

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Thursday, 24<sup>th</sup> October, 2024

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

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

#### PRAYER

#### DETERMINATION OF QUORUM AT COMMENCEMENT OF SITTING

**The Speaker** (Hon. Kingi): Clerk, do we have quorum?

*(The Clerk-at-the-Table consulted with the Speaker)*

Serjeant-at-Arms, kindly ring the Quorum Bell for 10 minutes.

*(The Quorum Bell was rung)*

Order, hon. Senators. I am informed that we now have a quorum. Please take your seats. Clerk, you may proceed to call the first Order.

*(Sen. Kibwana walked into the Chamber)*

Senator, proceed to take your seats. I need to give some communication.

#### COMMUNICATION FROM THE CHAIR

#### VISITING STUDENTS AND TEACHERS FROM RUBY KRAFT ADVENTIST SCHOOL, HOMA BAY COUNTY

**The Speaker** (Hon. Kingi): Hon. Senators, I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting teachers and students from Ruby Kraft Adventist School in Homa Bay County. The delegation comprises 14 teachers and 108 students who are in the Senate for a one-day academic exposition.

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

*(Applause)*

*(Sen. Ogola walked into the Chamber)*

Upon taking your seat, I will allow Sen. Beatrice Akinyi to extend a word of welcome under a minute.

*(Sen. Chute consulted the Clerk-at-the-Table)*

Sen. Chute, you are totally out of order. Please resume your seat.

**Sen. Ogola:** Mr. Speaker, Sir, thank you for granting me the chance to welcome the visiting students from Ruby Kraft Adventist School, Homa Bay County. On behalf of myself, Sen. Beatrice Ogola and on behalf of the Senator for Homa Bay County, Sen. Moses Otieno Kajwang' who is away on official duty, feel most welcome to the Senate.

The Senate is a House of representation, oversight and legislation. We welcome you here amongst us. This is also a House of Parliament that looks into the interests of our counties. Of course, you can be a testament to the good work going on in Homa Bay County, led by Her Excellency Governor Gladys Wanga.

Feel welcome and please continue dreaming right.

**The Speaker** (Hon. Kingi): Next Order.

## MESSAGES FROM THE NATIONAL ASSEMBLY

### APPROVAL BY THE NATIONAL ASSEMBLY OF THE MEDIATED VERSION OF THE SUGAR BILL (NATIONAL ASSEMBLY BILLS NO.34 OF 2022)

**The Speaker** (Hon. Kingi): Hon. Senators, I wish to report to the Senate that, I have, pursuant to Standing Order No.46(3), received the following Message from the National Assembly regarding the approval of the mediated version of the Sugar Bill (National Assembly Bills No.34 of 2022). The Message, dated Tuesday, 22<sup>nd</sup> October, 2024, was received in the office of the Clerk of the Senate on Wednesday, 23<sup>rd</sup> October, 2024. Pursuant to Standing Order No.46(4), I now report the Message.

Pursuant to the provisions of Standing Order Nos. 41(1) and 154(b) of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly-

WHEREAS the Sugar Bill (National Assembly Bills No.34 of 2022), which was published via the Kenya Gazette Supplement No.150 of 6<sup>th</sup> October, 2022 as a Bill seeking to reinstate provisions of the Sugar Act, 2001, that was repealed through the enactment of the Crops Act 2013, to re-establish the Kenya Sugar Board, to reinvigorate

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the sugar sector through reestablishment of the Sugar Development Levy and the Sugar Development Fund, and to establish the Kenya Sugar Research Institute, was conceded and passed by the National Assembly on 27<sup>th</sup> September, 2023, and thereafter referred to the Senate for consideration in accordance with provisions of Article 110(4) of the Constitution;

AND WHEREAS the Senate considered and passed the Bill with amendments, which upon reconsideration by the National Assembly, were rejected on Thursday, 1<sup>st</sup> August, 2024, consequently committing the Bill to Mediation Committee in accordance with the provisions of Article 112 of the Constitution;

FURTHER WHEREAS in accordance with the provisions of Article 113(2) of the Constitution and Standing Order No.150, the National Assembly considered and approved the mediated version of the Sugar Bill (National Assembly Bills No.34 of 2022), on Friday, 18<sup>th</sup> October, 2024, and in the form agreed to by the Mediation Committee on the Bill;

NOW THEREFORE in accordance with the provisions of Standing Order No.154 (b) of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly to the Senate.

Hon. Senators, as you may recall, during the sitting of the Senate on Tuesday, 22<sup>nd</sup> October, 2024, Sen. David Wakoli, MP, on behalf of the Vice-Chairperson of the Mediation Committee, laid on the Table of the Senate the report of the Mediation Committee on the Sugar Bill (National Assembly Bills No.34 of 2022) and soon thereafter gave Notice and moved a Motion for adoption of the report and approval of the mediated version of the Bill.

Debate on the Motion will resume and be dispensed with in the usual manner. The House is guided accordingly.

*(Applause)*

I have another Message.

DECISION BY THE NATIONAL ASSEMBLY ON THE SENATE  
AMENDMENTS TO THE DIVISION OF REVENUE (AMENDMENT)  
BILL (NATIONAL ASSEMBLY BILL NO.38 OF 2024)

**The Speaker** (Hon. Kingi): Hon. Senators, I wish to report to the Senate that I have, pursuant to Standing Order No.46(3), received the following Message from the Speaker of the National Assembly regarding the decision of the National Assembly on the Senate amendments to the Division of Revenue (Amendment) Bill (National Assembly Bills No.38 of 2024). The Message, dated Tuesday, 22<sup>nd</sup> October, 2024, was received in the office of the Clerk of the Senate on Wednesday, 23<sup>rd</sup> October, 2024. Pursuant to Standing Order No.46(4), I now report the Message.

Pursuant to the provisions of Standing Order Nos.41(1) and 148(b) of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly-

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WHEREAS on Wednesday, 7<sup>th</sup> August, 2024, the National Assembly passed the Division of Revenue (Amendment) Bill (National Assembly Bills No.38 of 2024) and thereafter referred the Bill to the Senate for consideration in accordance with Article 114 of the Constitution;

AND WHEREAS on Thursday, 3<sup>rd</sup> October, 2024, the Senate considered and passed the said Bill, with amendments and referred it back to the National Assembly in accordance with the provisions of Article 112(1) of the Constitution;

FURTHER WHEREAS on Wednesday, 16<sup>th</sup> October, 2024, the National Assembly negated a Motion on consideration of the Senate amendments to the Division of Revenue (Amendment) Bill, 2024, thereby committing it to a Mediation Committee in accordance with the provisions of Article 112(2)(b) of the Constitution;

NOW THEREFORE in accordance with the provisions of Article 112 of the Constitution and Standing Order Nos.41(1) and 148(b) of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly to the Senate and seek the appointment of nine Senators to a Mediation Committee to consider the Bill in accordance with Article 113 of the Constitution.

Hon. Senators, consequent to the said decision, the Speaker of the National Assembly appointed the following Members of the National Assembly to the Mediation Committee to consider the contentious Clauses in accordance with Article 113 of the Constitution—

- (1) Hon. Ndindi Nyoro, CBS MP;
- (2) Hon. Mary Emase, MP;
- (3) Hon. (Dr.) John Chikati, MP;
- (4) Hon. David Ochieng, CBS, MP;
- (5) Hon. David Kiplagat, MP;
- (6) Hon. (Dr.) Otiende Amollo, SC, MP;
- (7) Hon. Fatuma Jeho, MP;
- (8) Hon. (Dr.) Makali Mulu, MP;
- (9) Hon. (Dr.) Ojiambo Oundo, MP.

Hon. Senators, pursuant to the provisions of Standing Order No.166(2) of the Senate, and in consultation with the Senate Majority Leader and the Senate Minority Leader, I will, at an appropriate time, appoint Hon. Senators to the Mediation Committee.

Hon. Senators, you may take your seats before I read the last Message.

*(Several Senators walked into the Chamber)*

APPROVAL BY THE NATIONAL ASSEMBLY OF THE  
MEDIATED VERSION OF THE WATER (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILLS No.33 OF 2023)

**The Speaker** (Hon. Kingi): Hon. Senators, I wish to report to the Senate that I have pursuant to Standing Order No.46(3), received the following Message from the National Assembly, regarding the approval of the Mediated Version of the Water (Amendment) Bill (National Assembly Bills No.33 of 2023). The Message, dated

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Tuesday, 22<sup>nd</sup> October, 2024, was received in the office of the Clerk of the Senate on Wednesday, 23<sup>rd</sup> October, 2024. Pursuant to Standing Order No.46 (4), I now report the Message.

Pursuant to the provisions of Standing Order Nos.41(1) and 154(b) of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly-

WHEREAS the Water (Amendment) Bill (National Assembly Bills No.33 of 2023), which was published via Kenya Gazette Supplement No.108 of 4<sup>th</sup> July, 2023, as a Bill seeking to amend the Water Act, 2016 to provide for Public-Private Partnerships (PPPs) arrangements, was considered and passed by the National Assembly on 7<sup>th</sup> March, 2024 and thereafter referred to the Senate for consideration in accordance with the provisions of Article 110(4) of the Constitution;

AND WHEREAS the Senate considered and passed the Bill with amendments which, upon reconsideration by the National Assembly, were rejected on Thursday, 30<sup>th</sup> April, 2024, consequently committing the Bill to a Mediation Committee in accordance with the provisions of Article 112 of the Constitution.

FURTHER WHEREAS in accordance with the provisions of Article 132 of the Constitution and Standing Order No.150, the National Assembly considered and approved the Mediated Version of the Water (Amendment) Bill (National Assembly Bills No.33 of 2023) on Wednesday, 16<sup>th</sup> October, 2024 and in the form agreed to by the Mediation Committee on the Bill.

NOW THEREFORE in accordance with the provisions of Standing Order No.154 (b) of the National Standing Orders, I hereby convey the said decision of the National Assembly to the Senate-

Hon. Senators, as you may recall, during the sitting of the Senate on Tuesday, 22<sup>nd</sup> October, 2024, Sen. Beatrice Ogola, MP, on behalf of the Chairperson of the Mediation Committee, laid on the Table of the Senate the report of the Mediation Committee on the Water (Amendment) Bill (National Assembly Bills No.33 of 2023) and soon thereafter gave Notice of a Motion for adoption of the report and approval of the Mediated Version of the Bill.

The Vice-Chairperson of the Mediation Committee will, at an appointed time, move the Motion for adoption of the report and approval of the mediated version of the Bill as listed in the Order Paper. The House is guided accordingly.

Let us move on to the next Order.

### PAPER LAID

#### THE 3<sup>RD</sup> ANNUAL REPORT ON THE STATE OF PPPS FOR FY 2023/2024

**Sen. (Dr.) Khalwale:** Thank you, Mr. Speaker, Sir. I beg to lay the following Paper on the Table of this Senate today, the 24<sup>th</sup> October, 2024:-

The third annual report on the state of public-private partnerships, (PPPs), by the National Treasury and Economic Planning for the Financial Year 2023-2024.

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*(Sen. (Dr.) Khalwale laid the document on the Table)*

**The Speaker** (Hon. Kingi): Next order.

## QUESTIONS AND STATEMENTS

### STATEMENTS

**The Speaker** (Hon. Kingi): Statements Pursuant to Standing Order No.53 (1), Sen. Hamida Kibwana, proceed.

#### STATE OF FACILITIES AND SERVICES AT MAMA LUCY KIBAKI HOSPITAL IN NAIROBI

**Sen. Kibwana:** Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order 53(1) to seek a Statement from the Standing Committee on Health regarding the deplorable state of health services at the Mama Lucy Kibaki Hospital in Nairobi City County. Particularly, in the maternity wing, reports indicate severe overcrowding with as many as five patients sharing a single bed. Additionally, there are claims that patients are unable to fully access necessary facilities and are still being charged for services they could not utilize.

The situation raises serious concerns about the dignity, safety, and well-being of the patients relying on the hospital for essential maternity and general health care services.

It also highlights broader issues of inadequate healthcare infrastructure and staffing at the facility, which falls under the responsibility of the County Government of Nairobi. In the Statement, the Committee should-

(1) Report on the extent of overcrowding and the strain of facilities at the Mama Lucy Kibaki Hospital and provide a report on the noted constraints to service provision to Kenyans;

(2) Outline the measures being taken by the County Government of Nairobi to address the overcrowding, including immediate interventions and long-term plans to improve health care infrastructure and services at the hospital;

(3) Clarify the steps being taken to ensure the patients are not unfairly charged for services that they are unable to access due to current constraints; and,

(4) Recommend measures on how the national Government, through the Ministry of Health, can support the county government in improving service delivery at the Mama Lucy Kibaki Hospital.

Mr. Speaker, can I read the second Statement?

**The Speaker** (Hon. Kingi): Proceed, Sen. Kibwana.

#### LACK OF PRAYER ROOM FOR MUSLIM STUDENTS AT MOI GIRLS HIGH SCHOOL, NAIROBI

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**Sen. Kibwana:** Mr. Speaker, Sir, I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Education regarding the lack of a dedicated prayer facility for Muslim students at Moi Girls High School, Kibra Constituency in Nairobi City County despite Christian students having a designated space for fellowship.

This issue raises concerns about religious inclusivity and equity in public institutions in the country. It is important to ensure that all students, regardless of their faith, have equal access to facilities that support their religious practices as guaranteed by the Constitution.

In the Statement, the Committee should-

(1) Report on the steps the Ministry of Education is taking to provide Muslim students at Moi Girls High School in Kibra Constituency with a dedicated prayer room, similar to the facility available for Christian students;

(2) Clarify the Ministry's policy on ensuring religious inclusivity and equal access to facilities for students of all faiths in public schools across the country; and,

(3) Provide a timeframe within which the Ministry will address this issue and ensure that the Muslim students have a proper space for prayer and religious activities at the school.

I thank you, Mr. Speaker.

**The Speaker** (Hon. Kingi): Sen. Mwaruma, you may proceed.

#### ALTERATION OF BOUNDARY BETWEEN TAITA TAVETA AND KAJIADO COUNTIES

**Sen. Mwaruma:** Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.53(1) to seek a Statement from the Committee on Devolution and Intergovernmental Relations regarding the alteration of the Taita Taveta County and Kajiado County boundary at Rombo Ranch, following an agreement between the respective county governments on 4<sup>th</sup> July, 2020.

In the Statement the Committee should-

(1) Provide details of all registered boundary disputes that informed the alteration of the Taita Taveta County and Kajiado County boundary at Rombo Ranch;

(2) Disclose the details of public participation exercises undertaken by the respective county governments in respect of the boundary alteration, stating the dates and venues of the exercises, as well as the names and National Identification (IDs) numbers of participants;

(3) Clarify if the agreement entered into by the two county governments on 4<sup>th</sup> July, 2020 in respect to the boundary alteration is legally binding;

(4) Indicate whether the agreed-upon boundary alteration was deposited with the survey office, the Independent Electoral and Boundaries Commission (IEBC) and other relevant Government entities; and,

(5) State whether the process of boundary alteration complied with the legal framework for alteration of county boundaries, and if not, explain any remedial steps taken to revert to the originally delineated boundaries.

Mr. Speaker, I have another Statement to request.

OPERATIONS OF TAVEVO WATER COMPANY IN  
TAITA TAVETA COUNTY

**Sen. Mwaruma:** Mr. Speaker, Sir, I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Land, Environment and Natural Resources regarding the operations of Taita Taveta Voi (TAVEVO) Water Company in Taita Taveta County.

In the Statement, the Committee should-

(1) Inform the Senate of the billing calculation formula used by the TAVEVO Water and Sewerage Company to bill its customers;

(2) Explain the different classes of water billing, including but not limited to urban and rural consumers, large and small scale volume consumers, or any other classification in use; and finally,

(3) Provide details of the geographical area covered by the TAVEVO Water and Sewerage Company, and if possible, attach the map.

**The Speaker** (Hon. Kingi): Next Statement is by Sen. Onyonka.

Is Sen. Onyonka not here? That Statement is dropped.

STATE OF NAIROBI FUNERAL HOME

*(Statement dropped)*

**The Speaker** (Hon. Kingi): Sen. Onyonka had two Statements and both of them are dropped.

IMPLEMENTATION OF EDIBLE OIL CROPS  
PROMOTION PROJECT BY AFA

*(Statement dropped)*

**The Speaker** (Hon. Kingi): Sen. Allan Chesang, please proceed.

OPERATIONALIZATION OF MULTIPLE BANK  
ACCOUNTS BY TRANS NZOIA COUNTY EXECUTIVE

**Sen. Ogola:** Thank you, Mr. Speaker, for allowing me to read a Statement on behalf of Sen. Allan Chesang, the Senator of Trans Nzoia County.

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I rise, pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Finance and Budget regarding the opening and operations of bank accounts by the County Executive of Trans Nzoia County.

In the Statement, the Committee should-

(1) Provide a list of all bank accounts operated by the County Executive of Trans Nzoia County, stating the purpose of each bank account, the respective opening and closing balances for the FY2023/2024, opening balance for the FY2024/2025, as well as balance as at 1<sup>st</sup> October, 2024.

(2) Report on whether due process was followed in the opening of the bank accounts, providing evidence that all necessary authorizations required under the Public Finance Management Act and other relevant legislations were granted.

(3) Provide a list of all projects funded from these bank accounts, indicating the status of completion for each project.

(4) Disclose details of all short-term bank loans and overdrafts taken by the County Executive in the 2023/2024 and 2024/2025 financial years, providing justification for each bank facility and stating the applicable annual and monthly interest rates, as well as, the total interest cost.

(5) Indicate whether the County Executive sought and was granted approvals by the County Assembly of Trans Nzoia to take the short-term bank loans and overdrafts. If not, provide reasons for the same.

**The Speaker** (Hon. Kingi): Sen. Cherarkey, proceed.

#### INDEFINITE CLOSURE OF MOI UNIVERSITY

**Sen. Cherarkey:** Thank you, Mr. Speaker, Sir. I have very important Statements. Allow me to read them concurrently. Yours truly is an alumnus of Moi University. I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Education regarding the indefinite closure of Moi University due to a prolonged industrial strike by workers over alleged mismanagement of the university. In the Statement, the Committee should-

(1) Report on the current financial status of Moi University, providing reasons for the delayed payment of salaries and failure by the university to remit third-party deductions of more than Kshs4.1 billion.

(2) State the amount of money received by the university from the Government in the Financial Year 2024/2025, indicating the student enrolment at the university, particularly under the new university funding model framework.

(3) Provide a list of all assets, including commercial properties, land and estates owned and managed by the university, indicating the market value of each asset.

(4) Disclose all liabilities of the university, providing details of the sale agreement for the purchase of Rivatex East Africa Limited by the university, which is alleged to have been financed by a Kshs3 billion loan.

(5) State reasons for the delayed resolution of the industrial strike by workers of the university, explaining how the Government plans to address the situation and providing timelines for the reopening of the university.

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(6) Clarify whether students will be compensated for reporting in accordance with the university schedule and incurring costs, yet no learning has occurred.

#### STATUS OF DIGITISATION OF GOVERNMENT SERVICES

Mr. Speaker, Sir, I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee of Information, Communication and Technology regarding the status of digitization of Government services for enhanced transparency, efficiency and accessibility in line with Kenya's Digital Transformation agenda. In the Statement, the Committee should-

(1) Outline the standards used to assess the readiness of government services for digitization, as well as criteria used to prioritize the services to be digitized by the government.

(2) Disclose the criteria used to evaluate the success of the ongoing digitization of Government services, disclosing the strategies deployed to enhance performance, as well as the contingency plan for when the set targets are not achieved within the established timelines.

(3) State the challenges encountered so far during the digitization process, explaining how the experiences have informed future plans.

(4) Outline measures put in place to safeguard sensitive personal data uploaded on the digital platform provided by this service.

(5) Explain steps taken to bridge gaps in digital literacy among Kenyans and address the challenges faced by Persons with Disabilities (PWDs) to ensure and enhance equitable access to digital government services.

I hope Sen. Crystal Asige is listening to this part.

I thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Kingi): Senate Majority Leader.

#### BUSINESS FOR THE WEEK COMMENCING TUESDAY, 29<sup>TH</sup> OCTOBER, 2024

**Sen (Dr.) Khalwale:** Mr. Speaker, Sir, on behalf of the Senate Majority Leader, I rise pursuant to Standing Order No.57(1) to present the business of the Senate for the week commencing Tuesday, 29<sup>th</sup> October, 2024. The status of legislative business before the Senate is as follows-

(a) Fifty eight Bills are pending conclusion; of which 40 are at the Second Reading Stage, while 18 are at the Committee of the Whole stage;

(b) 32 Motions are pending conclusion;

(c) 25 Petitions are pending conclusion of which 19 are due for reporting by the respective Standing Committees; and,

(d) 424 Statements pursuant to Standing Order No.53 (1).

As hon. Senators are aware, in accordance with the Calendar for the Third Session, the Senate is scheduled to proceed on recess from 1<sup>st</sup> November, 2024 until 11<sup>th</sup>

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November, 2024. With that in mind, I urge all hon. Senators to prioritize Plenary sittings in the Chamber to ensure that we make progress on the business highlighted above.

Mr. Speaker, Sir, on Tuesday, 29<sup>th</sup> October, 2024, the Senate Business Committee (SBC) will meet to consider the business for the week. The tentative business for that day will include business not concluded from today's Order Paper as well as the business indicated in the Notice Paper.

The tentative business for the Morning Sitting on Wednesday, 30<sup>th</sup> October, 2024 will include the Schedule of Questions to Cabinet Secretaries as approved by the SBC, as well as Motions. The summary of Questions is as follows:-

(a) Question No.035 to the Cabinet Secretary for Education by Sen. (Dr.) Boni Khalwale, CBS, MP;

(b) Question No.036 to the Cabinet Secretary for Education by Sen. (Dr.) Boni Khalwale, CBS, MP;

(c) Question No.048 to the Cabinet Secretary for Education by Sen. (Prof.) Tom Ojienda, SC, MP;

(d) Question No.052 to the Cabinet Secretary for Education by Sen. Beatrice Ogola, MP;

(e) Question No.053 to the Cabinet Secretary for Lands, Public Works, Housing and Urban Development by Sen. Beatrice Ogola, MP;

(f) Question No.064 to the Cabinet Secretary for Education by Sen. (Dr.) Boni Khalwale, CBS, MP;

(g) Question No.071 to the Cabinet Secretary for Lands, Public Works, Housing and Urban Development by Sen. (Dr.) James Murango, MP;

(h) Question No.082 to the Cabinet Secretary for Lands, Public Works, Housing and Urban Development by Sen. Mwenda Gataya Mo Fire, MP;

(i) Question No.094 to the Cabinet Secretary for Lands, Public Works, Housing and Urban Development by Sen. James Lomenen, MP;

(j) Question No.095 to the Cabinet Secretary for Education by Sen. Mwenda Gataya Mo Fire, MP;

(k) Question No.098 to the Cabinet Secretary for Lands, Public Works, Housing and Urban Development by Sen. Edwin Sifuna.

(l) Question No.100 to the Cabinet Secretary for Education by Sen. Karungo Thang'wa.

(m) Question No.107 to the Cabinet Secretary for Education by Sen. Fatuma Dullo, CBS, MP.

(n) Question No.111 to the Cabinet Secretary for Education by Sen. George Mbugua.

(o) Question No.115 to the Cabinet Secretary for Education by Sen. Catherine Mumma.

(p) Question No.119 to the Cabinet Secretary for Lands, Public Works, Housing and Urban Development by Sen. Hamida Kibwana, MP.

The business for the Afternoon Sitting on Wednesday, 30<sup>th</sup> October, 2024, will include business not concluded in the Order Paper for Tuesday, 29<sup>th</sup> October, 2024 and the following-

(a) Bills at Committee of the Whole stage-

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- (i) The Street Vendors (Protection of Livelihood) Bill (Senate Bills No. 41 of 2023).
- (ii) The Local Content Bill (Senate Bills No. 50 of 2023).
- (iii) The Early Childhood Education (Amendment) Bill (Senate Bills No. 54 of 2023).
- (iv) The Land (Amendment) Bill (National Assembly Bills No. 40 of 2022).
- (v) The Intergovernmental Relations (Amendment) Bill (Senate Bills No. 12 of 2024).
- (vi) The Energy (Amendment) Bill (Senate Bills No. 42 of 2023).
- (vii) The National Disaster Risk Management Bill (National Assembly Bills No. 24 of 2023).
- (viii) The Co-Operative Societies (Amendment) Bill (Senate Bills No. 53 of 2023).
- (xi) The Political Parties (Amendment) (No. 2) Bill (Senate Bills No. 26 of 2024).
- (x) The Election Offences (Amendment) (No. 2) Bill (Senate Bills No. 28 of 2024).
- (b) Bills at the Second Reading stage –
  - (i) The Narcotic Drugs and Psychotropic Substances (Control) (Amendment) Bill (Senate Bills No. 1 of 2024).
  - (ii) The County Governments Election Laws (Amendment) Bill (Senate Bills No. 2 of 2024).
  - (iii) The County Oversight and Accountability Bill (Senate Bills No. 3 of 2024).
  - (iv) The County Civic Education Bill (Senate Bills No. 4 of 2024).
  - (v) The County Statistics Bill (Senate Bills No. 5 of 2024).
  - (v) The Provision of Sanitary Towels Bill (Senate Bills No. 7 of 2024).
  - (vi) The Statutory Instruments (Amendment) Bill (Senate Bills No. 10 of 2024).
  - (v) The County Assemblies Pensions Scheme Bill (Senate Bills No. 14 of 2024).
- (c) Motions
  - (i) Report of the Standing Committee on Energy on its inquiry into the Liquefied Petroleum Gas (LPG) explosion in Mradi Area, Embakasi, Nairobi City County.
  - (ii) Report of the Standing Committee on Labour and Social Welfare on an inquiry into the welfare of workers in Export Processing Zones (EPZs) in Mombasa and Kilifi Counties.
  - (iii) Report of the Standing Committee on Devolution and Intergovernmental Relations on its inquiry into personal security concerns raised by Hon. Philomena Kapkory, Deputy Governor, Trans Nzoia County.
  - (iv) Reports of the Standing Committee on Devolution and Intergovernmental Relations on its inquiry into the state of markets in Vihiga and Bungoma Counties arising from statements sought by Sen. Godfrey Osotsi, MP and Sen. David Wakoli, MP.
  - (v) Development of a policy and law for social risk management in infrastructure development projects in Kenya.
  - (vi) Consolidation of bursary funds for equitable access to education in Kenya.

(vii) The projected business for Thursday, 31<sup>st</sup> October, 2024 will include business not concluded in the Order Papers for Tuesday, 29<sup>th</sup> October, Wednesday, 30<sup>th</sup> October, 2024, and any other business scheduled by the Senate Business Committee.

I thank you and hereby lay the Statement on the Table of the Senate on behalf of Sen. Cheruiyot, the Senate Majority Leader, today, 24<sup>th</sup> October, 2024.

*(Sen. (Dr.) Khalwale laid the document on the table)*

**The Speaker** (Hon. Kingi): Hon. Senators, I will allow comments for 15 minutes. We may have to agree on the time per Senator to speak for two minutes. So, I am going to allow comments for 15 minutes with each Senator speaking for a maximum of two minutes. Sen. Mwaruma, proceed.

**Sen. Mwaruma:** Mr. Speaker, Sir, when the Statement by the Majority Leader was being read, he kept referring to the Committee on Land, Public Works, and Housing and Urban Development. What I want to clarify is whether that Committee has been changed because ordinarily, the Committee is called Lands, Environment, and Natural Resources. I just wanted that clarification.

**The Speaker** (Hon. Kingi): Senator for Nandi, proceed.

**Sen. Cherarkey:** Mr. Speaker, Sir, in August, 2024, I tabled a letter that I had written to the Parliamentary Joint Services (PJS). I have not received any feedback. Noting that the Senate is in session and the National Assembly is not, the services are slow. Early this week, when we resumed on Tuesday, the health club was closed. The food was not available and we had a power outage. We were told somebody who had the key to the generator was not in the house.

Mr. Speaker, Sir, I have noticed on the *Facebook* page called “Parliament of Kenya” they carried a story that the Speaker of the National Assembly attended the Mashujaa Day celebrations, but they did not see your picture or even mention that you were part of the attendees, including our Majority Leader.

We are wondering whether the PJS is only working for the National Assembly. Whenever we are in session, even getting a cup of tea is hard. It is like we are not part of time. It is high time the PJS be disbanded because it is unconstitutional and illegal.

When Exchequer releases are made, let it be subdivided between the Senate and the National Assembly. We have you - and we believe in you - the Clerk and the House leadership to protect us. We are subject to ridicule. When you go to the health club, you are not given proper attention. They simply assume that when the National Assembly is not in session, Parliament is not sitting. There are minor issues like updating *Facebook*, to show that you are part of the people who accompany the President. Do you know this can undermine some of us politically, including you, people imagining that you are not loyal?

I also need direction on the letter that I tabled. I needed to know from the PJS the issue of the security layout. Remember there was a security breach in this House on 26<sup>th</sup> June, 2024. No one gave out the security layout.

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Two, I need to see the insurance coverage in terms of the repairs to the chambers of this House. I want to request that Members are together on this. The PJS is undermining the Senate and no wonder they are sponsoring a Bill proposing that the Senate be abolished. You have seen the Committee on Justice and Legal Affairs of the National Assembly coming up with a Bill to abolish us. We are facing an imminent threat. I need your direction, so that this House is accorded dignity and respect, so that we can discharge our work.

I thank you.

**The Speaker** (Hon. Kingi): Senator for Nandi County, that matter was discussed during the Senate Business Committee (SBC) meeting and I understand that instructions were given to make sure that the services are offered without any interruption, despite the fact that the National Assembly is on recess. If there are any instances that hon. Senators are getting services that are not up to standard, then we can pick those specific complaints and handle them.

Let us make progress, Hon. Senators---

*(Loud Consultations)*

When you are given an opportunity to make a comment in the Statement, you can incorporate that, because we need to make progress. Sen. Olekina, if you wish to use your two minutes on what has been raised, it is up to you.

**Sen. Olekina:** Mr. Speaker, Sir, my two minutes are to be used on important matters. I wish to comment on the Statement by Sen. Kibwana on the status of Mama Lucy Kibaki Hospital.

Mr. Speaker, Sir, in your Communication this afternoon, you indicated to us that the National Assembly has rejected the amendments to the Division of Revenue Act (DORA) that we proposed. I request that the Members who you will appoint to the Mediation Committee remain focused because we need money to go to our hospitals.

We do not want a situation where three or four parents are sharing a bed---

**The Speaker** (Hon. Kingi): Order, Hon. Senator for Nakuru County.

**Sen. Olekina:** I plead with our colleagues here that this time round, we need to think about how we can ring-fence money to support our hospitals. In my county of Narok, we have a hospital, which was funded by the World Bank. It is not complete. We need to understand what our priorities are and healthcare should be one among them. I sit in the Standing Committee on Health and I hope we can actually discuss how to ring-fence money.

We need to improve the bed capacity. There was a point when people were talking about Mama Lucy Kibaki Hospital only having 216 beds. That was increased a little bit, but the population - people are migrating. There is a lot of rural-urban migration into the city. With that in mind, we have to think as a House that protects devolution and healthcare. We need to find a way to reduce the money which is allocated to the Ministry of Health because the budget allocated to the Ministry is almost six or seven times the amount of money which is allocated to county governments---

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*(Sen. Olekina's microphone switched off)*

**The Speaker** (Hon. Kingi): Sen. Methu, proceed.

**Sen. Methu:** Thank you, Mr. Speaker, Sir. Allow me to comment on the two Statements that have been sought by our brother the Senator for Nandi County. I will start with this Statement that has been sought on the indefinite closure of Moi University. As the Standing Committee on Education looks at the particulars that have been raised by the Hon. Senator; if there is one part of what we as government, or we in leadership must really focus and put our energies on, is education.

Mr. Speaker, Sir, education equalizes most of us and has brought us here. I am happy that this Statement has been sought by an alumnus of Moi University. I would be particularly interested in the particulars of what has been sought here. I do not know whether, this could also be extended to the Standing Committee on Labour and Social Welfare because one of the issues that has been raised here - a very pertinent one - is the prolonged industrial strike by workers.

I would really like to see how the Committee will deal with this one aspect of this Statement; the state of the amount of money received by the university from the government in the Financial Year 2024/2025, indicating the student enrollment at the university, and particularly under the new university funding framework.

Mr. Speaker, Sir, Moi University is a big institution. The enrollment is actually very massive. I wonder, if a university that has such a huge enrollment is struggling in its running and it can be closed indefinitely because the workers are not there, what would become of the other smaller universities that do not have a big enrollment as Moi University?

This is a matter that is pertinent. I am sure--- I would be happy to be informed by the Senator from Uasin Gishu County.

**The Speaker** (Hon. Kingi): Proceed, Senator for Uasin Gishu County.

**Sen. Mandago:** Thank you, Mr. Speaker, Sir and Senator for Nyandarua County for allowing me to inform him. Moi University is actually no longer the university with the highest enrollment. In fact, Moi University has the least number of students with only about 4,600 as we speak today.

I thank you.

**Sen. Methu:** Mr. Speaker, Sir, that is actually very relevant information because Moi University has been listed as one of the academic giants that we have around. That is why it has given us the people who lead in this House, led by the Senate Majority Leader, Sen. Cheruiyot. It is very sad that it has sunk---

*(Sen. Methu's microphone switched off)*

**The Speaker** (Hon. Kingi): Just one minute, Sen. Methu.

**Sen. Methu:** Thank you, Mr. Speaker, Sir. It is very sad that a giant at the level of Moi University has sunk to being closed indefinitely for this long and this matter cannot be addressed. We need to understand what exactly is happening to Moi

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University. The root cause must be looked into. I have seen that they even have a loan to the tune of Kshs3 billion.

We need to understand how they secured this kind of a loan, how they spent this kind of money and what they did with Rivatex East African Limited. These are issues that would make such an institution sink this deep.

I submit.

**The Speaker** (Hon. Kingi): Sen. Sifuna proceed.

**Sen. Sifuna:** Mr. Speaker, Sir, every time I have stood here, I have always implored my colleagues to always remember that we exist in a certain context. You cannot be tone deaf. On an afternoon when somebody has just brought a Statement here on the dire state of affairs at the Mama Lucy Kibaki Hospital in terms of the capacity to hold our women giving birth, then Members stand up and start claiming that they have not been able to access tea, mandazi or a health club.

Mr. Speaker, Sir, as a member of the SBC, I am going to be pushing very hard that the conduct and pronouncement of certain Members, even the Bills that they bring before this House, are accosting the image of this House, because they are tone deaf. How can somebody just stand up out of nowhere, propose a constitutional amendment to extend his own term when he is here and was elected for five years?

Then the rest of us are supposed to be dragged through this shame because people are looking for clout, bringing very useless Bills here instead of addressing the things that are facing wananchi. This is why I want to encourage our colleagues, because the majority of the Members of this House know what brought them here.

Some of us have never even gone to a sauna; a Bukusu man like myself. What is a sauna? I do not know. That is not why I was sent here. I was sent here to bring money for the people of Nairobi so that the Governor can complete the new maternity wing at Mama Lucy Kibaki Hospital. We need to call out these Members who repeatedly bring shame to this House by bringing up ridiculous ideas and thoughts and painting them as if they are the thinking of the entire House. This is not why we were elected.

**Sen. Olekina:** Yes. Very good.

**The Speaker** (Hon. Kingi): Sen. Mungatana, proceed.

**Sen. Mungatana. MGH:** Thank you, Mr. Speaker, Sir, for giving me the opportunity. I wanted to comment on the Statement from the Senator for Trans Nzoia County on the numerous bank accounts that that county has. The same fate is befalling Tana River County. Tana River County has 34 accounts that the Executive operates, which is contrary to the provisions of the Public Finance Management (PFM) Act.

Even the Auditor-General has called them out, but so far, the Executive has not tried or even attempted to close down some of those accounts. I am asking the relevant committee; when they are dealing with the issue of Trans Nzoia County Government, to as well deal with Tana River County, with a view to closing down and bringing the relevant officers to account.

I thank you.

**The Speaker** (Hon. Kingi): Sen. Faki, proceed.



**Sen. Faki:** Asante, Bw. Spika, kwa kunipa fursa hii kuchangia Taarifa iliyoletwa na Seneta Hamida. Maswala ya afya yanazidi kudorora katika kaunti zetu. Sio Mama Lucy Kibaki Hospital peke ambapo huduma zimelemaa na kuwa na ukosefu wa fedha.

Tunapozungumza sasa hivi, hospitali ya Mrima, Likoni, Kaunti ya Mombasa, kina mama waliojifungua wamezuiliwa katika hospitali hiyo kwa sababu hawajalipa gharama za kujifungua. Mradi wa Linda Mama ulikua unasaidia kina mama kujifungua katika hospitali zetu na mbali na kutolipishwa, walikua wakitoka hospitali na zawadi ndogo ndogo za kusaidia maisha yao. Kwa hivyo, kuna umuhimu wa hili swala la afya kuangaliwa kwa undani zaidi. Kila tunapochelewa kumaliza maswala ya Division of Revenue Act (DORA), ina maana kwamba, fedha zitaendelea kuchelewa katika kaunti zetu na huduma zitaendelea kudorora.

Bw. Spika, kuna malipo ya National Health Insurance Fund (NHIF) ambayo sasa inaitwa Social Health Insurance Fund (SHIF) yamesimamishwa kwa sababu hospitali hazilipi malimbikizo ya pesa zinazodaiwa. Ni muhimu Waziri wa Afya kuja hapa Bunge hili kueleza ni kwa sababu gani mradi wa Linda Mama umesimama na ni lini watalipa malimbikizo ya pesa ya NHIF ili hospitali zetu ziendeleo kutoa huduma kwa wananchi bila matatizo.

**The Speaker (Hon. Kingi):** Sen. Veronica Maina.

**Sen. Veronica Maina:** Thank you, Mr. Speaker, Sir. I rise to support the Statement brought to the Floor of this House by Sen. Hamida on the state of facilities at Mama Lucy Kibaki Hospital.

It is terrible to imagine that hospital is overcrowded, that mothers who are giving birth have to share beds. A man may not understand what kind of an experience women have when they are delivering babies. If a budget was to be directed to any facility in this Republic, it must look at the maternity wings that are in this nation.

I urge the Governor of Nairobi City, together with the national Government to ensure that Mama Lucy Kibaki Hospital is supported by an independent maternity wing, which is fully-fledged with facilities, in order to support mothers and ensure that we reduce the infant mortality rate; and we can make giving birth a safe experience for mothers.

Giving birth to a Kenyan child is a sacred duty that must be fully supported and given due regard and the care that mothers should have. I urge all hospitals in all the 47 counties where women are being held because of hospital bills after giving birth, to release them forthwith and no woman should be held in a hospital because they cannot pay for their maternity bills.

*(Interruption of Statements)*

**The Speaker (Hon. Kingi):** Allow me to make the following Communication.

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**COMMUNICATION FROM THE CHAIR**VISITING DELEGATION FROM KALYONGWET  
SECONDARY SCHOOL, KERICHO COUNTY

I acknowledge the presence in the Public Gallery this afternoon, of visiting teachers and students from Kalyongwet Secondary School in Kericho County. The delegation comprises two teachers and 14 students, who are in the Senate for a one-day academic exposition.

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

I will allow the Senate Majority Leader, in under one minute, to extend words of welcome.

**The Senate Majority Leader** (Sen. Cheruiyot): Mr. Speaker, Sir, I join you in welcoming these students from Kalyongwet Secondary School in Soin/Sigowet Sub-County, very close to my home.

I hope in their visit to the Senate, they have an opportunity to learn about business as we transact it. They are lucky because this afternoon, they will get an opportunity that many visiting delegations do not get, to see us legislate and pass laws.

We are about to do a Third Reading or vote on a mediated version of the Sugar Bill and these students come from a sugarcane growing area. I hope it will be a welcome lesson to them and they will appreciate the art of law making.

I thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Kingi): Thank you. Hon. Senators, as directed, we will interrupt on Order No.8 and move to Order No.9. Upon conclusion of Division, we will resume debate under Order No. 8.

Clerk, call that Order.

**MOTION**ADOPTION OF THE MEDIATION COMMITTEE REPORT ON  
THE SUGAR BILL (NATIONAL ASSEMBLY BILLS NO.34 OF 2022)

THAT, the Senate adopts the Report of the Mediation Committee on the Sugar Bill (National Assembly Bills No.34 of 2022), laid on the table of the Senate on Tuesday, 22nd October, 2024, and further that pursuant to Article 113 (2) of the Constitution and Standing Order 167 (3) of the Senate, approves the mediated version of the Bill.

*(Sen. Wafula on 22.10.2024)*

*(Resumption of debate interrupted on 23.10.2024 - Afternoon Sitting)*

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**The Speaker** (Hon. Kingi): Sen. (Dr.) Khalwale, were you the Mover?

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, the Mover of the Motion is accompanying the President to an official function, and I was the seconder. I, therefore, request that I be allowed to reply. This Motion has captured the imagination of this House and all Senators have spoken in support.

The Senators who come from Tana River, Kwale, Kisumu, Homa Bay, Busia, Kakamega, Bungoma and Trans Nzoia are indeed indebted to you. These are the counties that host eight million Kenyans whose livelihoods is the sugar industry. We also thank you, on behalf of the business people who are involved in regular and legal importation of sugar, including other stakeholders like the motor vehicles and *boda boda* industries and the school children who live around this industry.

Mr. Speaker, Sir, 400,000 small scale farmers were at risk because of the AFA law. With this amendment, everything has been made right and I thank everyone.

I, therefore, wish to reply. I thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Kingi): Serjeant-at-Arms, kindly ring the Division bell for two minutes.

*(The Division Bell was rung)*

Hon. Senators, this is a matter that affects counties and, therefore, voting shall be by delegations.

Sen. Mariam and Sen. Beatrice Akinyi, you have been given rights to vote, so you will vote from your seat. You do not have to come to the Dispatch.

Serjeant-at-Arms, you may now close the door and draw the Bar.

*(The door was closed and the bar drawn)*

**The Speaker** (Hon. Kingi): Hon. Senators, please, take your seats, so that I can put the question before you vote.

*(Question put and Senators proceeded to vote by county delegations)*

*(Voting in progress)*

## DIVISION

### ELECTRONIC VOTING

#### ADOPTION OF THE MEDIATION COMMITTEE REPORT ON THE SUGAR BILL (NATIONAL ASSEMBLY BILLS NO.34 OF 2022)

*(Question, that the Senate adopts the Report of the Mediation Committee on the Sugar Bill (National Assembly Bills No. 34 of 2022), laid on the Table of the Senate on Tuesday, 22<sup>nd</sup> October, 2024, and further that, pursuant to Article 113 (2) of the*

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*Constitution and Standing Order 167 (3) of the Senate, approves the mediated version of the Bill, put and the Senate proceeded to vote by county delegations)*

**AYES:** Sen. Abass, Wajir County; Sen. Cheptumo, Baringo County; Sen. Cherarkey, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Chute, Marsabit County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. Gataya Mo Fire, Tharaka-Nithi County; Sen. Githuku, Lamu County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kisang, Elgeyo Marakwet County; Sen. Madzayo, Kilifi County; Sen. Mandago, Uasin Gishu County; Sen. Mariam Omar, Mandera County; Sen. Methu, Nyandarua County; Sen. Mungatana, MGH, Tana River County; Sen. Murgor, West Pokot County; Sen. Mwaruma, Taita-Taveta County; Sen. Ogola, Homa Bay County; Sen. Oketch Gicheru, Migori County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. Osotsi, Vihiga County; Sen. Seki, Kajiado County; Sen. Sifuna, Nairobi City County; Sen. Tabitha Keroche, Nakuru County; and, Sen. Wamatinga, Nyeri County.

**NOES:** Nil

**The Speaker** (Hon. Kingi): Hon. Senators, the results of the Division is as follows-

**AYES:** 27

**NOES:** Nil

**ABSTENTIONS:** Nil

The “Ayes” have it.

*(Question carried by 27 votes to Nil)*

**The Speaker** (Hon. Kingi): Serjeant-at-Arms, you may now open the door and undrawn the Bar.

*(The door was opened and bar undrawn)*

Hon. Senators, we shall resume debate on the Statements.

Sen. Eddy Okech, please proceed.

*(Resumption of Statements)*

**Sen. Oketch Gicheru:** Mr. Speaker, Sir, thank you for this opportunity. I would like to make a comment on the Statement by Sen. Hamida on the pathetic and deplorable state of Mama Lucy Kibaki Hospital.

Mr. Speaker, Sir, currently in Mama Lucy Kibaki Hospital, there is a new maternity wing that is being developed with 120 beds. This maternity wing that is being developed has a vision of two operating theatres, six delivery beds, 10 burn units, and a 60-bed maternity lounge for pre-term babies.

This new maternity wing is being built at approximately Kshs344 million. In the last financial year, they only got Kshs70 million. What is the problem in this case? It is

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simply an issue of money. This is the time that the Senate must stand with all hospitals across the country and make sure that those who will be sent to mediate the Division of Revenue (DoRA) Bill, ensure that we give counties money and we do not go below Kshs400 billion. The key issue here is money going to counties.

In fact, there is a stalled Nairobi Metropolitan Services (NMS) neonatal Intensive Care Unit (ICU) in Mama Lucy Kibaki Hospital. This mirrors the ongoing stalled projects that we see across county hospitals. Even in Migori County, there comes a time when even paying bills as simple as electricity bills---

**The Speaker** (Hon. Kingi): Sen. Orwoba, please, proceed.

**Sen. Orwoba:** Mr. Speaker, Sir, as I stand to support the Statement, I beg that I be added one minute for the sake of all the unborn children out there, including the one that I am carrying.

As I stand here, it pains me to be the individual that says that I am disappointed, not only in the County Government of Nairobi City, because Governor Sakaja is a Governor under United Democratic Alliance (UDA), my party.

I am disappointed because time and time again, we bring issues that are dealing with women and children, and particularly women. I feel as though we are talking to people who are not hearing us. I am carefully trying to put out the issues without being political. As Kenya Kwanza, we signed a women charter in which we promised the 27 million women of Kenya that we will deliver maternal health care.

Mr. Speaker, Sir, the images coming from Mama Lucy and other hospitals when it comes to maternal health care are very sad. I asked for one more minute because in as much as this is an issue of funds and county allocation, as a national Government, Kenya Kwanza, we have an intention to address the women of Kenya.

To date, we do not even have a Cabinet Secretary for Gender. This is how much we think about women. It is as if those are not issues that should be discussed. There is hope. I want to ask Governor Sakaja to---

*(Technical hitch)*

Pumwani Hospital had the same problems. Pumwani Hospital where I attend my antenatal clinics, has made a turnaround from all the horror stories that we used to hear. It has tried and made an intentional approach. I urge Governor Sakaja to perhaps go and sit with those people in Pumwani, if they need to benchmark, so as to do something.

We are talking about beds and facilities at Mama Lucy facility. It is an issue of understanding the number of people they are serving and to ensure that pregnant women like me, who are waiting to deliver--- I like what Sen. Veronica said, that our duty to bring forth life---

Mr. Speaker, Sir, I asked for one minute on behalf of women.

**The Speaker** (Hon. Kingi): Third one now. You have three seconds to conclude.

**Sen. Orwoba:** Mr. Speaker, Sir, three seconds? Even as we deliver---

**The Speaker** (Hon. Kingi): Proceed, Sen. Osotsi.

**Sen. Osotsi:** Mr. Speaker, Sir, I want to comment on the Statement by Sen. Cherarkey regarding the status of Moi University. It is sad to hear what is happening at

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Moi University, being one of our premier universities in this country. However, the status of Moi University should inform us, as politicians, not to interfere with education institutions.

Mr. Speaker, Sir, we remember one Prof. Laban Ayiro, who is my constituent and a very renown Professor who wanted to turn around Moi University. However, he was ejected from that university because of tribalism. Now, the Professor has converted Daystar University to be the Kenyan equivalent of Harvard University. That tells you that as leaders, we should stop interfering with the running of our universities. We should make them purely academic without any political interference.

**The Speaker** (Hon. Kingi): What is your point of order, Sen. Mandago?

**Sen. Mandago:** Mr. Speaker, Sir, I have heard the Senator for Vihiga making allegations that Prof. Ayiro was chased out of Moi University because of tribalism.

I rise under Standing Order No.105 because that university falls squarely in my county and I am a politician from that county. Can he substantiate? What is the place of interviews in terms of selection of vice chancellors in this country?

**The Speaker** (Hon. Kingi): Sen. Osotsi, kindly proceed to substantiate.

**Sen. Osotsi:** Mr. Speaker, Sir, the Senator for Uasin Gishu should first of all declare conflict of interest in this matter.

*(Applause)*

When the good Professor was being ejected from the university, he was the Governor of Uasin Gishu and was among the politicians who ejected the good Professor from that university. Prof. Laban Ayiro is my constituent. I have a right to defend him.

*(Loud consultations)*

I am ready to defend him anywhere, including on the moon.

**The Speaker** (Hon. Kingi): Sen. Osotsi, you have made one more allegation. The first one was that the good Professor was chased away from the university on tribal basis. Secondly, that the Senator for Uasin Gishu County, Sen. Mandago, was directly involved in chasing away the Professor. You need to substantiate those two allegations.

**Sen. Osotsi:** Mr. Speaker, Sir, I am talking about facts and the truth will set me free. I am ready to substantiate. It is common knowledge that Sen. Mandago was the then governor of Uasin Gishu and together with the then Senator, participated in ejecting Prof. Laban Ayiro from Moi University.

**Sen. (Dr.) Khalwale:** On a point of information, Mr. Speaker, Sir.

**Sen. Osotsi:** I am ready to substantiate next week. I would like Sen. (Dr.) Khalwale to inform me.

**The Speaker** (Hon. Kingi): Hon. Osotsi has requested for time, so that he can substantiate. Sen. Osotsi, you will proceed to substantiate next week.

Sen. (Dr.) Khalwale, you can proceed to inform Sen. Osotsi.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I want to thank the Senator for Vihiga for accepting to be informed. We should recall that a few days ago, we voted to remove

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Deputy President and tribalism was on the card. A video has been doing rounds and the person depicted is the Senator for Uasin Gishu, former Governor Mandago.

Mr. Speaker, Sir, that video is recalling the role he played in removing Prof. Ayiro. We should call out the Senator for Uasin Gishu because of the seriousness of tribalism. I was in this House and I remember that we moved a Motion. We called out---

*(Loud consultations)*

I am informing.

**The Speaker** (Hon. Kingi): Order, Hon. Senators. Sen. Boni, take your seat.

Senator for Nandi, you cannot rise on a point of order against a point of information. Now, very serious allegations have been made by the Senator for Vihiga. He has requested for time to enable him substantiate.

Sen. Boni, what you are passing does not amount to information.

*(Loud consultations)*

I have not had the advantage of looking at the video, so you cannot even refer to it. We will allow Sen. Osotsi to substantiate next week. If you look at the Standing Orders, it is very clear. We go by our Standing Orders, Majority Leader.

Let us leave it there. Sen. Osotsi, your time had run out.

Senate Majority Leader, you may proceed to take your two minutes.

**The Senate Majority Leader** (Sen. Cheruiyot): Mr. Speaker, Sir, I wanted to speak about Mama Lucy Kibaki Hospital, but I have been distracted by the very unnecessary attacks on a colleague by none other than hon. Boni Khalwale.

Mr. Speaker, Sir, you cannot allow that to remain on record. On discussing a colleague, provisions are clearly provided for in our Standing Orders. If Sen. (Dr.) Boni Khalwale wanted to discuss the conduct of Sen. Jackson Mandago, it is provided for in our Standing Orders.

Mr. Speaker, Sir, why are you allowing this to be a marketplace, where I can rise and begin to discuss anybody, including your conduct? That is not right.

**The Speaker** (Hon. Kingi): Senate Majority Leader, take your seat. You will resume your contribution.

Two allegations had been made. One, that the professor had been ejected from Moi University based on tribalism and the second allegation was directed to the Senator for Uasin Gishu. I directed Sen. Osotsi to substantiate, which he sought time.

On the issue of Sen. Mandago being brought here, we will hear the substantiation when we resume next week. Regarding the information that the Senator for Kakamega was trying to help Sen. Osotsi with, that does not amount to any information to be passed. That information was not helpful to Sen. Osotsi, to the extent that it touches on the conduct of a Senator in this House.

Consequently, Sen. (Dr.) Khalwale, you need to retract that statement and allow Sen. Osotsi to come and substantiate his allegations. Just retract and take your seat; no speeches.

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**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I can never retract that statement because it is a fact.

**The Speaker** (Hon. Kingi): Sen. Boni, you are out of order. I will ask you to leave the Chamber for the rest of today's Sitting.

*(Sen. (Dr.) Khalwale withdrew from the Chamber)*

*(Loud consultations)*

Senate Majority Leader, you may proceed.

**The Senate Majority Leader** (Sen. Cheruiyot): Mr. Speaker, Sir, thank you for granting Sen. (Dr.) Khalwale a chance to go and enjoy his favourite glass of *chang'aa* early in the day.

Mr. Speaker, Sir, can I quickly---

**The Speaker** (Hon. Kingi): Senate Majority Leader, you are discussing the conduct of Sen. Boni.

**The Senate Majority Leader** (Sen. Cheruiyot): But he enjoys *chang'aa*, and that is a fact.

*(Laughter)*

**The Speaker** (Hon. Kingi): Order, hon. Senators.

Senate Majority Leader, proceed to retract that statement.

**The Senate Majority Leader** (Sen. Cheruiyot): Mr. Speaker, Sir, I withdraw the word "*chang'aa*" and replace it with "his favourite drink", which is known anyway.

**The Speaker** (Hon. Kingi): Senate Majority Leader, you have one minute to conclude.

**The Senate Majority Leader** (Sen. Cheruiyot): Mr. Speaker, Sir, let me quickly go to more serious issues. I want to add my voice to the issue of Mama Lucy Kibaki Hospital (MLKH) that has been brought by Sen. Kibwana.

Where MLKH sits today is where I used to play football as a young boy from the age of two up to the time I became an adult. People being served in that particular hospital today are friends that I grew up with. If I were not a Senator in this House, perhaps, I would be doing other duties like what has been brought by this Senator.

I plead with the Chairperson of the Committee on Health to treat this matter with the urgency that is needed. If up to four or five citizens of this Republic are sharing one hospital bed, then the intervention by the county government and the national Government is urgently needed to alleviate the suffering being faced by the citizens.

Mr. Speaker, Sir, I beg Sen. Mandago and his Members of the Committee on Health to treat this matter with the urgency that it deserves.

I thank you.

**The Speaker** (Hon. Kingi): Proceed, Sen. Ogola.



**Sen. Ogola:** Mr. Speaker, Sir, as I support Sen. Kibwana's Statement, I want to congratulate all the men in our lives, especially the special man in the life of Sen. Gloria Orwoba, who is going to give birth to a new Kenyan very soon.

My problem is that I keep wondering whether it is fair that 60 years after Independence, women have to deliver in distress. The nine months that we go through while pregnant are enough distress. If two mothers who have delivered share a bed, it means there are two plus two youngsters sharing a bed. This is not only peculiar to the hospital that has been mentioned. It is the same case all over the country.

In my own sub-county, I had a case of a mother giving birth at night in the darkness because there was no electricity, the generator had no diesel and they have no solar panel. You can imagine the distress our women go through as they deliver. The Committee on Health must look at such cases not just limited to MLKH, but all the hospitals.

Mr. Speaker, Sir, I also want to support the Statement by Sen. Mwaruma, that issues of boundaries must be looked into. I keep wondering when the Independent Electoral and Boundaries Commission (IEBC) is going to be in place, so that the issues of boundaries are resolved once and for all.

I thank you.

**The Speaker** (Hon. Kingi): Proceed, Sen. Chute.

**Sen. Chute:** Mr. Speaker, Sir, allow me to support the Statement by the distinguished Sen. Kibwana. Health issues are a big problem in this country. The MLKH issue is not just the only one facing this country.

A few days ago, a hospital in Laisamis Constituency had a problem. Two people died because of a problem that could be managed easily. The two died because they did not have drugs to treat snakebites or antivenom.

If you look at hospitals around this country, there are many problems. When the national Government was running the hospitals, problems were not much. I even said this about three weeks ago. Currently, when you go to a hospital, you are given a list of what you should have. It could include bedsheets, pillows, slippers, mugs, vaccines and many other things. I do not know where we are heading.

On the issue of SHIF, I think this is the best thing so far that our President has done. We also have Pay As You Earn (PAYE), where you pay according to your salary and that is okay.

The problem we are facing currently is that if you go to a hospital, you may not be given any service because---

*(Sen. Chute's microphone went off)*

**The Speaker** (Hon. Kingi): Sen. Kisang, you have the Floor.

**Sen. Kisang:** Mr. Speaker, Sir, I want to comment on the Statement about Moi University. In the late 1980s, 1990s and early 2000s, Moi University was a premier university, second to the University of Nairobi (UoN). I do not know what they thought to buy Rivatex East Africa Limited. They took a loan of Kshs3 billion to buy Rivatex East Africa Limited, but they were not in the textile business.

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As leaders, especially from the region and across the country, it is important to leave institutions of higher learning independent, so that they can run professionally. An institution like Rift Valley Technical Training Institute (RVTTI) is now bigger than Moi University. Right now, the Eldoret National Polytechnic has more students than Moi University.

When the position for Vice Chancellor for Moi University was announced, somehow leaders from that region, including myself, could have influenced that because we wanted our own, which was wrong. We should have left the Public Service Commission or the University Council to competitively employ and get a proper person to run the university. Recently, Moi University students went on strike. They wanted the former acting Vice Chancellor, who is now at Daystar University, to go back and save the university. We should be truthful to ourselves.

**The Speaker** (Hon. Kingi): Proceed, Sen. Tabitha Keroche.

**Sen. Tabitha Keroche:** Thank you, Mr. Speaker, Sir, for giving me this opportunity. I also want to support the Statement by Sen. Kibwana. She has talked about MLKH. As my fellow Senators have put it, we should be careful and serious about hospitals across board, especially those offering maternity services.

When you talk about MLKH, I think of Nakuru County where we have Margaret Kenyatta Mother-Baby Wing at the Nakuru Level 5 Hospital. It has over 320 beds and it is one of the best hospitals we have in this country. It was built during the last regime and it cost about Kshs300 million.

Mr. Speaker, Sir, since the current administration came into power, the services of hospitals have gone down due to the disruption of the medical personnel. Some of them were fired and other medical doctors or medical workers in the Margaret Kenyatta and Mothers-Baby unit were employed. Their qualifications are in doubt and there is mismanagement of the funds collected daily.

So, the question is, we can understand when you come to Sen. Sakaja in Nairobi City County, but the counties that are led by women governors, who understand what women go through, to bring forth newborn babies to this world---

**The Speaker** (Hon. Kingi): Proceed, Sen. Abass.

Sen. Tabitha Keroche, you had your two minutes.

**Sen. Abass:** Thank you, Mr. Speaker, Sir. I do not mind giving her one minute.

**The Speaker** (Hon. Kingi): Sen. Tabitha Keroche, proceed to take one minute from Sen. Abass.

**Sen. Tabitha Keroche:** Thank you, Mr. Speaker, Sir, for giving me that opportunity.

Mr. Speaker, Sir, we will not allow counties led by lady governors to have the maternity hospitals deteriorate under our watch, when we know they understand what mothers go through to bring forth newborns. Like now, we have one of ours, Sen. Gloria Orwoba, who can attest to this. Those of us who have given birth also know.

The Standing Committee on Health led by Mandago needs to understand that when he brings these Motions here, he should ensure that he follows them up. We have a memorial hospital in Nakuru County that everybody has been crying about---

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

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**The Speaker** (Hon. Kingi): What is out of order about the Hon. Senator for Nakuru County?

**Sen. Methu:** Mr. Speaker, Sir, I would not have wanted to disrupt my neighbour, but for records, Standing Order No.101(6) says-

“A Senator shall refer to another Senator by the title Senator.”

We all heard the Senator for Nakuru County, our Senate Deputy Majority Leader, refer to the Chairperson of the Senate Committee on Health as Mandago. That is grossly out of order.

**The Speaker** (Hon. Kingi): Sen. Tabitha Keroche, kindly correct that statement.

**Sen. Tabitha Keroche:** Thank you for reminding me. It is because of the way I am annoyed, but I understand.

Sorry, Sen. Mandago, the Chairperson of the Senate Committee on Health.

The Chairperson of the Senate Committee on Land, Environment and Natural Resources, there have been complaints about the Nakuru War Memorial Hospital. The Chairperson, Senate Standing Committee on Land, Environment and Natural Resources, you need to do your work. The Chairperson, the Senate Standing Committee on Health, Sen. Mandago, you need to do your work, the Nakuru people are crying because of you. We need to see you down in Nakuru.

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

*[The Temporary Speaker (Sen. Veronica Maina) took the Chair]*

**Sen. Abass:** Madam Temporary Speaker, I want to join my colleagues in supporting the Statement by Sen. Hamida Kibwana.

**The Temporary Speaker** (Sen. Veronica Maina): Sen. Abass, were you allowed to take the Floor?

**Sen. Abass:** Yes, Madam Temporary Speaker. I gave one minute to Sen. Tabitha Keroche, the Senator for Nakuru County.

**The Temporary Speaker** (Sen. Veronica Maina): Okay, proceed.

**Sen. Abass:** Madam Temporary Speaker, I want to support the Statement by Sen. Kibwana. As you are aware, it is not only the Mama Lucy Kibaki Hospital, the situation of health in this country is very difficult and unfortunate.

Mama Lucy Kibaki Hospital is situated in Eastleigh, where the highest population of this City is. We suspect many of them cannot even afford to pay for those services. It is unfortunate that Nairobi City County is receiving a substantial amount of revenue collection. I, therefore, request the governor to at least increase the number of beds and services.

Generally speaking, the national Government receives the highest budget for health services, but they have only a few hospitals to take care of. Those hospitals should be able to at least provide the necessary services. The counties are experiencing many challenges in terms of drug supply. The money is delayed; they get their money in one

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quarter, or even biannually and they cannot even provide drugs in time. Therefore, health services in the counties are almost failing just because these counties are not receiving their monies in time to buy drugs and pay for the services of the doctors and other medics.

Social services, like renal issues, HIV treatments, and all these things, are now facing many challenges in the counties. The counties are employing more staff. They are opening more hospitals---

**The Temporary Speaker** (Sen. Veronica Maina): Thank you, Senator.

Sen. Mariam Omar, you may proceed.

**Sen. Mariam Omar:** Thank you, Madam Temporary Speaker, for giving me this opportunity. I would like to add my voice to a Statement raised by Sen. Hamida Kibwana on the state of the Mama Lucy Kibaki Hospital.

It is almost a year since a petition was raised by the family of a mother who passed away in Mama Lucy Kibaki Hospital. As the Standing Committee on Health, we tackled it and there are so many recommendations that the Committee put forth.

What is the function of these Statements, Petitions, and Motions if those recommendations cannot be implemented? I do not know why their recommendations are not implemented.

The other one is about the education system. There is freedom of religion. In most of our schools, be it private or public, there are no special places for prayers for Muslim students. Some Muslim students are forced into Christianity to learn the Christian religion. That means the students are forced not to do IRE because the management will not allow the students to prosper in their religion. When it comes to health, the Social Health Authority (SHA) normally---

**The Temporary Speaker** (Sen. Veronica Maina): Sen. Mariam Omar, you will have half a minute to finish the sentence.

**Sen. Mariam Omar:** Madam Temporary Speaker, the SHA tackles hospitals from Level 2 up to Level 5. If the Mama Lucy Kibaki Hospital, which is a Level 5 is pathetic like that, do you think that this SHA issue can be implemented properly?

Thank you, Madam Speaker.

**The Temporary Speaker** (Sen. Veronica Maina): Thank you.

Sen. Gataya Mo Fire, you have the Floor.

**Sen. Gataya Mo Fire:** Thank you very much, Madam Temporary Speaker. I want to contribute to the Statement on the state of the Mama Lucy Kibaki Hospital. I remember the hospital with a lot of nostalgia. I lost my niece, I think some two or three years ago because of sheer neglect and irresponsible medical staff.

Across the country, I would call upon the Senate Standing Committee on Health to give this House a detailed report on the status of health facilities. Several health facilities are relatively dilapidated. There is nothing to show and the staff is very relaxed. It is high time that the Committee moves with speed and makes sure that this House gets the status of health facilities in the country.

Thank you, Madam Speaker.

**The Temporary Speaker** (Sen. Veronica Maina): Sen. Mandago, you may proceed.

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**Sen. Mandago:** Madam Temporary Speaker, I thank you very much for the opportunity. I will request for extra three minutes because the matter of Health is in my Committee.

I also want to comment on Sen. Cherarkey's Statement. On the matter of health, as the Chairperson of the Health Committee, we have had opportunity to visit a number of hospitals in counties, including Mama Lucy Kibaki Hospital. In our meeting, we made a raft of recommendations for Mama Lucy Kibaki Hospital. After our review, the County Government of Nairobi City has made some improvements in the areas that we had already asked to be addressed and attended to.

This being a new Statement, we would wish as a Committee to be given time to visit and fact-find on that matter. However, realizing that over 10,200 facilities are in counties and requires the attention of the Senate Health Committee, I will be proposing to this House that we convert all the 67 Members of the Senate, for a period of time, to be Members of the Health Committee, so that we can disperse them to make field visits.

From our field visits, there has been tremendous improvement in a number of facilities that we have visited, including Longisa County Referral Hospital in Bomet, Kisii Level 5 Hospital in Kisi County and Mombasa Level 5 Hospital and in Kwale County. As a Committee, we are seized of the matters that have been raised by the Senator for Nakuru County, Sen. Tabitha Keroche and we are going to take action.

Mr. Temporary Speaker, allow me now to comment on the Statement by Sen. Cherarkey concerning Moi University. I want to say from the onset that the problems of Moi University are the most misunderstood. In summary, Moi University is in that situation not because of a management issue, but a government policy of increasing access to university education in this country. It should not be lost on Kenyans that Moi University has nurtured and has nine fully-fledged universities, by those who make comments to the extent of thinking that Moi University has been mismanaged.

The loan that the honourable Senator for Nyandarua County was talking about was taken to acquire Kakoji Tea Training Centre in Karatina for purposes of training by Karatina University. When Moi University nurtured all these universities, they used their own resources to nurture and bring up those universities.

When those universities were fully-fledged, all the loans and expenses were left with Moi University. How do you expect Moi University to repay a loan for Kakoji Training Centre in Karatina, used by Karatina University? The logical thing that should have happened during transition was to transfer the loan to Karatina University. In total, the amount of money utilised by Moi University to establish nine universities and create access to higher education in this country amounts to close to Kshs13 billion.

It is just the other day because people are in a rush and a takeover, the Ministry of Investment, Trade and Industry took over Rivatex Limited. Moi University revived Rivatex Limited and invested their Kshs3.7 billion for purposes of training textile engineers for this country. This is a nation that is importing clothes, when we have an opportunity to grow cotton in Nyando, Elgeyo-Marakwet and Kerio Valley using agriculture. However, the Ministry of Investment Trade and Industry woke up one morning and declared it a parastatal for the Ministry. Moi University invested Kshs3.7 billion there, but all that we hear is Moi University has been mismanaged.

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I dare say that the national Government must take responsibility. The National Assembly has the responsibility of budgeting at least Kshs15 billion to get Moi University out of the woods that the Government made a policy to put Moi University into it.

Finally, it is difficult to understand how the Kenya Universities and Colleges Central Placement Service (KUCCPS), can decide that Moi University, with a declared capacity of 14,000 students, gets 6,000 students in an enrolment, while a small university like Kisii University, which was started the other day, sitting in some few acres of land, gets 16,000. What is the rationale that---

*(Sen. Mandago's microphone went off)*

**The Temporary Speaker** (Sen. Veronica Maina): Your time is over. We are done with the Statement Hour. We will proceed to the next Order.

## BILL

### *First Reading*

THE STREET NAMING AND PROPERTY ADDRESSING SYSTEM BILL  
(SENATE BILLS NO.43 OF 2024)

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

Next Order.

## MOTION

ADOPTION OF THE MEDIATION COMMITTEE REPORT  
ON THE WATER (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILLS NO.33 OF 2023)

**The Temporary Speaker** (Sen. Veronica Maina): I call upon the Chairperson of the Mediation Committee to move the Motion.

Sen. Methu, proceed.

**Sen. Methu:** Thank you very much, Madam Temporary Speaker. I beg to move the report of the Mediation Committee on the Water Amendment Bill, (National Assembly Bill No.33 of 2023). This Mediation Committee started its work on Thursdays, 19<sup>th</sup> September, 2024 pursuant to Article 113(4) of the Constitution of Kenya. The Committee was able to agree on a version of the Bill within 30 days from the first sitting. The Water Amendment Bill (National Assembly Bill No.33 of 2023) was published on the 4<sup>th</sup> ---

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*(The Clerk-at-the-Table consulted with the Temporary Speaker)*

**The Temporary Speaker** (Sen. Veronica Maina): Sen. Methu, can you approach the Clerk's desk?

**Sen. Methu:** Okay, no problem.

*(Sen. Methu approached the Dispatch Desk)*

**The Temporary Speaker** (Sen. Veronica Maina): You may proceed to move the Motion.

**Sen. Methu:** Thank you very much, Madam Temporary Speaker. I beg to move—  
THAT, the Senate adopts the Report of the Mediation Committee on the Water (Amendment) Bill (National Assembly Bills No.33 of 2023), laid on the table of the Senate on Tuesday, 22<sup>nd</sup> October, 2024, and further that pursuant to Article 113 (2) of the Constitution and Standing Order No.167 (3) of the Senate, approved the mediated version of the Bill.

Mr. Temporary Speaker, pursuant to Standing Order No.144 of the National Assembly Standing Orders and Article 110 of the Constitution, the Bill was forwarded for the consideration by the Senate.

I will go to the specific clauses that we worked on. The Committee held a total of six sittings, with the first meeting held on Thursday, 19<sup>th</sup> September, 2024 and concluded its sittings on Wednesday, 9<sup>th</sup> October, 2024. That was within the 30 days that have been provided for by our Standing Orders.

The Committee considered the clauses of the Bill that were under mediation and subsequently agreed on a version of the Bill. I want to start with Clause 4 of the Bill because I believe this was a crux of what was in contention between ourselves and the team from the National Assembly. I am very happy that we were able to agree on a mediated version.

The Committee considered Clause 4 and concurred with the proposal by the Senate to delete the proviso that provided that a national public water works shall not be transferable to a county government be dropped to allow for the non-transferability of national public water works.

Section 8 of the Water Act, 2016, Cap 372, sets out national public water works that are intended to serve a national government function and are financed by the Government share of the national revenue pursuant to the Public Finance Management Act, and hence, the same way not transferable to counties. Further, some of these national public water works cut across counties. Therefore, it will pose an administrative challenge to determine which county to transfer such public works. To make this particular clause easy, especially for my colleagues, this is a proposal of the Senate that we should delete a provision that the National Public Water Works shall not be transferable to the county. However, after what we discussed at the Mediation Committee, after a national public work is complete, the Water Works Development Authority may not or shall not be required to transfer it to the counties. It shall remain as

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the body that will be dealing with the bulk water, and then it shall be transferred to the water service provider.

The reason we, in the Committee on Land, Environment and Natural Resources, had initially thought that it is important that we transfer this to the county governments was so that we try and be compliant with the Constitution. According to the Fourth Schedule of the Constitution of Kenya, water and sanitation are preserved by the county government. We were wondering, if projects that the national Government completes are not handed over to the county government, how then will we be compliant such that the national Government shall not deal with matters related to water and sanitation? However, to cure the fears of the Senate and the Senators when we first passed this Bill, the Water Works Development Authority's scope will only be limited to bulk water. It will not be in terms of the last mile. Once they are done with the project, they will hand it over to water service providers. In this case, it will be counties.

It would have been difficult to transfer a national water works project if it cuts between two or three counties. The case in point is that the Karimenu Water Project that runs in three counties: Kiambu, Nairobi, and Machakos. It would have been difficult to transfer it. It would have been even more difficult to determine which county it would go to.

Whereas the Bill provides that water works bulk purchase agreements should be subject to the Public-Private Partnerships Act, which includes a general framework for the feasibility and approval of PPP projects across the various sectors under Section 32, this does not preclude adding more specific requirements for the water sector given the unique nature of the water services.

The role of the Water Services Regulatory Board as a regulator is crucial in ensuring these projects meet high standards. I want to go quickly Clause 2. The Committee considered Clause 2 and noted that the National Assembly had rejected the Senate amendment to include the definition of a joint committee. Once the project is not being transferred to the counties, joint committees will not be necessary. The Senate's proposal to have different joint committees was linked to the transferability of national waterworks. The Mediation Committee had agreed to drop the proposal for transferability in Clause 4. The Committee observed that the definition of joint committees was no longer necessary. So, it was easy to agree on this one.

Allow me then to also go to Clause 3, an amendment to Section 32 on the powers and functions of the Water Storage Authority. The Committee considered Clause 3 and agreed that the proposal by the Senate on the requirement to subject bulk water purchase agreements to economic efficiency criteria set by the Regulatory Board be dropped and instead include the Water Services Regulatory Board (WASREB), be among the bodies to be consulted whenever water storage authorities enter into a bulk water purchase agreement. This is a bit straightforward.

Whereas the Bill provides that the bulk water purchase agreements will be subject to the Public-Private Partnership Act, which provides a general framework for the feasibility and approval of the PPP projects across the sectors under Section 32. This does not preclude adding more specific requirements for the water sector given the unique



nature of the water services. The role of the Water Services Regulatory Board, as the regulator, is crucial.

In a subsequent clause, you will see that we have reinforced this particular Clause. I will keep jumping through the clauses, so that we can follow the way we agreed on this mediated version.

I want to then go to Clause 7, an amendment to Section 72 on the powers and functions of the Regulatory Board. The Committee considered Clause 7, which outlines the Board's powers and functions to evaluate and recommend water tariffs.

The Committee concurred with the Senate proposal to separate WASREB's authority to evaluate and recommend water and sewerage tariffs for water service providers from its jurisdiction and evaluate and recommend bulk water tariffs for the Water Works Development Authority.

Madam Temporary Speaker, you recall that bulk water would then be the preserve of the Water Works Development Agency. It is fair that we allow it, and we do not combine it, so the tariff for bulk water is the same as the tariff for the water provided by water service providers because most of this water goes to the consumer. If we allow the water that is going to the consumer to have the same tariffs as the water that is being provided for at the bulk level by the Water Works Development Authority Agency, we shall make water an expensive commodity, and we have to protect the people of Kenya. That is why we had to set in this particular Section (72)(1)(c), which already provides that WASREB's role in evaluating and recommending water and sewerage tariffs for water service providers. The Bill needed to distinctly address the evaluation, recommendation and approval for processes for bulk water tariffs. We had to have them separate.

Let me turn to Clause 6 on the handover of completed works. The Committee considered clause 6 of the Bill, which outlines the handover of completed works, and rejected the Senate's proposal to hand over national public water works to county governments. It is the same explanation that I gave earlier. Some of these projects are trans-counties; they transfer to different counties. So, it will be difficult to even administer such a project that runs in three counties. Even agreeing upon which county this project will be handed over to will be a challenge administratively. So, we ceded to this proposal by the National Assembly, just as we had agreed.

It is also important to note that the main intention of this Bill is to create a framework for making water a tradable commodity, so that private people can engage in water projects. The easiest people to engage with are the waterworks development authorities.

If a private person is the one who developed this project, then it has been handed over to a county, and the agreement has been entered into with the Water Works Development Authority, it would be an unneat situation.

Please, allow me to then go to Clause 5, Section 72 of the Water Act, CAB 372, which empowers the regulatory board to publish the regulatory standards without the approval of the Cabinet Secretary.

For consistency with the law and to maintain WASREB's independence and autonomy in its operation, the regulatory board should be empowered to set national

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standards for the provision of water services and asset development for water services providers without the approval of the Cabinet Secretary.

I am sure from what I have read, you know what we are trying to protect. It is now an overreach by the Executive, especially the Cabinet Secretary, in an independent body tasked with the responsibility of ensuring that they are the ones that set tariffs and publish regulatory standards.

So, for it to require another approval by a Cabinet Secretary, we felt that this would be an overreach of the Executive. We need to protect the WASREB from this overreach by the Executive. That is why we, in the Mediation Committee, agreed on this mediated version of this particular section of the law. However, pursuant to Section 2 and 22 of the Statutory Instruments Act guidelines, the statutory instruments and consequently, there is a requirement for the publication in the Gazette. Section 2 of the Statutory Instruments Act includes guidelines in the definition of the statutory instruments as follows-

‘Statutory instruments mean any rule, order, regulation, direction, form, tariff or cost of these letters, patent, commissions, warrant, proclamation by law, resolution, guideline, or any other statutory instrument issued, made, or established in the execution of a power conferred by or under an Act of Parliament under which the statutory instrument or subsidiary legislation is expressly authorized to be issued’.

So, whereas Section 22 provides for the publication of the statutory instruments subject to Section 2, every statutory instrument shall be published in the Kenya Gazette and shall be assigned a serial number as of the year and that kind of thing. However, what was agreed upon in this particular section of this law is that the Cabinet Secretary shall not have to approve or superintend over work that has already been delegated to the Water Services Regulatory Body (WASREB).

Madam Temporary Speaker, allow me then to go to Clause 11. There were not very many clauses that we are dealing with at the mediation level. I am not very far from being done. I actually just two sections away.

Clause 11 is an amendment to Section 14 of the Objects of the Water Sector Trust Fund (Water Fund). Before I read what is in this mediated version, allow me to express my great displeasure because we invited the leadership of the Water Sector Trust Fund, to appear before the Committee of the Senate before it appeared before the Mediation Committee.

We have been trying to protect a proposal to allow Water Works Development Authorities (WWDAs) to partake upon the budget of the Water Fund. I wish to refer to the Constitution, and I know those who comment after me will tell you that the reason why the Water Fund was mooted and the reason why it is part of the Government agencies that we have is so that they can reach where WWDAs cannot get to go.

In fact, specifically, it is there in law that for them, their appraiser or budgets are supposed to go to the most rural parts of this Republic, where it would not be economically viable for either the county or national Government to provide water to the people who live in such areas. It is this inequality that necessitated the formation of the Water Sector Trust Fund. We felt bad that they did not support the position that had been taken by the Senate that we should not allow WWDAs from partaking from their budget.

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Madam Temporary Speaker, this was our argument. Where does the funding of the Water Fund come from? They get their funding from the Exchequer, partners and donors. Where does the budget of the WWDA come from? They get their budget from the Exchequer and donors. Why is it that you are getting your budgets from the same source but you want to partake from a budget of the other agency? Why did they want to open up that budget to the WWDA?

More importantly, because it is important that I converse on this particular proposal in law. The budget of the Water Fund for the year 2024/2025 was about Kshs4.7 billion. It was actually Kshs4.3 billion. If you are to divide Kshs4.3 billion among the number of counties that we have, equally, it would just be Kshs90 million for every county, including the counties that we come from whether it is Nairobi City or Murang'a.

I would like the Senator from Busia, Tana River or West Pokot counties to tell us, what major project can be undertaken by any serious Government agency with Kshs90 million for a whole county such as Tana River? Do we now have so much that we can share with the WWDAs, whose budget runs in tens of billions? Why would they want to partake in these small budgets that are meant for a small dam in Tana River County or a small borehole in a remote area of Busia County that the WWDA or the county government cannot get to?

We felt very disappointed that the Water Fund, and their leadership do not want to support this. However, we are happy that we are able to convince our colleagues from the National Assembly to support this particular proposal by the Senate. The Committee agreed with the Senate's proposal to delete Clause 11 of the Bill that proposed to amend Section 114 of the Water Act to expand the mandate of the Water Sector Trust Fund by broadening the scope of its entities to which the fund caters.

By the way; the reason that was given by the Water Sector Trust Fund is that most of the donors who want to give money, do not have a lot of trust with the WWDAs. Madam Temporary Speaker, I do not want to say that they wanted to cure diarrhoea by sewing the exit, but it looked more like it. There is need to protect the integrity and the purpose of the Water Trust Fund. This is what has been explained on this particular clause.

Finally, allow me then to go to Clause 12, an amendment to Section 119 of the Water Tribunal. It was a proposal of the Senate that since water is a devolved function, it is only fair that we allow the Council of Governors (CoG) to nominate members who shall be sitting in the Water Tribunal. However, it also came to our notice, especially from our legal people, that we have to reject that particular proposal. If a tribunal is supposed to be an umpire, why then do you need to bring players or allow players to nominate people to sit in this particular tribunal?

Article 169 of the Constitution of Kenya establishes subordinate courts, including local tribunals, established by an Act of Parliament. In exercising judicial authority under Articles 159 and 160 of the Constitution, tribunals ought to be independent. This informed our decision of agreeing to reject our own proposal that we have the CoG nominate two people to sit in this Tribunal. If this Tribunal is to be independent, then we

must ensure that we remove all the players; either through nomination by the Cabinet Secretary, CoG or any player, so that the Tribunal can be independent.

It is the same case for the House Business Tribunal, Rent Business Tribunal, and all the other tribunals that have been formed in law. It is a preserve of the Judiciary to nominate the people who should sit there. To make it easier, it is like parties being allowed to nominate judges who shall be hearing their matters. It will be very difficult. If I was allowed to nominate a judge in the matter that is before court this afternoon, then they would be very biased because I am party to the proceedings.

The Water Tribunal, as proposed in the Bill, is under the Water Act and hears disputes related to the implementation of the Water Act. This Tribunal itself is meant to address all the disputes that would come. If there is a dispute on tariffs that have been set by WASREB, they are supposed to be heard by this Tribunal. If the parties agree, they can go to the superior courts. However, if then they are meant to hear these disputes emanating from the Water Act, then all the players that have been mentioned in this Water Act should be kept away from the Tribunal, so that it can be independent. As an arbiter, it is prudent that the membership of the Tribunal remains as neutral as possible.

Madam Temporary Speaker, as I move because that shall be my last clause, I want to thank the Members of the Committee. It is important to note that the Committee that I Chair has been dealing with three mediations at a go during a week that was very difficult. There was the week that was before the two impeachments that we had, and the week we had the impeachments.

Madam Temporary Speaker, we had mediation on this Water Act and there is one that is coming up on the National Rating Bill. We also had the final one on the Sen. Mungatana's Bill; the Natural Resources (Benefit Sharing) Bill which the Committee is dealing with. I therefore thank Members of the Committee for committing a lot of their time to deal with these pieces of legislation.

With those remarks, I invite the Senator for Nandi to second this Motion. I thank you, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Veronica Maina): Thank you, Sen. Methu. Sen. Cherarkey Samson.

**Sen. Cherarkey:** Thank you, Madam Temporary Speaker, I take this opportunity to second this Motion of the mediated version of the Water Bill. I also thank the Chairperson who coincidentally is our Chair of the Committee on Land, Environment and Natural Resources although, I do not know for how long he will be, but we wish him well.

**The Temporary Speaker** (Sen. Veronica Maina): Sen. Cherarkey, what are you insinuating by saying you do not know how long he will be Chairperson of the Standing Committee on Lands, Environment and Natural Resources? Are you insinuating at the removal of the Chairperson or resigning or otherwise exiting from his duties as the Chair of the Committee?

**Sen. Cherarkey:** Madam Temporary Speaker, after five years, we will go and seek for mandate, unless we add more, but the point I was trying to make is that it will reach a time he may re-assigned to another Committee as the Chair or be given lighter duties.

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(Laughter)

**The Temporary Speaker** (Sen. Veronica Maina): Are you privy to such information, so that you disclose to the House?

**Sen. Cherarkey:** I am privy, and I have told him in confidence, but he is doing a good job. That does not mean he is not doing a good job.

**The Temporary Speaker** (Sen. Veronica Maina): Proceed to submit.

**Sen. Cherarkey:** Madam Temporary Speaker, you will need to protect Sen. Methu from the Senate Majority Leader because you can see the excitement of the Majority Leader on the matter.

I wish to congratulate Sen. Methu, one of our youngest Senators in the House for proving, time and again, that he is equal to the task. We are proud that one of the youngest Senators continues to demonstrate good leadership skills, both in the Committee and in mediation. It shows the confidence of the House leadership led by the Senate Majority Leader to assign him to such serious tasks.

We usually say that water is life, it is critical and important, but the sad story is that accessibility of water here in Nairobi or other parts of the country is still a challenge, especially in Eastern, North Eastern and Nairobi. Last time, I said that there is no difference between access to water for the people in Northern Kenya, Eastern and Nairobi. In Nairobi, it comes like a doctor's appointment. You are never sure when water will be available in our taps. This is a big challenge and when we get legislative interventions led by Sen. Methu's Committee to come up with solutions, we do not take it for granted.

Madam Temporary Speaker, I will begin by Clause 11 where the National Assembly wanted the Water Sector Trust Fund and yet it is counties that fund this trust fund. It is critical because the water trust funds are used for water and sanitation. For example, in Kapsabet Town, we have a population of 87,000 people and we depend on water that is being supplied through electricity and generators because we are still waiting the establishment of Keben Dam that will ensure there is access to water to Kapsabet Town. The reason I am making this point is that under the United Nations Population Fund (UNPF), there is an *en-masse* urban-rural movement.

Therefore, it is critical to access water. There are many upcoming towns, especially in our counties. For example, in Nandi, we have ten upcoming trading centres in the six sub-counties. This growth continues to---

## QUORUM

**Sen. Kibwana:** On a point of order, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Veronica Maina): What is your point, Sen. Hamida?

**Sen. Kibwana:** Madam Temporary Speaker, under Standing Order No. 41, this is an important matter in terms of water and I can see we do not have quorum.

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**The Temporary Speaker** (Sen. Veronica Maina): Clerk, confirm if we have quorum. Let us have the Quorum bell ring for 10 minutes.

*(The Quorum Bell was rung)*

**The Temporary Speaker** (Sen. Veronica Maina): Hon. Senators, we now have quorum, so, the sitting proceeds right away.

Sen. Cherarkey, take the Floor. Please, give him the microphone.

**Sen. Cherarkey:** Madam Temporary Speaker, I would like to make four points on the Adoption of the Mediation Committee Report on the Water (Amendment) Bill (National Assembly Bills No.33 of 2023).

I was on Clause 11, where we said that the Water Sector Trust Fund should remain with counties. This is because most of the funding comes from the counties. I would like to inform the House that with the affordable housing programme of the Government, we need water and sanitation.

I can give you statistics for the benefit of the House. According to the Kenya Bureau of Statistics (KBS), in 2023, we had 16,265,693 Kenyans in urban areas. This was an increase of 3.81 per cent, because in 2022, we had close to 15.6 million Kenyans that were in urban areas. It means access to water and sanitation will become critical, and, therefore, the intention of the National Assembly to thin the Water Sector Trust Fund was very unfortunate. However, I am happy that they agreed with our proposal that, most of the funding that goes to Water Sector Trust Fund should remain with counties. For instance, my town, Kapsabet, has only a population of 87,000, but access to water is very challenging. The last time a water project was launched was when Hon. Charity Ngilu was the Minister for Water and Irrigation. We use water, electricity and generator. We depend on Kebed Water Project, which the Government should start, and Kipkaren Dam, that is almost nearing completion, that will feed water to Mosoriot and Kibiyet towns.

Clause 12 on the Water Tribunal is not gainsaid. I agree that you cannot choose your judge. I agree with the decision of both the National Assembly and the Senate, that you cannot choose Members who will sit in the Water Tribunal because they will become biased. The aspect of neutrality should be critical in the water tribunal.

On Clauses 6 and 7, I agree on the issue of Water Works Development Agencies (WWDA). We should have a handover. For example, Nandi County is under Lake Victoria North Water Works Agency. However, most projects go to Kakamega and Vihiga counties, yet in Nandi County, we do not benefit. Even on the issue of drilling boreholes in schools and urban centres, these water works---

In reference to water tariffs, I have seen there is a proposal to have private-public partnership. Even on the issue of bulk water sale agreements, we must give the regulator; Water Services Regulatory Board (WASREB)---

I would like to repeat what I said yesterday, that there is a place called Chiapas in Mexico, where Coca-Cola is highly consumed because it is cheaper than water. If in our country, water will be more expensive than other beverages, like the ones that the Senate Majority Leader referred to as favourite drinks of some Members in the House, then the society will collapse. In Chiapas, Mexico, and it is on record---

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**The Temporary Speaker** (Sen. Veronica Maina): Sen. Cherarkey, are you aware that the Hon. Senate Majority Leader was asked to withdraw the reference to those drinks.

**Sen. Cherarkey:** Madam Temporary Speaker, only on the word ‘*chang’aa*, but not the word ‘*favourite*’ drink. The Speaker allowed it. I have said, ‘*favourite*’ drink, Everybody, including Sen. Eddy and Sen. Chute has a favourite drink.

In conclusion, in reference to the water tariffs, we must have WASREB as the regulator. There are many water tankers in the city. It is very expensive for families. Sixty percent of households spend on food, domestic water, being part of it. Are you aware that the moment you have people accessing unclean water, there will be many diseases? That translates to the need for treatment. What does this mean? It means that people will need to use drugs and a lot of resources to treat diseases caused by consuming drinking unclean water. I therefore would like to say that water works are important. I agree they can run Karimenu, Thwake, Itare, Posta, Keben, Sondu and Two Rivers dams. Members should listen to this, the issue of last mile should be left to the counties. The counties should be the ones to do the last mile distribution of water at that point in time. I request that we agree on this mediated Water Bill, 2023. We must have a discussion on going into the future.

Madam Temporary Speaker, I am happy that Sen. Hamida is back because we supported her Statement on the issue of health. You know when you consume water that is not safe, you become sick. When you become sick, you go to the hospital. When you go to the hospital, the budget for treatment is expensive.

As we continue in the spirit of addressing access to medical care and clean water, we condemn the issue of femicide that seems to be coming back. You have seen there are many unexplained deaths that are happening across the country. I saw in Eastleigh, they struggled to look for the Member of County Assembly (MCA) of Della Anole Ward in Wajir County, after Deoxyribonucleic acid (DNA) samples gave negative results, that it was not him. There are unexplained deaths happening. I call upon the Directorate of Criminal Investigations (DCI) and the police to fast-track the investigations, so that Kenyans can know what is happening. We do not take it for granted, especially when it happens to women, because we know they are critical and important.

No one should lose their life. I hope the Inspector General of Police, the DCI, and the Director General of the National Intelligence Service (NIS) are listening. I ask Kenyans wherever they are, especially our young ladies, to never go with somebody they are not sure of, as I condole with the MCA from Kirinyaga County, who lost her daughter in Thika. We ask our girls to be careful. Do not just be excited by what you see on TikTok. Do not date somebody you are not sure of. Can you do background checks? I am not saying that the girls and women should be Directorate of Criminal Investigations (DCI), but they should do due diligence before being taken out. They need to take care of themselves.

The police cannot police everybody. We are tired of losing young people. I am happy there is a breakthrough on another girl who was found here in Mwiki. Suspects have been arrested. However, we want to ask our girls and ladies to be careful. Be sure about the person you are dating. Date Christian or Muslim men, but be careful of those

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who go to party. I know Sen. Karen Nyamu is happy because there is a new song called *Yanni*. She should tell us what it means.

I support the Mediated Version.

**The Temporary Speaker** (Sen. Veronica Maina): Thank you, Sen. Cherarkey.

*(Question proposed)*

The Motion is free for debate. I will call upon the Senators who will contribute to this Motion.

Sen. Wamatinga Wahome, Nyeri County, proceed.

**Sen. Wamatinga:** Thank you very much, Madam Temporary Speaker. I sat in the Mediation Committee as a member of the Standing Committee. Indeed, the issue of water scarcity and the reticulation has remained quite a major challenge in this country. That being the case, the Committee from the Senate and the National Assembly sat together.

In the spirit of one nation and one approach, we thrashed out the issues that we had. Fully aware that matters of water affect county governments, we realized that it is imperative that we agree on a way to move it forward. It is not lost to us that there are counties that are nationally disadvantaged because of their geographical location.

We are also fully aware that there are counties that draw water from other counties. Therefore, the existence of Water Works Development Agencies provides an infrastructure within which you can aggregate multiple counties, so that economies of scale in the implementation of water solutions can be achieved.

The mediated version of the water Bill allows the Government, both at the national and the county level, to put the effort and resources together to ensure that most of the counties that do not have water or enough portable water do have access.

Madam Temporary Speaker, it is known to everybody that we promised in the manifesto of the Kenya Kwanza Government to ensure that people get access to water. However, the limited balance sheet of the country and a lot of money that has been borrowed by the previous regimes, our balance sheet will not support infrastructure development in the water sector.

It is in this spirit that none other than the President himself came up with the idea of getting a kind of a paradigm shift in the way we do implementation of the project. Therefore, he came up with the idea of making water a tradable commodity that can be handled within Public Private Partnership (PPP). To ensure that it is doable, it is imperative that we have laws in place that ensure that water harvested in reservoirs and reticulated to households can be accounted for.

Madam Temporary Speaker, it worries me that some counties have as high as 70 per cent non-revenue water. That is water that has been collected, dispatched through the master meter, but cannot be accounted for because of the old infrastructure that we have. We know some of the counties would not on their own be able to put the reticulation systems together.

Therefore, it is important that the national Government, in collaboration with the county governments, come up with a systematic approach that will ensure that the infrastructure is renewed. Most importantly, moving forward with the technology, we

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need to come up with smart meters, smart and intelligent water reticulation system and water leakage system as is with gas and oil pipeline.

Madam Temporary Speaker, if we achieve this, some counties will save up to 70 per cent of the water that they harvest. We know that in the wake of the climate change, our rivers and our groundwater is reducing day by day. This calls us to ensure that we have a more pragmatic approach that will ensure that the water that we harvest is not only used prudently but also accounts for each and every drop.

It is also not lost to us that most households still use untreated water not fit for human consumption. That being the case, this enhanced and renegotiated Bill seeks to highlight how we can approach this and ensure that the issues raising challenges have been addressed.

As a country, the biggest challenge that we face in water reticulation is especially by counties in the northern part and the coastal region of Kenya. They do not have the advantage that the counties in the central region, the mountain areas and other water catchment areas like Rift Valley have. That being the case, it is the responsibility of every citizen of this country to ensure that every drop of water we can put our hand on is used properly.

Madam Temporary Speaker, how can that be achieved? We know counties such as Nairobi, Thika and other counties surrounding the big rivers that flow into the ocean have been heavily contaminated by effluent discharged into the rivers. That is why when the Kenya Kwanza regime assumed power, we formed the Nairobi River Commission. The Commission was supposed to handle the issue of water pollution, river contamination and most importantly, to ensure that the riparian area is protected. If protected, we can not only protect life, but also ensure that most of the diseases caused by the pathogens transported by water are addressed.

Madam Temporary Speaker, it is also not lost to us that most of the counties that lie in the lower part of the country have many disadvantages. As much as all the rivers flow into the ocean, by the time the water gets into those counties, it is heavily contaminated. Therefore, coming up with a way of changing that approach requires laws that are not only dynamic, but laws that also address issues of how we use our water, discharge the affluent and treat that water before it is consumed.

Therefore, promoting bulky water supply in multiple counties must be looked into. I am happy to note that there is an intention by the current Government to construct the high grandfalls dam that will have multi-purpose function. One, it will address the perennial fronts that affect the lower counties, like the Tana River, whose Senator is sitting here. Those counties that are on the lower side of the country lose lives and property every couple of years because we have no control once the rivers burst their banks.

We will have solved that problem by constructing high grandfalls dam, one, we will have floods controlled and two, additional supply of 1,000 megawatts of reliable electricity. On top of that, we will have multiple counties enjoying water for irrigation.

Madam Temporary Speaker, embracing modern technology and promoting governance has been one of the biggest challenges. Why is that so? Most of these water works development agencies, including the water service providers have been run by a

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family kind of approach where the governors in most counties do not even know what happens. Therefore, we must also put into place structures and systems to ensure that we do not only account for the water that has been harvested and reticulated, but also ensure that transparency and governance are written in capital letters.

The spirit of the Bill is to ensure that moving forward, water becomes a tradable commodity and that we have responsible boards that are manning these water service providers. As we do that, it should not be lost to us that some of these water service providers are too small that they cannot achieve economies of scale.

Consequently, I like the approach that the previous Cabinet Secretary for Water, Sanitation and Irrigation, took before she moved to head the Ministry of Lands, Public Works, Housing and Urban Development. She consolidated some of these water service providers, so that we could achieve economies of scale.

Some counties are also small that they cannot accommodate the large dams or they do not even have the natural resources to put those dams together. Once we construct the reservoirs upstream, then there is a duty to ensure that there is reticulation. This is to ensure that we do not lose the water that we transport to counties. As we do that, it must also be emphasised that the governance issue has become and must become one of the major challenges that we must address.

We, as Senators, have the obligation and duty of promoting devolution. As we do that, our role to oversight the county governments, water service providers and waterworks development agencies must be promoted. This will ensure that when we harvest water, it is not only stored, but also used in such a manner that it will promote life.

Water in some counties is a very scarce commodity. We also know that in those very same counties where we have scarcity of water, every time we have heavy rainfall, we have a lot of flooding that causes a lot of damage. In order to address that, as we talk of our target of planting 15 billion trees, we must also come up with a concept of creating both localised storage and storage that will ensure that we have enough water.

As I support this Bill, I remember one of the Motions that I moved when I came into this House, which is the application of smart technologies in the usage of water. We know in most of these western countries, taps will let the water run so long as there is someone there. These sensor motions and leak detection systems allow them to save a lot of water.

Having said that, it should also not be lost on us that water treatment works, is an area that we are doing poorly in as a country. We know that in most western countries, water is treated and recycled for either household use or garden irrigation.

In this country where most of the latrines are pits, we know that there is a lot of contamination of groundwater. This is an area that we, as a country, must also look forward to especially in line with the Sustainable Development Goals (SDGs) that Kenya is a signatory to.

The water service providers in most counties, and I want to highlight that Nyeri County is one of those counties that are performing quite well in water services. This is simply because we do not rely on pumping water but we rely on a gravity flow. However, we can still do better with some areas like in Kiambu East and West, where the construction

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of dams that were promised in the 1960s have not been realised up-to-date because of the challenges in the balance sheet of the country.

As I said at the beginning, the Government approach today is to have Public Private Partnership (PPP) where you will let private equity flow into the construction of dams, development of the infrastructure and reticulation works, which can be paid off like it is with the Expressway.

I would want to urge my colleagues to keep their eyes wide open especially with the water service providers. We have a gap in terms of governance and management. We do not have the technology application in the usage of accounting and billing systems. With the advent of internet technology, we know that it is possible today to apply for smart metres. These smart metres will not be of any use if there is no water or the taps are running dry.

I would also want to urge my colleagues to support this Bill and to enhance their role in oversight, so that we can improve governance, transparency and accountability in the water works and water service providers to ensure that Kenyans get water across the counties.

I support.

**The Temporary Speaker** (Sen. Veronica Maina): Proceed, Sen. Cheruiyot, Majority Leader.

**The Senate Majority Leader** (Sen. Cheruiyot): Madam Temporary Speaker, I want to appreciate the opportunity to speak on this very important endeavour by our Committee charged with this very enormous responsibility.

First, for the record, I wish to register my appreciation that mediation exercises are now taking a shorter period than was the case in the previous sessions of the Senate. Previously, the first few meetings would end up being five or 10 minutes and we would disagree on very basic matters, including who chairs the meeting and who makes the opening prayer. That is how bad the relationship between the two Houses was then.

I want to appreciate that the spirit of bicameralism has settled in the country and in both Houses of Parliament. They now equally appreciate the very important role of the Senate, that we have specific eyes keen to detail to ensure that every law that we pass in this country is in compliance with the spirit of devolution. This is one such exercise where we ensure that in our interactions and engagements with colleagues from the National Assembly, every time we have a mediation exercise with them, they appreciate where Senate is coming from.

It is not unusual nowadays to hear Members of the National Assembly on their own Floor in the National Assembly, and I have seen this more than once, including none other than the Majority Leader in that House, who sometimes rises to oppose a particular position taken by colleagues in that particular House and told them there is no way the Senate will agree to this. They know how we view things. I have come to appreciate that any legislation where Senators are involved will eventually end up with that particular law not violating any principle organ of devolution. I want to appreciate and celebrate all the committees of our House that continue to do this great responsibility and undertake their work diligently to ensure that we live up to our core mandate.

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I celebrate these committees more specifically in this Report. I have only about two or three comments that I want to make, specifically on the Committee recommendations that have been made on what now will be the mediated version of this Bill.

Madam Temporary Speaker, I, first, want to appreciate that this is a very important piece of legislation. You understand that in the United Democratic Alliance (UDA) manifesto, we made a promise to make water available to as many citizens of our Republic as possible. Having made that promise, we came to the realisation that it was going to take extremely long for the Government of Kenya, either national or county, to get to the last mile of water provision to the citizens of this republic. Thus, there was need for better thinking on how to better organise the water sector to ensure that we conform it to the needs of our people. This is by matching the demand to the realities of funds that are scarce and it is not possible to reticulate this water to all our citizens.

The thinking that went to this Bill right from the onset, which I see now being confirmed in this particular mediated version of the Bill, is to create powers for various contracting agencies through our water service companies in our counties. This is to ensure that they have the power to enter into contractual obligations with people who have the resources to guarantee that this service is available to citizens.

Madam Temporary Speaker, of course, it will be at a fee. This is because there are many parts of the country where people are willing to pay for this water. Unfortunately, if it is unavailable, it does not matter. Even if you have money so long as that water is not available, there is nothing that you can do.

I appreciate that this mediated version has gone to the basic levels, including disagreeing even on a simple term such as the definition of what will be a bulk water service provider and their relationship with the contracting authority. It has defined it into two.

Remember, I mentioned earlier in my initial comments that what I appreciate about our mediation exercises, is that they help both Houses of Parliament to appreciate that there are two levels of government. Initially, the Bill only had the definition of the contracting authority with the mindset of a national Government.

Our Committee went on to specify and introduce the aspect of-

“At the county level, the county government, the county agency, or the county corporation which intends to have its function undertaken by a private party.”

Appreciating that even our county governments will have the power. We need to grant them the authority to enter into these contractual obligations, so that they provide water to their citizens without much of a struggle.

The second thing that I want to spend a little time on, is the issue of the operation of water works. When an investor, through Public-Private Partnerships (PPP), has conducted public participation and consulted with the regulatory board and the relevant county government whose area and jurisdiction of water works is located, they are allowed to, first of all, engage the citizens.

As per our Constitution, this is a cardinal principle. If you want to commit citizens of the Republic to any long-term engagement, especially one that will involve them parting with their resources, it is important to have their voice.

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I appreciate that in this mediated version of the Bill, Clause 4 now provides for the opportunity to engage with the citizens and seek their views. It is at this point that citizens can give their views. Perhaps, even put a limit on what will be the allowed charge and the time period within which they need to pay.

If, for example, you live within the City of Nairobi, you know that the Nairobi Water and Sewerage Company (NWSC) expects you to pay your water bill by the end of every month. However, given the enormous task that they have and how big a city like Nairobi is, they do not have the resources and manpower to meet the demands of every citizen.

Therefore, it is not unusual to find citizens who occasionally go even for three, four, five, or six months without honoring their obligations. Therefore, you end up creating unnecessary extra costs on the contracting authority. This is because they now have to contract people to move around and check if you have complied with the demands for payment.

That is why I agree, with what Sen. Wamatinga has said. Out of his experience, because these are private entities, we hope that they will make use of available modern technology of smart meters where when you run short of your tokens, the water stops. They do not need to employ people to walk around with a big spanner. Sometimes, they have to fight with dogs to access where the meter is located in the house. You simply put a stop to this kind of game by use of available technology. That will also help. This is the beauty of our PPP Act.

In this country, there is a sudden conversation that is ongoing about PPPs generally, whether they are legally useful and effective in resolving many of the service needs of our citizens. I am a big believer in PPP.

Many countries, especially comparable jurisdictions that have even bigger populations than ours, have used the power of PPP to develop their societies. They have ensured that citizens pay a competitive fee that is not exploitative, but at the end of the day, find world-class service.

Of course, this Express Way has been referred to many times as being the embodiment or the poster child of what a successful PPP will look like. It will serve us great as a nation, upon the signing of this Bill having passed today here. We will have these contracting agents. Once they enter into partnership with private companies, they will bring the efficiency of the private sector in running this institution as opposed to what presently exists.

Part of the reason many counties continue to suffer under the burden of huge public wages after the health workers, the second most expensive public servants for counties to hire, are those that work in our water service agencies. Many of those were inherited from the municipalities. You will find even a driver is earning more than what technical people earn in other competitive sections of the county governments because that is the rate upon which they were contracted.

Private sector money and the involvement of the private sector in this particular space will ensure that our water service agencies become competitive. Therefore, it will ensure that citizens do not have to pay a lot of money. Citizens end up paying lots of money to compensate first for employees and secondly, for water loss through leakages

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and old piping systems. I want to believe that the coming in of private players in partnership with these water service agencies, will rid out these losses and ensure that they deliver water to our citizens at a fee that many of the average citizens can easily afford.

There is one that I am not certain how it has been addressed in this particular Bill. Although, I recall that previously as I Moved this Bill, it is one of the things that we had concerned ourselves about. What would eventually happen with the existing water service agencies in our counties that will find themselves unable to keep up with other competing players, who will deliver the service that they are currently delivering perhaps at 50 per cent of the cost they are delivering?

Many county governments will find themselves in a difficult place where they have to reach an agreement to either completely shut down or surrender and leave it to the private players to make a decision. One of the most difficult decisions in this country is how to wind up a public entity because of the interest of employees. You will find employees demonstrating and sometimes curiously, even citizens who would have benefited from the efficiency of a private player involving themselves in public issues innocently join. They ask why the people have to be fired and that they should be allowed to have a job. Not knowing that this is being introduced, so that they can get services at a cheaper fee than what they presently get.

Finally, there is this Clause on the water tribunal that states that-

“The chairperson will be an advocate of the High Court of Kenya with not less than 10 years’ post; two persons, one of whom shall be a registered civil engineer; two persons who possess a degree from a university recognized in Kenya; the chairperson and members of the water tribunal shall be appointed to a term of three years and shall be eligible for reappointment for one further term of three years.”

Madam Temporary Speaker, the most important addition that the mediated version has brought that I appreciate is part four of that Clause. It says-

“The Chairperson and members of the Tribunal shall be paid such allowances as the Judicial Service Commission (JSC) may, in consultation with the Salaries and Remuneration Commission (SRC).”

It cannot be JSC alone. If you are not careful, you will create tribunals where people will end up collecting all the savings we have previously made from efficiencies brought in by the private sector, to be earned by members of this tribunal.

I like the fact that this has now been introduced at this stage of the mediated version of the Bill. The members of the Tribunal will be enumerated, so that they do not feel like they are offering free service, which would make them susceptible to being bribed. The second and most important thing is that they are being compensated competitively as per the rates that will be determined by SRC.

I believe that SRC will vary these rates because I do not think that you can have a standard rate applying for all the 47 counties. I may be wrong on that. The rates that will be charged to citizens will vary from one county to the other depending on so many other factors, including the distance or the cost of getting that water to the tap of citizens. Therefore, the earnings from water in one part of the country might not be necessarily the same for other parts of the country.

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I hope SRC will do a better job of determining the rates based on the efficiency of a water service provider so that you do not apply a standard rate across all the 47 counties. We are sometimes obsessed with certain constitutional principles that end up violating the core mandate of service provision, which is to ensure that every citizen enjoys this service.

Not every water service provider has the financial capability to carry on certain costs. I believe that what the Tribunal in Mombasa County will be earning might not necessarily hold true to what it will earn in Tana River County, a few hundreds of kilometers down the coast. It is for obvious reasons. It might not be necessarily what the people in Kericho will afford to pay.

I expect SRC to carry out a scientific study to determine the economic viability of every water service agency, including the ones that operate within our counties and determine the rates specific to a particular county. By the time you take up a job as a member of a tribunal, you should know what the people of that county can afford to pay based on the books of the water service agency of that county.

Madam Temporary Speaker, with those very many remarks, I congratulate the Members of the team that participated in this mediation. I hope we can conclude on this Bill before we break for Christmas so that many investors can begin to troop into our counties. This is a signature legislation. It is for the history, just like the legislation that we passed on health. With all the challenges that we are currently facing, 20 years down the line when the dust has eventually settled, other countries will be coming to benchmark asking how Kenya end up providing water to its citizens comparable to other jurisdictions.

This legislation will be at the centerpiece of that conversation just like it will be said, how Kenya ended up providing medical services to its entire citizens under Universal Health Cover (UHC). Despite all the challenges that are presently being faced at the inauguration phase of the health laws that we passed in Turkana, we will celebrate. This is normally the case in any project when you are beginning. I therefore thank the Members of the Mediation Committee who did an impressive work.

I thank you.

**The Temporary Speaker** (Sen. Veronica Maina): Thank you, Senate Majority Leader.

Sen. Mungatana, Senator for Tana River County, the floor is yours.

**Sen. Mungatana, MGH:** Asante sana Bi. Spika wa Muda kwa kunipa nafasi hii nitoe maoni yangu kuhusu sheria hii mpya. Natangaza kutoka Seneti leo kwamba hii sheria inatangaza mwanzo mpya kwa sekta ya maji Kenya. Tumetengeneza sheria ya kuwezesha wawekezaji wa kibinafsi ambao watashirikiana na serikali gatuji na mashirika mengine ya serikali yanayohusika na mambo ya maji ili kuboresha utoaji wa maji kwa wananchi wa Kenya katika gatuji zote 47.

Bi. Spika wa Muda, wananchi wa Kenya wanakumbuka katika historia ya Kenya kwamba miaka iliyopita Serikali ilikuwa inafanya kila kitu. Mtu akiajiriwa alikuwa anapewa nyumba na gari, na wale ambao mamlaka yao hayaruhusu kupewa gari walipewa usafiri wa basi ili kumchukua mtu na kumpeleka kazini na kumrudisha nyumbani.

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Kampuni za kibinafsi zilizokuwa wakati tuko watoto kama Kenya Ports Authority (KPA) na Kenya Breweries Limited (KBL) zilikuwa zinajengea wafanyakazi wao nyumba na kuhakikisha kwamba wana usafiri wa basi wa kuwapeleka kazini na kuwarudisha nyumbani.

Jinsi miaka imeenda, mambo yalianza kugeuka ikawa kwamba haiwezekani Serikali kupatia kila mtu gari. Wawekezaji wa kibinafsi wakaanza kuingia kwa sekta hiyo. Mtu akiajiriwa, ikawa kwamba sio serikali inayotafutia watu usafiri wa kuenda kazini, bali wawekezaji wa kibinasi. Watu wakaanza kulipa nauli kuenda kazini na kama kwako ni karibu na kazi, unatembea kwa mguu.

Mambo yakazidi kubadilika kwa watu waliokuwa wanategemea Serikali kuwapatia nyumba. Wawekezaji waliingia wakawa wanakodisha nyumba kwa wafanyakazi wa Serikali kwa sababu nyumba za Serikali zilikuwa hazitoshi. Uwezo wa Serikali ulizidi kuwa mfupi. Makampuni makubwa kama KPA yakaanza kutoa nafasi za nyumba lakini unakosa kupewa *allowance*. Ukipewa *allowance*, ulifaa kukodisha kwa wawekezaji. Kwa hivyo, mambo yamebadilika.

Bi. Spika wa Muda, leo hii tunazungumzia sekta ya maji. Wananchi siku zote wanauliza kwa nini hakuna maji miferejini. Ukweli ni kwamba hata tukipinga hizi kampuni mpaka mwisho, kuna shida ya kiasili. Ndio, kuna shida ya management, lakini shida ya asili ni kwamba ile mifereji ya zamani haitoshelezi haja za wananchi wa sasa. Hii ni kwa sababu watu wameongezeka na mifereji iliyotengenezwa na manispa ya zamani ishazeeke na mingine imepasuka na hali ya maisha imegeuka.

Sasa hivi tumeingilia sekta ya maji na tuko na mwanzo mpya. Tukishapitisha hii sheria, uwekezaji wa kibinafsi utaingia kwa kaunti zetu zote na mashirika ya serikali. Watu watashirikiana na serikali gatu ili kuweka fedha zao na kusimamia mipango ambayo italeti maji ambayo tumetafuta kwa miaka mingi.

Kwa hivyo, wale wanabiashara wanaosikiliza kikao cha Seneti leo watafute njia. Sisi wabunge wa Seneti na Bunge la kitaifa tutapitisha sheria hii. Tuna imani ya kwamba tukishaikagua na kumalizana nayo ikienda kwa Raisi, itapita kwani ni lazima atie sahihi.

Mwanabiashara ambaye amekuwa na shida ya maji, na kuteka maji na mikokoteni, hivi sasa tunawashauri watoke kwenye biashara hizi. Tunabadilisha sheria ili wawekezaji wa biashara za maji wafaidike. Wanabiashara hawa washikane na Kaunti ili waweze kupata pesa kidogo kutoka kwa wananchi wanaoletea maji na mikokoteni, gari ama geleni. Wanabiashara hawa waingie kwenye serikali za kaunti na kupata hela kidogo kutoka kwa hii kazi.

Ikiwa wawekezaji hapa nchini wataingia kwenye sekta hii, sawasawa na vile watu wa matatu waliingilia sekta ya uchukuzi, wawekezaji wakiingia kwenye sekta hii kama wale wa nyumba za wananchi na wafanyikazi ambao walikuwa wanategemea serikali--- Watu waliowekeza kwa nyumba hawasemi wamekosa kitu.

Watu ambao watafungua macho yao na kwenda kwa serikali za kaunti na kuangalia sehemu ya Nairobi na Tana River wanaweza fanya kazi, hii inaweza kuwa biashara utakayo fanya pamoja na watoto wako. Wakiondoka duniani, wajukuu wako watafanya pia na vilevile vitukuu.

Maji ni uhai na hakuna siku ambayo watu watasema hawataki maji. Ukweli wa mambo ni kwamba, katika nchi ambazo zimeendelea kama Ujeremani, nilipata nafasi

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nikaenda mji wa Munich. Baada ya mikutano tulikutana mzee mmoja ambaye anasimamia kampuni ya kusafisha maji machafu na kuwapa wananchi maji. Alisema kuwa yeye ni kizazi cha tatu ambao wanafanya kazi ile ya uwekezaji kwa upande wa maji.

Nikisema kuwa sekta hii ni mahali watu wanafaa kufungua macho, kuna watu wamefanya kazi hii, vizazi vitatu katika nchi zilizoendelea. Watu wanajua kampuni ile wakiwa ni wao wanatuletea maji miferejini mwetu basi maji yale ni masafi. Hakuna uchafu ndani ya yale maji. Ikiwa ni kampuni ile inasafisha maji, basi yale maji machafu wanaachilia kwa mito yetu na bahari hazitachafua bahari zile kwa sababu wako na uzooefu, ujuzi kwani wamesomea suala hili na kujua namna ya kusimamia biashara ya maji.

Bi Spika wa Muda, sheria hii inatangaza mwanzo mpya kwa sekta ya uekezaji wa maji. Wananchi watukufu ambao wanasikiza Seneti inafaa wajipange. Wasipojipanga watapangwa. Kesho utakuwa unasema kuwa kampuni hazifanyi vizuri na ulikuwa unaskiza Bunge la Seneti na hukufanya na mwingine akafanya. Wito wangu ni kuwa wale ambao watasimamia kazi hii ya uwekezaji kati ya Serikali za Kaunti na sisi ambao tutaingia kwa hizi biashara, ya kwamba haki ifanyike.

Wale ambao wako na uwezo, haswa wale wako kwenye biashara hii ya kutoa maji na kuuza, na kupeleka kwa *water bowsers*. Hawa wapewe nafasi za kwanza kufanya ushirika na serikali za kaunti ili wawekeze. Miferiji mipya iwe pale, *billing systems* mpya ambazo zitakuwa na *tokens*. Na pia maji yasiwe yanamwagika yakapotea. Ikiwa nimelipia *token* ya mia mbili basi pesa yangu ifike mia mbili. Kama nimenunua *token* ya Shilingi elfu moja na ninajua familia yangu, pengine tunatumia maji ya Shilingi elfu moja kwa wiki ama kwa mwezi basi hiyo maji ifike.

Tunataka wawekezaji waje kwa sababu sheria tumeitengeneza. Serikali hii ya Kenya Kwanza inajali mambo yetu ambayo inahusika na wananchi. Hili ni jambo nzito kwa wananchi. Shida ya maji ipo na huu ni msingi mwafaka kwa ajili ya mipangilio yetu ya kiserikali. Kwa hivyo, wale ambao wanasikiza Bunge la Seneti wajipange na wajue kuwa Serikali yetu inatujali. Seneti inajali wananchi. Ikiwa watu wataskiza na kufuatilia mswada huu, basi baada ya muda sio mrefu sana tutaanza kupata mabadiliko. Maanake kule kwa gatuzi tutaona hali ikibadilika. Mungu akipenda, sekta hii ya maji ambayo imetusumbua kwa miaka mingi tutaanza kuangalia na mambo yatakuwa mazuri kwa wananchi.

Bi. Spika wa Muda, haya yote yako ndani ya *Clause 5* ya hii Ripoti ya uwiano kati ya Bunge la Kitaifa na Bunge la Seneti. Nimefurahi sana maelewano ambayo yamekuwa. Kulikuwa na vipengele ambavyo hatukuvikubali sisi hapa Seneti. Tuligeuza na wale wa Bunge la Kitaifa wakakubali. Na kuna vipengele walileta huku hatukuvikubali na tukageuza.

Sasa tuko na sheria ambayo iko sawasawa, dhabiti na itasaidia wananchi wetu. Nashukuru kiongozi ambaye alishughulikia Mswada huu Seneta wa Nyandarua. Ameongoza kamati hii pamoja na wabunge wa Bunge la Kitaifa.

Tunashukuru kwa kazi mliyofanya ya kuleta uwiano na kujaribu kumaliza utata uliokuwa kwenye vipengele kadha wa kadha. Sasa tuko na sheria mwafaka ambayo

tukimaliza kuijadili na kuipiga msasa, itaenda kwa Rais na wananchi watapata afueni kwenye hii sekta ya maji.

Naomba kuunga mkono.

**The Temporary Speaker** (Sen. Veronica Maina): Thank you, Sen. Mungatana.

Sen. Murgor, proceed.

**Sen. Murgor:** Thank you, Madam Temporary Speaker, for giving me the opportunity to express my thoughts alongside those of my colleagues.

The saying that ‘water is life’ is commonly known. I am grateful to the Committee that jointly worked on this Bill. This Bill is about water. It is also said that the percentage of water in a human body is more than the percentage of blood. This emphasises the importance of water in human life apart from its physical usage.

Also, food without water is an impossibility. There are places in West Pokot where, even if you have food in the house, you cannot use it because water sources are far away. Therefore, if you do not go that far to get water, you will not eat anything in the house. This emphasises or puts importance on the need for water. Also, water challenges life. I have a drilling machine, and I was able to drill in that dry area of Pokot. I have also drilled in South Sudan, Uganda and Kenya. It is so interesting what water does in a place that does not have water. It changes life completely. Water changes the situation of places that people would not otherwise occupy or stably live in, such that stable homes begin to spring up.

You find that people become lively when they find good water. They become clean, physically, and you also see them wearing clean clothes. There is water to wash their clothes, bathe and wash their dishes after cooking. Life changes and becomes very different. Therefore, availability of water is key to life and stability. Even school-going children, have their situation changed and they become clean even when they go to school.

Like I said before, I have drilled more than 400 boreholes, and so around those areas, where we have succeeded in providing water, life is really different and very lively even for the animals too such as cows, goats and sheep. There was a place I went to drill water and we had made troughs where the animals drink from. The day I was handing over that borehole to the community, bees also came and interestingly, they did not move away.

They started just making a swarm together with the people, and they stayed there overnight because there was availability of water. Water changes life and is very essential for people, animals, and insects as well. This also puts emphasis on what we should do as human beings to make water available. That stresses the fact that we should plant trees because lack of water in some of the places in our country, Kenya, has been caused by human activities such as cutting down trees, therefore, making the land barren.

Climate change has been contributed to heavily by cutting down of trees and burning charcoal and so on. We should guard against this as national and county governments. The county government particularly should be tasked to guard against cutting down of trees. They should be encouraged and facilitated to plant trees, so that there is afforestation in counties. This will make the rain available and many things will also change such as vegetation.

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In addition to finding resources or ways of providing water for the citizens, tree planting should be made a priority in programmes. This should go along with the protection of river banks. River banks have also been destroyed. Trees that were planted or that grew along river banks have been destroyed by human activities such as cultivating. This has also contributed a lot to the destruction of homes, lives and even farm land that people have maybe had close to rivers.

The Government should have programmes that will make people aware of what to protect and the kind of protection needed along the hills, mountains, and river banks, so that we contribute towards availability of water and then change of the environment in places where we live. We should also encourage Non-Governmental Organizations (NGOs) and individuals that are able to introduce new ways of making water available.

My organization is one of those that has been able to provide water for people and so NGOs should also be encouraged. Any technology that can make water available should be introduced to the citizens, so that life is made livable and nice for the citizens.

I support. I thank you.

**The Temporary Speaker** (Sen. Veronica Maina): Thank you, Senator. Senator for Busia County, Sen. Okiya Omtatah proceed.

**Sen. Okiya Omtatah:** Thank you, Madam Temporary Speaker, for the opportunity to address this House on a very important Bill. Basically, we are dealing with a natural resource that is mentioned many times in the Constitution of Kenya, including in Article 43(1)(d), where there is a right of everybody to adequate quantities of safe and clean water.

On Article 56 on the marginalized; there is an obligation on the state to ensure that the marginalized access adequate quantities of safe clean water. You continue to Article 62 you find that water and water bodies are defined as public resources. Within that construct, we raise a debate on this Bill.

Although it does not come out very clearly in these amendments; because basically the amendments are designed to make it possible for private actors to play a very big role in this sector; it is really the duty of the public water works. When these private actors come in, we must be very guarded to ensure that they do not privatize the natural resource. When the regulations are being made for this Bill, for these sections, like the Public Private Partnerships (PPPs), there will be a need to ensure that water remains a public resource. We would have the primary duty being on the state to ensure that it is accessible.

Madam Temporary Speaker, more so in Kenya, which is a water scarce country, we are told that about 98 percent of the water on planet earth is in the oceans and the seas and only two percent remains accessible to human beings; unless you go into these modern technologies of desalination and stuff like that.

Here, however, we are allowing private actors to come and play a big role in the distribution of water and yet, there is an obligation on the State to make this water accessible. Water is a right. The State is the duty bearer. It should not just be a question of people coming to make profit. This is because, if profit becomes the motive, or if market forces override the primacy of political action within the water sector, then we

will end up with a very bad situation where many people cannot access water. Not because it is not available, but because they cannot pay for it.

Madam Temporary Speaker, what will be the duty of care on the private actors? In this law, I do not see the duty of care on private bulk water actors being imposed on them to ensure that the obligation on the state, which they are taking over, by coming to play a role in this very critical sector, is not lost on the vulnerable, the marginalized, and those who have challenges to access water.

You will find that most of our people in the villages, in the rural areas and sometimes depending on the economy or the capacity of your pocket in the urban areas, have no access to water. Even in Nairobi here, water gets rationed. I live within the city. My taps only get piped water on Saturday and Sunday. I live around town here, within the heart of the city. I am one person who does not board a *matatu* that is written “Nairobi” in the morning. I live in Nairobi not like my brother, the Senate Majority Leader, who lives in some bushy areas where you get a *matatu* that is written “Nairobi”, meaning you are going to Nairobi.

*(Laughter)*

I live within the heart of the city and I get water pumped to me twice a week. Therefore, you have to invest in some funny plastic tanks, whose safety you do not know about. When those tanks get heated up by the sunshine, you do not know the kind of chemical reactions occurring in that tank. Sometimes, you end up feeling weaker than you are supposed to feel.

Madam Temporary Speaker, the obligation on the State to supply this very, scarce commodity is something that we must look at critically. In Busia County, that elected me, you have two areas that have got acute water shortages. One is Samia, and the other is Teso North. Acute water shortages that you might identify with the North Eastern and yet Busia has got a lake. Part of Lake Victoria is in Busia. We get floods in Budalang’i, but that does not mean that there are no parts of Busia which have this problem.

With a situation like that and with a poor population, which may not be able or is not able maybe to pay for tapped water, it is important for the State to come in. If a bulk water supplier was to go there and say that he wanted to tap the water in Lake Victoria and pump it all the way to go and do irrigation in Turkana, that can be done. However, what would be the considerations for the local people? We have seen Murang’a supplying water to Nairobi. What are the considerations for those people? This culture whereby laws are made for the rich is a dangerous culture; where roads are built for those who drive, not those who walk, ride bicycles or motorcycles and whereby, we think that Kenya only belongs to the small elite who live good lives, like Sen. Karen Nyamu. That kind of a situation does not belong to all of us. So, when you come to this situation whereby you are trying to privatize a natural resource, then technically, we must put in mechanisms to ensure that these vulnerable groups are protected.

Madam Temporary Speaker, it is not for nothing that they are mentioned specifically in the Constitution. It is not for nothing that the Constitution declares water within the Bill of Rights. Water is mentioned twice in the Bill of Rights. Not even the right to life, which is just mentioned once, but the right to water is mentioned twice, in

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Article 43 and Article 56. That means that we are dealing with a very critical issue, more important than life itself, which for our country, is very limited because there are water scars; and which profit, must not become the driving motive. The driving motive should be access to that water. The Government should realize that access to water has a correlation to the budget for health. If people get clean water, then you eliminate common water-borne diseases like coughing, diarrhoea and even dysentery. There are many diseases that are water-borne as well as other contaminations that occur. If water is made available, the budget of the Government on other issues will lessen, the quality of lives of people will improve and they will become more productive.

Madam Temporary Speaker, I believe that the primary duty to ensure there is water lies on the state. I have deliberately not gone to Section 4, which deals with water and sanitation. I am hanging around the Bill of Rights. This is because, you can easily declare water as a devolved function considering water and sanitation is given to the county governments, and therefore, the national Government has nothing to do.

When you go to the Equalization Fund, again, water is mentioned as one of the areas where funds from the Equalization Fund should be spent. Therefore, the national Government is a major duty bearer in ensuring that the people of Kenya have access to adequate and safe water, and that duty is one duty that cannot be delivered by the market. The market can never replace the Government on provision of this critical service.

Madam Temporary Speaker, I pray that when we go to the making of regulations after we pass this Bill, because it has some good aspects, and I will be supporting it. We should be very critical to ensure that within those regulations, we erect mechanisms that ensure the right to water is not subsumed, denied, or is not abrogated by market forces, which are pursuing profits. That will be a terrible thing.

We have already seen some areas in town here where you hear narratives of people with water bowsers who keep on disabling the city water system, so that they can use their bowsers to go and sell water. This is happening, and it is very sad.

Madam Temporary Speaker, I plead that as we go forward, we do not just cheer and look at it that water is like - I do not know what I can compare it with because of the debates I have heard here. Even sand nowadays is a limited mineral that needs proper management.

The other thing that we need to stress on is water pollution and the destruction of water catchment areas. In the former Western Province, including Busia County, sugarcane has been a major problem in terms of destroying water catchment areas that we call swamps. The swamps that were there in the 1970s are no longer there. The rivers have become small streams and storm waterways, such that, when it rains, that is when they get some water, otherwise, they dry up.

I pray that this matter be looked at comprehensively. The companies that are going to invest in the water business must realize that their profit-making is secondary to service delivery. Profit-making should not be the main driver for which investors come in to invest. They must realize that they are coming to do a public duty, and their profits come second. They must have corporate social responsibility structures that ensure that if they have taken over an area, the vulnerable people within that area are taken care of. Otherwise, they must come up with a mechanism of subsidizing them, whereby the state

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can give vouchers to poor people who cannot pay for this water. When they get these vouchers, they can then redeem these vouchers in terms of litres of water. However, the State will not say that it will buy trucks and incur all those costs, the way they did with the fertilizer and cooking oil. However well-intentioned, it will become messy.

We have areas we can borrow from. I have been doing some desktop research on India, on how they do that. They have a big subsidy programme. They do their subsidies through first of all, mapping the recipients, then using technology, they are able to then target these people with vouchers. So that, if there was a subsidy for fertilizer, there was no need for government to buy the fertilizer and incur costs of transport, warehousing, and all the efficiencies.

The Government people are not shopkeepers, they do not run shops. It would have been done very well whereby, they would have mapped out the farmers, known the needs of each farmer, and then issued out vouchers where a farmer can go into an ordinary store and with a voucher, the way people do at Christmas when they are given vouchers by their employers, walk into a supermarket or an agro-vet, and give their voucher and redeem it against fertilizer. I would pray that we consider that.

If we are going to allow the private sector to play a primary role in water distribution, then we must come up with a way where the Government does not hide behind that. The Government's duty must be able to penetrate that through a voucher system where we can subsidize the poor and the marginalized, who the Constitution recognizes in very many ways and protects.

Above all, Madam Temporary Speaker, never should we ever allow any market forces to control our natural resources or to own water. Nobody should own water. They can own the distribution, but owning the water must remain with the State, and the State must control how that water is used.

Ultimately, I reiterate that the poor and the marginalized, who are the most disadvantaged, must be protected through clear and elaborate policy and legal frameworks that ensure they do not become sacrificial lambs on the altar of profit-making.

Those who come to invest in these waterways as bulk distributors want to grow their capital. However, they should not grow their capital on the graves of Kenyans. They should grow their capital in a manner that makes Kenyans thrive. So, there is a big role on the Government to invent, think, and come up with a structure that can allow the market to play a role, allow people to grow their profits, and protect the rights of the marginalized and the vulnerable, including people in many villages in this country who are poor, to access this vital commodity to improve their lives and serve.

Madam Temporary Speaker, with those remarks, I support and congratulate the bipartisanship that has come up and has been expressed here, which the Senate Majority Leader has recognized in eloquent poetry, which I will spoil if I try to imitate him in my broken prose.

I thank you, may God bless us all.

**The Temporary Speaker** (Sen. Veronica Maina): Thank you, Hon. Senator.

**ADJOURNMENT**

Hon. Senators, it is now 6.26 p.m., and for the convenience of the House, we are going to adjourn the Senate until Tuesday, 29<sup>th</sup> of October, 2024 at 2.30 p.m.

The Senate rose at 6.26 p.m.