka): Sen. Seneta, what is your point of intervention?

**Sen. Seneta:** Mr. Speaker, Sir, it is not a point of order. I have been on the queue and I have just seen Sen. Olekina walking in and---

**The Speaker** (Hon. Lusaka): Order! Order! Senator. I consider a number of things before I give you the opportunity to speak.

Sen. Olekina, continue.

**Sen. Olekina:** Thank you, Mr. Speaker, Sir, for your protection. My sister and I were in another Committee where we were dealing with electricity issues. I am happy that we are discussing wildlife conservation.

I am a little bit apprehensive even as I support this Statement. Some of our actions, including hunting, are the ones that are leading to the decline of lions in this country. In the Maasai Community, we are killing ourselves by selling all our land. Our land used to be open and everyone would graze on them.

The moment we sell our land, particularly in the Masaai Mara region and buyers erect electric fence, we expose our wildlife to danger. It is a pity that when a lion roams around hunting for food, it is killed and we keep on complaining. How can we continue complaining and yet are not protecting our wildlife? It is time we pointed the finger to the

real culprits who are killing our wildlife because KWS is doing its job. Why should we make it difficult for them to do their job?

In Narok County, for example, the government has allocated of 19 per cent of revenue to support the local community to deal with wildlife. After selling our land and erecting electric fences, we deprived wildlife of food and water. Therefore, when a lion is hunting, it sees cows and attacks them for food. It is killed by the local community.

I think the Ministry ought to put huge corridor, say, of four or five kilometres long for wildlife conservation. If we do not do so, hunting will continue and our wildlife will diminish. I am concerned about this wildlife/human conflict. That is why I seeking clarification. In my Statement, I wanted the Chairperson to state the measures KWS has put in place to address the unsustainable hunting practices in wildlife management areas. Hunting in Kenya is illegal; it is not allowed.

**Deputy Speaker** (Sen. (Prof.) Kindiki): Proceed, Sen. Olekina.

**Sen. Olekina:** Mr. Deputy Speaker, Sir, I rise to Second that this House adopts the Motion. This is why we are here to defend the interests of our counties, and to ensure that they have enough resources to deliver services to the people of Kenya.

Mr. Deputy Speaker, Sir, the Fiduciary Risk Report, which we are seeking to have adopted by this House, took us on long a journey to examine how counties have been spending their money, and how the Auditor-General reported after looking at the expenditure. The Auditor-General identified serious risks. Notably, that most counties flouted various pieces of legislation, which include those that deal with finance management. One of the legislations which was flouted by almost all counties was the Public Audit Act during the audit process.

Mr. Deputy Speaker, Sir, the Auditor General noted clearly that out of all the 47 counties, 39 counties received a disclaimer of opinion because of the limitation of scope. For Financial Year 2013/14, most of these counties – 39 counties – did not co-operate with the auditors during the audit process. They did not provide the auditors with the relevant information required to be able to examine the risks.

Mr. Deputy Speaker, Sir, the county executive officers are the ones tasked with the responsibility to ensure fiduciary responsibility. They are meant to ensure that the money that is put under their care is utilised properly. The Auditor-General noted that a lot of these Governors, their staff and entire cabinets did not understand the process on how to manage these funds effectively. Most of these counties had various accounts into which they deposited their own-source revenue. This completely violated the Public Finance Management (PFM) Act, which is very clear in terms of where all own-source revenue should be deposited.

Mr. Deputy Speaker, Sir, it is very sad to note that most of the county governments, particularly in the first year of Financial Year 2013/2014, literally just operated these counties as if they were running their own kiosks. You will find county governments depositing money and withdrawing it. At the end of the day, the money just disappeared, and they do not report on how they expended it. We have serious risks. You will find that a lot of the pending Bills which have been accumulating for all these years were as a result of counties coming up with huge budgets which they are unable to fund.

When you look at the financial statements of most of these counties during the three financial years that we looked at, most of them were setting unrealistic budgets. You will see a county government that is only collecting Ksh80 million and receiving

about Ksh5 billion coming up with a budget of about Ksh10 billion. A very good example is the county that we visited, Samburu, where the Governor clearly stated that the Controller of Budget was withholding about Ksh6 billion of their money in the account.

This led us to understand that these county governments did not have a clue on the entire budgeting process. There was a very serious risk in terms of counties involving staff in the counties on the issue of financial management. Most staff who were managing these county funds had no clue of what they were supposed to do. They neither understood how they were supposed to carry out the monthly reconciliations, which the Public Finance Management Act (PFM) calls for, nor the audit process.

When these counties appeared before our Committee, the governors would try to say that they provided this information to the auditors, who refused to consider their reasons as to why the money was spent in a certain way. The problem we had with these counties is that none of the staff tasked with the accounting duty had any clue on what the law stipulated.

Mr. Speaker, Sir, Section 35 of the Public Audit Act – which was mostly abused by these counties – is very clear on the audit process. Most of the governors would appear and say that they participated in the audit process. However, they did not understand why they received a disclaimer of opinion, which was issued because of the limitation of scope. That means that no documentation was provided for audit. Some of the governors came up with the excuse of fire incidents, which destroyed all the accounting documents. These are very serious risks which led our Committee to come up with various recommendations on how we can ensure that funds forwarded to the county governments are properly utilized.

Mr. Deputy Speaker, Sir, I am quite happy that we are thinking ahead, even as we consider this Fiduciary Risk Report. Sen. (Dr.) Zani has come up with an amendment to the PFM Act so that all counties can have a proper system where they can record their own-source revenue. It is very serious that when you look at all these counties, they relied heavily on the shareable revenue.

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

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

Madam Temporary Speaker, this puts us in a very difficult situation. When the Judiciary says that the Senate has no business to look at issues of own-source revenue, it opens up a window where governors will continue spending own-source revenue, and they are not answerable to the Senate or the county assemblies. These are serious issues that this House must take into consideration. I hope that all Senators – the specially-elected and the individual head of delegations – will take their time and ask themselves where their county stands.

Madam Temporary Speaker, in the Financial Year 2014/2015, 25 counties received a disclaimer of opinion. In the Financial Year 2015/2016, that number only went down by three counties, and 22 counties received the same disclaimer of opinion. That means that many counties lost money and accumulated a lot of debt, which the Auditor-General is questioning. Additionally, most of the counties deducted the statutory

deductions from their employees. However, they never remitted the same to the Kenya Revenue Authority (KRA), thus violating the Kenya Revenue Authority Act.

Madam Temporary Speaker, my Chairman delved into the various recommendations and observations we made when looking at these reports. I want to limit my submissions to the way forward only. As we look at this, we cannot only condemn the county governments for having flouted these pieces of legislation. It is high time that this House now comes up with a programme that tries to build the capacity of the staff in these counties.

We have seen the Auditor-General changing and working with these counties. This year, many counties have received qualified opinions, while some have received unqualified opinions. This does not eliminate the risk involved in funds management in the counties. It is, therefore, important that the Auditor-General himself comes up with the different types of audit. This is so that when the county governments spend these funds, they not only have to perfect the act of putting together the documentation or ensure that they go through the audit process properly, but also ensure that the little resources they are receiving can continue to improve service delivery.

One of the biggest problems that we noted is that many counties were carrying out functions that are designated to the national Government. This makes the services that they are supposed to deliver to the people, like healthcare, lose out a lot. When you see counties building high schools and spending their money on projects that are supposed to be carried out by the national Government, then the health sector and Early Childhood Development Education (ECDE) loses.

In conclusion, Madam Temporary Speaker, I would like to encourage all Members of the Senate to take time and go through all these risks. They should take the Auditor-General's report for the three years, compare them and see where the counties are losing out. If this House approves the Commission on Revenue Allocation (CRA) proposal on the third generation formula, many counties will lose out. If counties are not able to increase their own-source revenue and set up the internal audit committees or even the budget implementations forums, most of them will lose out. I plead with my colleagues to look at this Report as well as address the assemblies on the issues and risks that will continue facing them, abetting corruption and how we need to resolve them.

Finally, as I second the Motion, I want to state that unless we expedite the process of considering these reports, we will not be doing our counties any service. I hope that next time when we have such a serious Report, the House will be full so that Senators can poke holes on the work that the CPAIC is doing. They should also contribute for us to better our people.

Madam Temporary Speaker, we do not summon governors so that we can have a show of supremacy. We engage them in conversations to show them how they can improve on service delivery to the people they represent. This will also ensure that we build devolution in this country.

Madam Temporary Speaker, with those few remarks, I beg to second.

*(Question proposed)*