

# **Should public officers make open declarations of their wealth? Kenyan parliamentary discourse on the fight against corruption**

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## **Abstract**

This paper analyses the debate of the Public officers Ethics Bill (2003) as discussed in the Kenyan parliament using the discourse-historical approach (DHA). The bill sought to legislate public officers' ethics as well as provide for public officers, including Members of Parliament (MPs), to annually declare their wealth in a bid to stem rampant corruption and inefficiency in the public sector. However, clauses in the bill went against the expressed intent for transparency envisaged in the bill. These contradictory clauses were retained at the passage of the bill. The analysis of arguments advanced in the retention of the clauses contradicting the intents of transparency in the bill exposes the fallacious arguments put forward, which were protective of power elite interests at the expense of those of the public. The analysis therefore demonstrates the various discourses strategies employed by those for and against the retention of the contradicting clauses as a critique to fallacious arguments that go against the cardinal principle that parliament ought to safeguard public interests.

## **1. Introduction**

During the last half of Kenya's President Daniel arap Moi 24 year autocratic rule, high level politically sanctioned corruption in Kenya had become so rampant that there was a rapid economic decline for most of the general public and massive accumulation of wealth for the politically connected, including ministers and MPs. For instance, one reported scandal in the early 1990's – the Goldenberg scandal – involved siphoning out

of public coffers an estimated \$600 million in connected dubious deals in two years. The adverse effect of this pilferage is thought to still have an impact now, two decades later. During the same period, there was also massive irregular allocation of public land and utilities to the politically connected. The consequence of these actions was impoverishment of most Kenyans, such that the per capita income around this period was estimated at \$239, while close to 50 % of the population was driven to living below the poverty line (Barkan 2004). There was also a total decay or collapse of infrastructure and social amenities.

At the behest of civil society and international lending partners, a Public officers Ethics Bill was mooted in 2002 to check rampant corruption. However, President Moi declined to assent it into law. In 2003, when President Moi's political party – Kenya African National Union (KANU) was defeated in the 2002 elections, the bill was reintroduced in parliament by the then perceived reformist National Rainbow Coalition (NARC) government. The Public officers Ethics Bill constituted one of various legislative measures that had been proposed in curbing corruption, especially high level future corruption by empowering the public in monitoring of public officers' annual wealth profiles through annual declarations of the officers' wealth. Among these officers included MPs and Cabinet Ministers. The bill therefore directly touched on MPs' interests. However, a clause in the 2003 bill, just like in the 2002 one, provided for the confidentiality of wealth declarations by the officers thus making it difficult for the public to access the declarations made. Further clauses actually provided a penalty that was twice as heavy for anyone divulging the contents of the wealth declarations vis-à-vis public officers making false wealth declaration. The net effect of these clauses seemed to be protective of elite interests at the expense of those of the public, for which parliament ought to safeguard. The bill was passed without amendment to these contradictions.

This paper therefore analyses the debate of the Public officers Ethics Bill (2003) as discussed in the Kenyan parliament using the discourse-historical approach (DHA). I conceive the debate of the bill as power elite discourse on the fight against corruption in Kenya where the MPs debate matters that potentially touch on their interests. In the analysis, I seek to answer the following questions:

- 1) What arguments were advanced for and against public access to public officers' wealth declarations?
- 2) What is the intrinsic logic of these arguments?
- 3) How were the arguments discursively realized?
- 4) How can the retention of the contradictory clauses in the bill be explained within Kenya's socio-political context, and what does this mean for the fight against corruption?

## **2. Theoretical Framework**

For my analysis, I adopt the Discourse-Historical Approach – DHA (Reisigl & Wodak 2001, 2009; Wodak 2001). DHA, like other approaches in Critical Discourse Analysis (CDA), is a problem oriented social research that begins by identifying socio-political issues and problems that involve power relations that engender discrimination, domination, power abuse and control. Then an analysis is made of the discourses and texts that ideologically produce and reproduce such unequal power relations by critiquing such abuses of power with the ultimate aim of engendering more egalitarian power relations in society (Fairclough 2001a & 2001b; Fairclough & Wodak 1997; Van Dijk 2001; Wodak 2001a).

The socio-political issue I focus on in this paper is the fight against corruption as debated in the Kenyan parliament. The contradictory clauses in the debated bill touched on potential instances of abuse of power, and the engendering of inequality and domination, which my analysis seeks to critique. The historical orientation in DHA makes it an appealing framework in the analysis of corruption and parliamentary debates intended to make laws to fight corruption because these twin issues are best understood through a historical examination of the socio-political context in which such debates emerge.

Wodak (2001b, p. 65) and Reisigl and Wodak (2001, p. 32) affirm that DHA, 'adheres to the socio-philosophical orientation of critical theory' and in so doing, pursue a three-pronged critique as briefly reproduced below from Wodak (2001b, p. 65):

1. Text or discourse immanent critique, which aims at discovering inconsistencies, (self-) contradictions, paradoxes and dilemmas in the text-internal structures.
2. Socio-diagnostic critique – concerned with demystifying exposure of the – manifest or latent – possibly persuasive or ‘manipulative’ character of discursive practices.
3. Prognostic critique, which contributes to the transformation and improvement of communication.

Reisigl and Wodak (2001, p. 34) elaborate that the motivation for the kind of critique in DHA is based on (a) ‘sense of justice’ and ‘conviction of the unrestricted validity of human rights and by awareness of suffering’ caused by ‘social discrimination, repression, domination, exclusion and exploitation’, which is a source of inspiration to take sides ‘for emancipation, self determination and social recognition’. (b) ‘...conviction that unsatisfactory social conditions can, and therefore must, be subject to methodical transformation towards fewer social disfunctionalities and unjustifiable inequalities’, a motivation they acknowledge is ‘part utopian’. According to the proponents of DHA, the best political model that best captures the actualization of their envisaged critique is Habermas’ deliberative democracy which is based on the free public sphere, which is also tied to the notion of rational argumentation.

DHA adopts the principle of triangulation as a means of ensuring rigor in analysis through incorporating an interdisciplinarity in theory, methods – incorporating fieldwork and ethnography, in teams and in practice. Triangulation in DHA captures four levels of context as reproduced in brief from Wodak (2001b, p. 67) and Wodak (2003, p. 13):

1. Immediate language or text internal co-text;
2. The intertextual and interdiscursive relationship between utterances, texts, genres and discourses;
3. The extralinguistic social/sociological variables and institutional frames of a specific ‘context of situation’;
4. The broader socio-political and historical contexts, which the discursive practices are embedded in and related to.

The operationalization of DHA analysis basically takes three interlinked dimensions:

- 1 Contents or topics of a specific discourse that is of concern to a researcher or a social problem under investigation;
- 2 Discursive strategies (including argumentation strategies) that are used to achieve the discourse concerns in (1) above. A discursive strategy is defined as “more or less accurate and more or less intentional plan of practices adopted to achieve a particular social, political, psychological or linguistic aim” (Reisigl and Wodak 2001, p. 44);
- 3 Linguistic means and context dependent realization used to accomplish the discursive strategies and hence the producing or reproducing the discourse concern or problem under investigation. The relevant linguistic devices to focus on should be determined by the specific research questions a researcher is investigating (Meyer 2001).

In operationalizing DHA, the three dimensions of analysis above should constantly engage with the context as outlined above as well as the socio-historical and institutional context in which the social problem under investigation is embedded.

Following the DHA operationalization steps above, the content I focus on is the parliamentary power elite discourse on the fight against corruption in Kenya where the MPs debate matters that potentially touched on their interests. I further particularly focus on the argumentation strategies that MPs use to argue for and against legislation to make wealth declarations open to the public in a bid to fight corruption, and the linguistic realization of the said arguments.

### **3. Data and Method**

The source of my data is the National Assembly of Kenya parliamentary Hansard reports (a verbatim recording of parliamentary proceedings) of the debate of the Public Officers Bill 2003. From the debate of the bill, I firstly identified and extracted all the sections that directly touched on the debate of the clauses on public officers' declaration of wealth. Secondly, I categorized the arguments into two, that is, (a) those in support, and (b) those against public access to wealth declarations for close analysis. However, before analysis, I outlined parliamentary debates as a genre of political discourse as represented in section 4.0. A genre is a conventionalized use of language associated with a particular social activity (Reisigl and Wodak 2001). DHA considers genre analysis

a prerequisite to a detailed analysis of a text (Reisigl and Wodak 2001). I then outlined the wider, as well as the immediate socio-political context in which the need for the enactment of the Public Officers Ethics Bill was mooted as captured in section 5.0 and 5.1 respectively.

#### **4. Parliamentary debates as a genre of discourse**

Debates are a fundamental means through which parliament carries out its business, which includes: making laws, regulating taxation and monitoring public expenditure, scrutinizing the conduct of ministers and other public servants, and discussing matters of national importance (Interparliamentary Union 1976). The overriding principle guiding parliament in accomplishing its tasks is that public interests should always prevail over parochial or vested interests. This is a major challenge that parliaments have to grapple with, and how well or badly they carry through this principle may as well be reflective of 'the nature of the state (democratic or authoritarian) ... and political culture' (Salih 2005, p. 3)

In the discussion of parliamentary debates as a genre of discourse, I will adopt Van Dijk's (2000; 2004) context model. I adopt the context model because it ties up with the notion of *discursive strategy* in DHA. Both presuppose mental constructs that are goal directed as participants engage in language use, and have a bearing on how and what language is used in specific social situations. Context model, according to Van Dijk, are mental constructs of participants of or about social situations in which they are involved. Context models mediate the instantiation of discourse that is relevant to the ongoing situation by participants. Context models, Van Dijk further observes, are personal, but also bear important social dimensions. This dual character of context models allows for individuals to both have personal interpretations of the context of situation and a common social interpretation as well. Context models are also dynamic and changeable depending on both the changing interpretation of situation and discourse as well.

According to Van Dijk (2000), the parliamentary debates context schema is a construct that the MPs, lay people, and experts possess. Van Dijk postulates that the parliamentary debates schema contains macro and micro categories, as outlined below:

1. Macro categories

- Domain – this is the broad social domain that a social situation is thought to be part of. Parliamentary debates are in this regard part of the political domain.
- Global actions – these are the overall actions that instantiate the global domains. The global actions that define parliamentary debates as a political activity include: legislative, deliberative, financial regulation and probity, representation, as well as attendant MPs social acts such as promoting themselves, party and other interests among others.
- Institutional actors – these are the participants in parliamentary debates in their complex, singular and multiple dimensions, such as MPs, political parties, opposition and government, front and back benchers, parliament itself, and the public.

2. Micro-level categories

- Setting – this broadly encompasses the time and space and the attendant political and legal significance. Setting may also be seen in terms of the sub-genre of parliamentary activity and its procedures and regulations.
- Local actions – these are the multiple local actions that constitute political social acts in the global act of debating, legislating and so on.
- Participants – Van Dijk examines participants in terms of firstly, their *communicative roles*, which encompass the different speaking identities MPs may adopt and the varied audiences they address. Secondly, MPs *interactional roles* such as government and opposition. Thirdly, *Social roles*, which are MPs membership in various social, institutional, interest groups, and so on.
- Cognition – this involves the knowledge that is brought to bear in parliamentary debates, ranging from the personal, social knowledge, knowledge of what other people know, should know, the aims and intentions of speakers, and so on.

I use the parliamentary debates context schema above as basis for both making sense of MPs talk in the debate I analyze, as well as a means of making a critique of the debate. But before making a critique of the debate, an understanding of the socio-political

context in which the debate is embedded is necessary. The next section outlines this context.

## **5. The wider socio-political context of the Public Officer Ethics Bill (2003): corruption, the state and the power elite in Kenya**

There is a close linkage between the configuration of the state, the power elite and corruption in Kenya. The configuration of the state and the attendant power elite domination in Kenya was systematically achieved through various amendments to the independent constitution, resulting in granting unfettered powers to the presidency at the expense of the judiciary and legislature, thereby enabling the holder of this position to have almost unbridled control of the state and its resources (Katumanga 1999; Lakidi and Mazrui 1973; Salih 2005). In the prevailing situation the state was run like a personal fiefdom, such that, access to or proximity to state power ensured access to wealth, acquired by whatever means. The interconnection between the state, power, the power elite and corruption in Africa, as is the case in Kenya, is aptly captured by Ake (2000, p. 37 – 38) when he writes:

*In most post colonial Africa, the only way for elites to secure life and property and some freedom was [is] to be in control, at any rate, to share in control of state power.... That was [is] part of the reason why state power was [is] sought with such desperation that political competition tended [tends] to degenerate into warfare. Those who prevail in this struggle privatize the state and take what they can, and those who lose effectively lose all claim to the resources of the state, including protection by the law, and suffer what they must. In these circumstances, everyone desperately wants to be incorporated in the sharing of state power (Ake, 2000:37-38).*

As Ake observes, the restructuring and practices of state power and the concomitant privatization of the state power and resources provided for very fertile ground for the thriving of corruption and cronyism in Africa, and indeed Kenya. With the privatization of the state, doling out and withholding state power and resources become an important means of maintaining political regimes. This was the case in the decade preceding the

introduction of the Bill under discussion here. The then KANU's regime was mired in rampant corruption involving illegal public land transfers, illegitimate acquisition of public land – 'land grabbing', phony state contracts involving various shell companies, bribery, and outright theft (Barkan 2004; Klopp 2000; Taylor 2006). Little or no genuine attempts were made by state organs to hold to account various public officers or politically connected individuals suspected of having engaged in corruption.

### **5.1 The Public Officer Ethics Bill (2003) and its immediate socio-political background**

The public officer ethics bill (2003) was a re-introduction of the bill passed in 2002, but which the then President, Daniel arap Moi, did not assent to. The 2002 bill had been introduced to parliament, hurriedly debated and passed, at the behest of international lenders and donors who had frozen lending to the then broke government. Conditions for resumption of lending were then pegged on the government passing legislation to combat the unbridled corruption in the public sector.

The 2003 bill was introduced shortly after the defeat of the corrupt and repressive KANU regime in December 2002, and the coming to power of the pre-election coalition party – National Rainbow Coalition (NARC) in what was hailed as the second liberation, the first being the gaining of independence from the British colonialists. This regime change imbued in Kenyans so much optimism for a radical shift in the management of political affairs of the country. However, NARC, as constituted, bore the bane of contradiction of many regime changes in Africa within the newly reintroduced multi-party politics in the 1990s. It was saddled with a host of holdover political actors associated with the discredited KANU, as well as constant power struggles (see Gachigua 2006; Murunga and Nasiong'o 2006; Oyugi 2006). As (Matiangi 2004, p. 8) observes of what he calls 'incestuous' regime changes, 'members of the new regime with links to the past regimes tend to subvert, derail or regroup to circumvent efforts to fight graft'.

The overall purpose of the bill was to legislate 'an act of parliament to advance the ethics of public officers, including MPs and the members of the executive, by providing a

code of conduct and ethics for public officers, and requiring financial declarations from certain officers and to provide for connected purposes' (Kenya Gazette supplement 2003, p. 69). The bill contained six parts and several clauses; however, I will only analyze part four of the bill, dealing with 'declarations of income, assets and liabilities', which contained the clauses that contradicted the intent of The public officer ethics bill (2003), and thereby seemingly protective of power elite interests at the expense of public interests that parliamentary legislation ought to advance. Of particular interest for this research are the clauses (28 – 31), which made it difficult for the public to access wealth declarations by public officials. Furthermore, clauses 29 provided for a penalty that was twice as heavy for anyone divulging the contents of the wealth declarations vis-à-vis public officers making false wealth declaration.

## **6. Data Analysis**

In this section, I analyze and critique the arguments advanced in the debate for and against public access to wealth declarations, which will entail assessing the soundness of the arguments employed in the arguments, as well as pointing out how these arguments were discursively realized within the dynamics of parliamentary debates as a genre, and the wider socio-political context of the debates. I have put in italics those segments of discourse that I cite in my analysis.

### **6.1 Arguments against open public officers' wealth declarations**

- Arguments appealing to collective African culture/customs: the thrust of these arguments was that open declaration of wealth goes against African customs or culture:
  - 1) **Mr. Robinson Githae - NARC (Assistant Minister for Justice and Constitutional Affairs):** ... The reason why there is a confidentiality clause is because of *our African custom*. *In some communities*, it is prohibited even to count the number of your children. *It was thought* in order to encourage public officers to list down all their assets, let it be confidential. (Kenya, Republic of 2003, p. 457)

- 2) **Mr. Kipchumba (KANU):** ...one aspect of declaring all that we own, or all the property, assets and liabilities, *we are all Africans and we know the African culture....* Members of parliament don't even tell their wives or spouses what they earn or own. Now you require them to tell Kenyans what they have. I think you will receive a lot of resistance. (Kenya, Republic of 2003, p. 493)

The arguments advanced here, firstly, appeal to the supposed collective sentiment of the African culture and customs, as realized in the expressions: *our African custom* and *we are all Africans and we know the African culture*. The logic regarding such customs, which is based on superstition that counting ones children and property would invite personal tragedy, may have been applicable to private life, however, this reasoning ignores the public nature and hence the public interest and need for transparency that goes with public service in modern public institutions. A related argument advanced by Kipchumba goes, if MPs don't tell their spouses what they own, who are Kenyans to expect such disclosures. This argument transposes private opinions and imposes them in a public sphere without due regard to the different logics of these spheres. These arguments thus both erroneously appeal to collective sentiment of the African customs (*argumentum ad populum*), as well as false authority (*argumentum ad verecundiam*) through erroneously transposing the logics of superstition and private beliefs to modern public affairs. Secondly, in citing the relevant African custom, Githae clearly indicates that it is only practiced by *some communities* in whom power is invested to decide for the whole nation. Thirdly, there is the internal contradiction that the African custom does not allow one to enumerate their wealth yet it seems agreeable that, as the bill proposes, that public officers' wealth can be listed albeit confidentially. Fourthly, both MPs evade expressing their arguments as explicitly their own. They are framed as matters of collective African custom/culture, as collective MPs perspective, or in Githae's case employing the vague agentless passive structure: 'It was thought in order to encourage public officers to list down all their assets, let it be confidential'.

- Arguments invoking dangerous or threatening consequences if open declaration of wealth was legislated included:

- 3) **Mr. Moses Wetangula (NARC):** ...unless in pursuance of criminal investigation, under no circumstances should the information given in confidence by anybody under this Act be let loose to *anybody who wants to see it*. This bill with all its

noble intentions can easily *be an instrument* for witch-hunts, abuse or subsequent reckless prosecution of people. (Kenya, Republic of 2003, p. 496).

4) **Mr. Kipchumba (KANU):** ...we are against where *people* get information to scandalize certain people. I think we put in regulations in the Bill that will safeguard *individuals being scandalized* just because of what they own. (Kenya, Republic of 2003, p. 493).

5) **Mr. Mutula Kilonzo (responding to the debate on behalf of the Leader of the Official Opposition - KANU):** Mr. Deputy speaker, Sir, allow me to raise the following issue: supposing after we pass this law, I go and publish the list of what I have – as I will – and I declare, and then it is open, what will stop *the practice* of being abducted going on in South America and other countries in Europe being adopted here. *Somebody* comes and openly has access to the list of your assets, he finds that you can afford Ksh. 3 million, he goes and picks your favourite child and he calls you and says: “we know that in your bank account you have Ksh. 3 million; we got that information from the declaration you gave to the commission; unless I get Ksh. 3 million, I will send to you the finger of your child in the course of the evening”. (Kenya, Republic of 2003, p. 493).

The basic argument advanced here is that open declarations of wealth portend dangers such as abductions, blackmail, witch-hunt, reckless prosecution and potential for scandalizing those who have declared wealth (*argumentum ad baculum*). These arguments beg the questions: Why would MPs fear for such ills to occur? Who are the would be perpetrators of the evil acts cited? And are these reactions an indicator of other underlying fears by the elite? The likely perpetrators of these ills are strategically left vague, realized indefinite pronouns: *anybody, somebody, people*; as activity and instrument respectively, without actors, such as *the practice, an instrument*; or as passive constructions: *individuals being scandalized*. The MPs are keenly aware of the risk of implying ill motive of the public.

A possible cause of this fear can be explained historically. In the late 1980s through the 90s, politically sanctioned corruption in Kenya had become so rampant, causing a rapid economic decline for most of the general public and massive accumulation of wealth for the politically connected. In one of the major scandals in the 1990s – ‘Goldenberg’ scandal, an estimated US\$ 600 million was siphoned out of public coffers (Taylor 2006).

Further, Barkan (2004:89) observes that 'from 1990 through 2002, annual per capita income in Kenya fell from US\$271 to \$239 and poverty rose from 48 to 56 percent. Basic social services and infrastructure, particularly roads, decayed or collapsed. The civil service, the legislature, and the judiciary became impotent, little more than rubber stamps for Moi's (then president) repressive policies'. This coupled with the patronage system of politics that informs Kenyan politics, where accumulation of wealth and proximity to government are closely linked makes open declarations of wealth for the elite who benefited from political largesse very uncomfortable, (see, Barkan 1984; Hornsby 1989, for patronage in post-independent Kenya; and Holmquist 2002; Katumanga 1999 for analysis stretching to the colonial period). Secondly, open disclosure of wealth would certainly have exposed concrete evidence to the much talked about inequalities between the rich and the poor, which are reported to be among the highest in the world (Society for International Development 2004). Concrete exposure of such dramatic evidence is potentially politically explosive.

- Arguments that open declarations of wealth by public officers would scare off people of integrity from public service, and only attract reckless ones, thus, resulting in undesirable consequences (*argumentum at consequentiam*):
- 6) **Mr. Mutula Kilonzo:** ... You allow this blanket permission for anybody to inspect your assets at will.... Violation of privacy will be extreme and the dangers of blackmail will be so real that instead of attracting people of integrity, which this law hopes to do, we will end up attracting people who do not care at all. (Kenya, Republic of 2003, p. 549).
  - 7) **Mr. Kipchumba:** ... very soon we might have rich public servants running away from public service, yet they are very productive, just because they do not want anybody to know what they own. (Kenya, Republic of 2003, p. 494).

These arguments do not clearly demonstrate why people of integrity or the rich and productive people should be scared off from public service for openly disclosing their wealth; in fact it seems that people of integrity, and who have nothing to fear would be better served in such an arrangement.

- Arguments invoking right to privacy: these arguments open declaration of wealth infringes on the privacy and choice of an individual and therefore should be rejected.

- 8) **Mr. Raila Odinga (Minister for Roads, Public Works and Housing – NARC):** (*translated from Kiswahili*) what we do not want is people's privacy to intruded. Kenyans too have their privacy. To make a wealth declaration and make it open to public scrutiny is to mean that not everybody enjoys the right to privacy. ... Let open declarations be a personal choice. ... I oppose the idea of openly publishing people's declarations. In what country is this done? What kind of law is this? One is entitled to privacy! Because one is not a thief. (Kenya, Republic of 2003, p. 493).

Related to the argument above, is that access to the declaration of wealth by a public officer should only be made in cases where there were criminal charges preferred against the officer. A person's privacy should only be encroached when there is a justified cause such as misconduct. These arguments ignore the history of the fight of corruption in Kenya, which had demonstrated that when damning information on corruption was confined to the elite and state institutions, corrupt practices were never punished, were glossed over or covered up, hence, the need for the public involvement in monitoring the elite.

## **6.2 Arguments for open public officers' wealth declarations**

- Arguments for transparency and accountability in public affairs:
- 9) **Mr. Mirugi Kariuki (NARC):** ...Mr. Deputy Speaker, sir, I am a little concerned by Clause 29 of this bill. We are living at a time of transparency, yet we are talking about confidentiality under clause 29. I believe that the purpose of making public officers accountable is to ensure that the members of public are informed what they have acquired. There is no way a member of the public who may be willing to offer or challenge information disclosed to the commission by the public officer will be able to do so. I am proposing that, in fact, clause 29 is unnecessary. ...We want the public officers to come clean and declare their wealth and income. Mr. Deputy Speaker, Sir, this is what happens in other jurisdictions (*cites the case of America*). (Kenya, Republic of 2003, p. 456-457).
- Arguments about parts of bill contradicting spirit of the bill:

- 10) **Mr. Mukiri (NARC):** Mr. Temporary Speaker, Sir, I feel that section 29 is undoing this Act. I do not know why the Minister introduced section 29. ... the purpose of this section beats the spirit of and the purpose of this Act. The aim of this Bill is for people to be transparent, accountable and be able to declare their property. (Kenya, Republic of 2003, p. 591).
- 11) **Mr. Paul Muite (chairman departmental committee on Administration of Legal Justice and Legal Affairs):** (the declaration of wealth)... is absolutely confidential, so much that the sentence for disclosure is punitive. (*Cites the relevant section*) ...So the thrust of punishment is disclosure. Therefore, the question is: what are we seeking to achieve by enacting this bill if the weight is against disclosure? ...Is the objective of the bill merely to comply with what the donors are asking us to do in order for us to get aid? Or is the objective the policy decision by us, as Kenyans, to truly confront corruption? If it is the later, no case can be made for confidentiality. (Kenya, Republic of 2003, p. 584).

These arguments appealed to the accepted legislative principle that clauses of a bill should not be inimical to the spirit of the bill. The penalty for leaking the declared information to the public that is twice heavier than that of a public officer giving a false wealth declaration negated the spirit of the bill, which was to combat corruption in the public sector.

- Arguments about public interests and public good weighing against private rights:

- 12) **Mr. Muchiri (NARC):** ... I do not know why we were being told yesterday that section 70 is being infringed. That is not correct. I am not a lawyer, but I have a lot of interest in law. Section 70 of the constitution states that you should not infringe on the privacy of an individual at home or his property, but that should not be at the expense of the public. (*Quotes the section*). The constitution therefore, states that if it is in the public interest, we should infringe into your privacy. (Kenya, Republic of 2003, p. 580).
- 13) **Mr. Paul Muite:** ...Statistics the world over show that the media is the most effective organ to fight corruption. It is the whistle blower. We have witnessed it even in this country... (*Cites local case and the Watergate scandal in US*). If truly our intention is to confront corruption as a nation, we

must make this register available for inspection. That way, members of the public will monitor how individuals will be acquiring their wealth.... Obviously, we are talking about the public good. In the process of trying to achieve the public good, several factors should be weighed, one against the other. In this case, we could be having in mind the reputation of individuals. However, public interest must always carry the day. Therefore, when you accept a public position, you must accept scrutiny by the media. (Kenya, Republic of 2003, p. 584-5).

These arguments are against unfettered right to privacy as advocated for by proponents of making public officers' wealth declaration confidential. In arguing their position, Mr. Muchiri and Mr. Muite appeal to the principle of public interest, which is widely held to inform the conduct of public affairs. In their arguments, they consider the public disclosure of public officers' wealth as being in the interest of the public, and thus overriding rights to privacy on this issue in a bid to foster transparency and accountability of public officers.

## **7. Conclusion**

From the discussion above of the arguments advanced by those for and against declaration of wealth by public officers being open to public scrutiny, the following observations can be discerned. The overall framing of arguments advanced against public access to public officers' wealth declarations was largely fallacious or problematic and manipulatively invoked risks, dangers and violations as a basis for rejecting public access to public officers' wealth declarations. The overall framing of arguments advanced for public access to public officers' wealth declarations was largely based on straight-forward arguments invoking principles of public good, transparency, accountability, good practices, and pointing out that clauses in the bill contradicted the spirit of the bill (part-whole contradictions).

On the basis of the observation above, how can the passage of the bill despite its glaring contradictions be explained vis-à-vis the arguments advanced? A possible explanation can be adduced from the prevailing political practice in Kenya at the time of debating the bill, where the political elite sought to configure state power so as to privatize state

power and resources, and then use proximity to state power as a patronage system to perpetuate their power. Therefore, the fallacious arguments against public officers' wealth declarations being open to public scrutiny should be seen as a strategy to foreclose exposure of elite manipulative use of power that open access to public officers wealth declarations would expose. For instance, with regard to how public officers obtained their wealth and indeed that such declarations would dramatically expose the huge gap between the poor and the rich in Kenya, which is described as one of the worst in the world.

Based on the observation above the findings in this data suggest that straight forward logical arguments urging for genuine legislation to fight corruption are not necessarily successful in the face of a structural configuration of the state to serve elite interests. However, given a dearth of in-depth critical analysis of parliamentary debates in Kenya on such topical issues such as corruption, there is greater need to systematically analyze and expose fallacious arguments advanced by the elite in Kenya which seek to forestall genuine attempts at making laws to fight the vice. Such critiques would be essential in bolstering arguments to the country's quest for wider political reforms that would make it possible for state power to serve public interest.

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