

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Tuesday, 26<sup>th</sup> November, 2019

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

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

#### PRAYER

Let us now have Sen. Olekina. Please, be brief.

**Sen. Olekina:** Mr. Deputy Speaker, Sir, I wanted to make some comments and support the sentiments of my colleague, Sen. M. Kajwang'. I sit in the CPAIC; this House really needs to take seriously the reports that are coming up, particularly from the committee sittings. On a daily basis, we sit up to around 2.30 p.m., and sometimes, we are even not done. That tells you that there are so many challenges that are facing this country, which are caused by mismanagement of funds and lack of competency in the county governments.

Mr. Deputy Speaker, Sir, the question of pending bills, which my colleague has alluded to is, in my view, is an issue that should never arise. You have a budget, an Annual Development Plan (ADP), a County Integrated Development Plan (CIDP) for five years and the county assemblies approve money. If everyone does their job properly, it would really help us. I thank the Senator for Nandi County for taking the time to observe and also suggested that we should actually come up with radical measures.

When you have a Governor like hon. Alfred Mutua, who has refused to come in and mitigate on issues, it really sends a very bad message out there. Article 125 of this Constitution gives that Committee the powers to call for evidence and also ask the police to arrest a witness who fails to appear. When these witnesses know that they can go to court and seek conservatory orders, then it renders all our work useless.

Mr. Deputy Speaker, Sir, it is about time that this institution also engaged the Judiciary, so that we have a way that we can work and ensure fiducial responsibility. I believe that our committee will be coming up with some radical suggestions on how to deal with these rogue governors to ensure that county governments continue to receive services. This will also to ensure that if anyone has been tasked with fiduciary responsibility, they must account for every single penny.

Mr. Deputy Speaker, Sir, looking heavily on the issue of the Auditor-General, a lot of these governors are only keen on saying, "I got an unqualified opinion" or "I got a qualified opinion." It is important for them and Kenyans out there to note that the fact

that a Governor has been given an unqualified opinion does not mean that he or she has spent the money well.

Thank you, Mr. Deputy Speaker, Sir.

**Sen. Olekina:** Thank you, Mr. Deputy Speaker, Sir. On Order No.12, the Election Laws (Amendment) Bill (Senate Bills No. 33 of 2018), I would like to seek that the matter be held for some time. I am still seeking certain directions, and will later on give the way forward.

Proceed, Sen. Olekina.

**Sen. Olekina:** Thank you, Mr. Deputy Speaker, Sir. I rise to support the adoption of this very important Motion. I was hoping that every Senator would be here today, because I have sat in all the sessions, apart from either one or two of them, dealing with the issues of Financial Year 2013/2014 to a point where we thought we should start looking at the current reports. Whenever I meet a former governor, the first thing that comes to mind is; what will happen to this governor when Article 226(5) of the Constitution finally catches up with him?

One of the main observations that I noted, going through various volumes of the Auditor-General's reports, was the lack of competence in the county government financial management. When governors appear before us, it is as if it is the first time they are hearing that there are pieces of legislation called the Public Audit Act, the Public Procurement and Disposal Act (PPDA), or even the Constitution, in that case. When you ask the governors whether they were familiar with the audit process, most of them will tell you, "No." In fact one former governor I met said, "If you ask me today to comment on things that happened when I was the governor, where will I start?"

My message to them, and this is part of an observation or hopefully a recommendation, is that they have to make right where they went wrong. This is money that belongs to the public. Currently, we are having serious challenges in terms of paying bills. When you go to each and every county, there are stalled projects which will never be completed. All these are noted in these reports that we have worked on diligently, day in and day out, so as to ensure that there is continuity and proper accountability.

Additionally, there are certain observations that we made where when you look at the Auditor-General's reports, many of the governors will say: "At least this year, we have received a qualified opinion." They then believe that a qualified opinion means they have spent the money wisely. Most governors were shocked when we made it clear to them that a qualified opinion only means that you did, to some extent, provide the documentation which the Auditor-General was seeking.

As I support this Report, I believe that the EACC and also the Director of Public Prosecutions (DPP) will have fun reading the recommendations so that they can follow the money to the former and current governors. My message is very clear as I support this Report: That where you have misappropriated public funds, it is about time for you to start correcting. When we got to several counties which are noted here, beginning from Kiambu all the way down to Wajir, we found that projects were being undertaken which were not budgeted for. It is no wonder then that we have a lot of pending bills. They would have a budget and even request money from the Controller of Budget (CoB) to pay for projects which are budgeted for. However, when the money is finally transacted to

their accounts, they end up paying for things which are not in the budget. This is a result of incompetence and lack of understanding as to why people are put there.

I am sure that when they finally sit down and pay attention to the reports, the former and current governors will rush to the Senate tomorrow to get a copy of this Report, which we are now debating. This is because you will find that in most counties, as long as the Chief Executive Officers (CEOs) are already out of office, they are like "it is none of my business." They do not know that even the new governors who came in, and who are still their competitors, will not try to do anything to help them to fix their mess; so the mess is still with them. If a governor was defeated and he does not correct or try to mitigate on the issues pointed out by the Auditor-General, that issue will still be alive until the time when the EACC or the DPP catches up with them.

On the issue of lack of discipline, we noted that a lot of counties deducted the statutory deductions, for example, the Pay As you Earn (PAYE), *et cetera*, but they never remitted it to the Kenya Revenue Authority (KRA), to retirement bodies, the National Hospital Insurance Fund (NHIF) or the National Social Security Fund (NSSF); yet they still have huge pending bills. This is an issue that I hope we can reign in on these governors and ensure that whatever amount of money is deducted from employees can be sent to the bodies that require that money. On this note, I would like to encourage Kenyans out there to check their pay slips and follow up so that they do not have to wait until the last minute when they have retired for them to look for their retirement benefits and they cannot get them or to even follow up with KRA.

On the issue of pending bills, it is my hope that when these governors sit down and think about what is happening in this country--- I support 100 per cent and actually commend the current Acting Cabinet Secretary (CS) for the National Treasury and Planning for having instituted administrative measures to try and bring in sanity. If these governors can look at those bills, and pay off the ones that they believe are genuine, at least the KRA will be able to collect the money. This is because the moment the contractors have been paid, the KRA will also go after those contractors and collect money, thus enabling them to up their annual collection.

Because of time and I know that we have another debate at 5.00 p.m., I would like to end by saying that it is imperative that the governors and the entire finance departments in all counties familiarize themselves with the four pieces of legislation. This is in order to ensure that they can account for all the money and literally use the money in the manner that it is supposed to be used. These four pieces of legislation are; one, the Public Audit Act, and is very important for them to understand the audit process. They can specifically go to Section 31 of that Public Audit Act.

Two is the Public Finance Management (PFM) Act, which is very important. In fact, when you think about the issues of reconciliation, the PFM Act requires county governments to reconcile their books on a monthly basis and share with the Auditor-General, but quite seldom do they do that?

Three, the Public Procurement and Disposal Act and finally, four, is the Constitution. This is so that we can ensure that at least when you are tasked with the responsibility of ensuring that counties collect and utilize their money to develop the county, you will not be there lining your own pocket and leaving the people out there who cannot afford drugs.

As I sit, I fully support this Report and I hope that all Senators who are elected and also nominated can take time to read it and go back and support their counties.

Thank you, Mr. Deputy Speaker Sir.