

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 23rd October, 2014

The House met at 2.30 p.m.

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

PRAYERS

Hon. Speaker: Hon. (Ms.) Beatrice Nkatha Nyaga, you have the Floor.

PETITION

DELAY OF RETIREMENT BENEFITS FOR MR. CASTON KAMARU KITHINJI

Hon. (Ms.) B.N. Nyaga: Thank you, hon. Speaker for giving me this opportunity to present a petition by Mr. Caston Kamaru Kithinji from my county; on delay of his retirement benefits.

I, the undersigned, on behalf of Mr. Caston Kamaru Kithinji, draw the attention of the House to the following:-

THAT, Mr. Caston Kamaru Kithinji was employed by the Government of Kenya in the Ministry of Environment and Natural Resource on 1st March, 1978 as Support Staff (SS) II, Job Group B with a Salary of Kshs. 2,155 per month;

THAT, the officer applied for early retirement on 13th February, 1994 and that his application was approved on 14th December, 1994 to be effective from 1st January, 1995;

THAT, his benefits under the Voluntary Early Retirement (V.E.R) for the years he had worked including the Golden Handshake amounted to Kshs.186,260;

THAT, the petitioner was informed vide a letter dated 14th December, 1994 that he would be paid his dues latest 31st December, 1994;

THAT, to date the petitioner has not been paid his dues as had been stated in the letter dated 14th December, 1994;

THAT, failure by the Government to pay the petitioner has forced him and his family to live in abject poverty; and

THAT, the matter in respect of which this petition is made, is not pending before any court of law;

Therefore your humble petitioner prays that the National Assembly, through the Departmental Committee on Labour and Social Welfare intervenes to have the petitioner paid his rightful dues by the Government; and ensures that the petitioner is paid for damages caused as a result of failure by the Government to pay him at the required time.

Thank you, hon. Speaker.

PAPERS LAID

Hon. (Dr.) Shaban: Hon. Speaker, I beg to lay the following Papers on the Table of the House:-

The Financial Report of the Audit Office of the Auditor General, Kenya National Audit Office for the period of 1st July, 2011 to 30th June, 2012.

The Transition Authority progress Report for the month of August, 2014.

The Transition Authority progress Report for the month of September, 2014.

The Report of the Auditor-General on the Financial Statements of Maasai Mara University for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the University of Eldoret for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the Meru University of Science and Technology for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the University of Kabianga for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the Kenya Utalii College for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Maseno University for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Rongo University for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

Thank you, hon. Speaker.

Hon. Speaker: If I look at the Order Paper, the hon. Asman Kamama Abongotum has two reports.

Hon. Abongotum: Thank you, hon. Speaker. I beg to lay the following Papers on the Table of the House:-

Report of the Departmental Committee on Administration and National Security on its consideration of a petition regarding rights of persons detained, held in custody or imprisoned.

Report of the Departmental Committee on Administration and National Security on its Third Visit to the State of Israel on 19th to 26th October, 2013.

Thank you, hon. Speaker.

Hon. Chepkong'a: Thank you, hon. Speaker. I beg to lay the following Paper on the Table of the House:-

Report of the Departmental Committee on Justice and Legal Affairs on the refusal by the President to assent to the Status Law (Miscellaneous Amendments Bill, 2014).

Thank you.

Hon. Speaker: Next Order.

NOTICE OF MOTION

MATTER CONCERNING *EX PARTE* INJUNCTION ON IPOA

Hon. Kuria: Thank you, hon. Speaker, Sir. This is a request for adjournment on a definite matter of urgent national importance.

THAT, Pursuant to Standing Order 33(1), I wish to seek leave to move the adjournment of this House for the purpose of discussing the matter concerning the *ex parte* injunction granted to the Independent Police Oversight Authority (IPOA) restraining the admission of the police recruits to the Kenya Police Training College.

Hon. Speaker this move is greatly affecting the capacity of the National Police Service Commission from effectively providing security to citizens of this country due to the shortage of police officers, which the recruits were supposed to bridge the gap. In April 2014, 7,000 police officers graduated from the police training colleges. The recruitment exercise that has been on hold was to add another 10,000 police officers to the police service.

Hon. Speaker, on several occasions, the Government has committed to increase the number of police officers by 10 per cent every year in order to attain the globally accepted ratio of police officers to the population.

This noble commitment is severely affected by this injunction at a time the country is facing the twin threats from criminals and terrorists. I, therefore, wish to urge the Judiciary to consider the implications of *ex parte* injunctions especially those touching on national security and in the spirit of national hold and patriotism.

Thank you, hon. Speaker.

Hon. Speaker: Do I get the sense that you would want the House to discuss a matter that is already pending before court and has not been concluded? This is because you said an *ex parte* order has been issued.

Hon. Kuria: Hon. Speaker, in the spirit of separation of powers, this House is at liberty to discuss the same.

Hon. Speaker: We want to be the House that respects its own rules while allowing others to continue disrespecting theirs as they choose to. If, indeed, the matter is active and alive; hon. Kuria, are you saying that the House should engage in this matter?

Maybe, before I make a decision one way or the other let me hear what our colleagues have to say. Hon. Midiwo, the Floor is yours.

Hon. Midiwo: Thank you, hon. Speaker. You will excuse my colleague because he is new in this House. I am told he made his Maiden Speech last week. In fact, he told me. Therefore, this should be his first serious business.

Hon. Speaker, nobody could be more out of order than what hon. Kuria is trying to do. We are complaining that the Judiciary is a bit overbearing on legislation and legislators. We should not even attempt to give the impression that we want to break rules. That matter is alive before court. Yesterday, I saw you being accused of not respecting court orders. This would be juicy one for your accusers. Even people who are

just accusing you for the sake of it would really have a field day. Therefore, I urge you to rule hon. Kuria seriously out of order.

Hon. Chepkong'a: Thank you, hon. Speaker. I rise pursuant to Standing Order No.83 as read together with Standing Order No.89.

As you know, I am the godfather of hon. Moses Kuria. When he first appeared before this House, I escorted him and I would still play that role even today. I know this is a very important Motion that he seeks to introduce in the House. It is a matter that has exercised the minds of Kenya for a long time, including even those of the legal fraternity. Those *ex parte* orders are issued by the Judiciary without considering the views of the other parties; including you.

You have been accused. I remember when we had our committee you were accused to have been served with some court papers, which you told me you did not receive. You were quoted at some point by someone allegedly that you said you cannot obey an idiotic court order. To the best of my recollection, before I come to this point, I remember the Chief Justice himself calling a meeting at Serena on a Sunday and telling Kenyans that every Kenyan must obey every court order, even if it is an idiotic court order. Therefore, I thought it was in response to that, that you were saying you will not obey idiot court orders. As a lawyer, I find it extremely impossible that a judge can issue an idiotic court order and that the Chief Justice can actually say such kind of thing. There is nothing called "an idiotic court order". Once a court order has been issued, it is a court order and you must comply with it. I do not think you are in the league of those who want to disobey court orders.

In line with that, I just wanted to say that hon. Kuria has made a very good attempt. The only thing is that I want to refer him to Standing Order No.89 which is very clear that once a matter is pending before court and it is active--- In fact, there are dates that have already been set and this matter is to be determined by a court of law. The rule of *sub judice* that we respect in this House is really a restraint on the part of the National Assembly or Parliament. It is not a doctrine that has been imposed upon us from outside. It is a doctrine that has been imposed by ourselves so that we do not interfere with matters that are pending before court. If we comment about this matter, I know many hon. Members are concerned about it. We are also concerned about how Judiciary issues *ex parte* orders. That is a matter that we intend to deal with under the Civil Procedure Code. We intend to amend the Civil Procedure Code to provide for instances when a court can issue an *ex parte* injunction without hearing the other party.

Therefore, in view of the very clear provisions of our Standing Order and the precedent that we have set in this House; it will not be in order for us to discuss that matter, hon. Kuria. It could be postponed to some other day when that case has been concluded then we can have the merits of the judgment that will have been issued by the court. Then we ventilate on it without appearing to be overbearing on the Judiciary; so that we respect the principle of separation of powers.

I like what he said that he respects separation of powers. That is in fact, the very basis of separation of powers, that you do not discuss anything that is actively pending before another independent arm of Government.

Thank you, hon. Speaker.

Hon. Wakhungu: Thank you, hon. Speaker. We learn from mistakes and I want to congratulate hon. Kuria for trying by referring to Standing Order No.89 which talks about the *sub judice* rule.

What I am concerned about is that, before any Motion comes to the Floor of the House, there is process and a procedure. I am wondering how hon. Kuria sneaked his Motion to the House yet we have a stage that a Motion passes. It is in the public domain that this matter is active in the courts of law and everybody knows that it is *sub judice*.

How did he manage to sneak this Motion to the House and all Members and technical officers know this? He should have been advised appropriately. Can he explain how he managed to sneak this Motion to the Floor of the House?

Thank you.

Hon. Waiganjo: Thank you, hon. Speaker. I also wish to join my colleagues in congratulating the hon. Member for Gatundu for bringing up this Motion. The rule of separation of powers cannot be understated. In fact, every sector in this country is struggling to reinforce its position as an arm of Government.

As far as the Judiciary is concerned, it is in our interest to make sure that the independence is not underestimated. Also, the independence of the Legislature must also be emphasized. IPOA got an injunction after moving to court under the certificate of urgency. The import of an *ex parte* order is to preserve the *status quo*.

So, in my view this matter is an active matter before court. An *ex parte* injunction is not a final injunction. It is a holding order awaiting final determination by the court. Therefore, even as we urge our judges to have some purposeful interpretation of the law, we cannot also seem to be the arm of Government that is leaning over the other two arms of Government.

The rule of *sub judice* is clear. The rule of *sub judice*, even as far as it is within our Standing Orders, does not just apply to this House. It also applies to people out there. Every matter that is active before court is not subject to any discussion outside the court rooms. Not just outside this House of Parliament or this National Assembly, but also to the wider public.

It is important to preserve the independence of the Judiciary. It is very important to observe laws and orders, even if such orders are granted in an *ex parte* way. I also wish to join my colleagues who find that hon. Kuria, even if his intentions are good, is grossly out of order.

I thank you.

Hon. Speaker: Hon. Members, every one of you is speaking on a point of order. You are the one who is lost now, the one talking about information. Deputy Leader of Majority Party, proceed.

Hon. (Dr.) Shaban: Asante sana, Mhe. Spika. Mwenzangu Mbunge wa Gatundu Kusini ametatizika sana kwa sababu ya hali ya usalama hapa nchini na umuhimu wa kuwa na maafisa wa usalama kwenda kwenye mafunzo ili waweze kufanya kazi kama vile Serikali ya Jubilee ilivyoahidi.

Ijapokuwa ni hivyo na haswa sisi wenye kutoka maeneo ya mpakani, tunapendelea sana kuwa maafisa hawa waende mafunzoni haraka iwezekanavyo ili waje wafanye kazi ya kuwalinda Wakenya haswa wakati huu ambapo tumekuwa na matatizo mengi hapa Kenya. Kulingana na kanuni za Bunge hili, Mbunge huyu wa Gatundu

Kusini ambaye bado ni mgeni, hajaelewa sana kanuni zinavyosema na kwa hivyo ni vizuri Wabunge wenzangu wamuelewe. Sisi sote tunaumwa na roho kuwa maafisa hawa hawajaenda bado kwenye mafunzo hayo lakini vile vile, ni muhimu tukumbuke kwamba ni lazima tugawanyane majukumu, mahakama wafanye kazi yao na sisi Wabunge pia tufanye kazi yetu.

Kitu ningeomba ni mahakama iharakishe ili wale waliochaguliwa kwenda kwenye mafunzo waweze kwenda haraka iwezekanavyo. Vile vile, Mhe. Spika, wewe kama Spika wetu umekuwa ukiheshimu kanuni za Bunge na sheria za nchi hii kwa hivyo hakuna sababu ya mtu yeyote kusimama, kukulenga na kukurushia maneno ambayo si ya haki na ambayo ni bughudha.

Mhe. Spika, ninaomba wenzangu tutulie, tumuelewe mwenzetu na tutulize zile duku duku tulizo nazo kuhusu maafisa hawa.

Asante sana.

Hon. Speaker: Everybody is rising on a point of order, but the matter is not very difficult for me to even just make a decision.

Hon. Ngong'o: Hon. Speaker, thank you for giving me this opportunity. You know, hon. Kuria actually was two years ahead of me in college and fortunately I have now the task of trying to train him. I know he has been very lucky and probably thinks he can be lucky all the time.

Hon. Speaker, hon. Kuria is one of the MPs who are in this *Bunge* as a result of telephone calls, but is not lucky this time. Now, let me come to the issue that hon. Kuria has raised. The issue of *sub judice*, in my view, is very clear under Standing Order No. 89. Standing Order No. 89 says that no member shall refer to any particular matter which is *sub judice* or which, by the operation of any written law, is secret. Then it goes on to describe what is actually *sub judice* if the matter is active in court.

Hon. Speaker, even though the responsibility of proving that a matter is active in court is with the Member leading it, fortunately for us, hon. Kuria himself has already proved that the matter is active and there is an injunction. Therefore, we would only urge our friend, I know he has excitement, really when you start running when others are already ahead, you want to catch up with them very fast. I would understand and appreciate that, but we ask him to hold on and understand that just as we complain that the Judiciary is interfering at times with the operations and activities of Parliament, we also want to respect Parliament and you hold your horse. We are all affected in this. We would only urge, as hon. (Dr) Naomi Shaban has said, that this matter should be concluded speedily. Actually, we urge the Judiciary to be dispensing of these matters as fast as they come so that they do not hold the entire country. We cannot, in my view, discuss this matter.

Thank you very much for giving me time to train hon. Kuria. The problem is that he does not want to sit near me most of the time. I would urge him for the time that he is going through training; he should come and sit this side. I will surrender him back once he has already learnt the rules of the House because next to him is hon. Charles Njagagua and he is not doing a very good job. Hon. Charles, you should have stopped him from raising this matter.

Thank you.

Hon. Speaker: Hon. Members, I can make a decision on this matter but say what you must say quickly so that I can---

Hon. Sakaja: Thank you, hon. Speaker. It is very interesting to hear this discussion because Members have, maybe due to lack of a better word, castigated the member who has brought this Motion. This is because he is referring to a matter that is active.

Hon. Speaker, if you look carefully at what the member is asking for in his Motion, and we respect the doctrine of separation of powers, the doctrine of separation of powers has been there for many years but in that doctrine, we have three arms of government which move in horizontal formation. None is superior to the other; which means that this arm of Government can discuss what the other arm of government does without necessarily going into the details of that operation.

The Member wants us to discuss, and probably the issue is how it was worded, a matter of national importance of how *ex parte* injunctions are given without focusing on the specific case. *Sub judice* is defined in our Standing Orders. *Sub judice* is on a member and I will read Standing Order No. 89(2); “a matter shall be considered *sub judice* when it refers to active criminal or civil proceedings and the discussion of such matter is likely to prejudice its fair determination.”

Hon. Kuria wants us to discuss the matter of the court, and there are many examples; giving *ex parte* injunctions that hamper the activities of other arms of Government. He does not want us to discuss the specific issue of this case which is before the Judiciary. He has mentioned it as an example of the many.

Hon. Speaker, in the doctrine of separation of powers, if the National Assembly decides to act in an inferior manner that we cannot discuss the happenings in the Judiciary, we will not be doing right. This is because our Constitution says that this National Assembly can discuss any matter of national importance and I believe that is the reason why this Motion has been approved by your office.

Hon. Speaker, I urge hon. Moses Kuria to reword his Motion such that he can bring it again. It is not too late. Such that the discussion is not about the injunction of the police but it is about how the Judiciary has been giving *ex parte* injunctions, because that is a matter that must be discussed. That is what *sub judice* is, and in refusing to have this Motion debated, it must be demonstrated how the discussion of this matter is going to affect its fair determination.

So, let us be fair to the Member. Let us not just say that the Member joined Parliament only the other day. Everyone in this House is a Member in his own right. He has a right to raise this issue because it is a matter of national importance.

This is an issue you have personally, and many other hon. Members, have spoken about.

Hon. Speaker: Hon. Members, the matter before the House is not very complicated. When the Motion was first brought to my office, what came to my mind was a general discussion on issuance of *ex parte* injunctions and orders but hon. Moses Kuria has since confirmed in his own words that he specifically wants the matter of the *ex parte* injunction issued against the National Police Service Commission, and in favour of the Independent Policing Oversight Authority, discussed. He has also confirmed that the matter is, indeed, active. Hon. Sakaja read only the part of Standing Order No.89 that

deals with criminal matters. He did not go below to see the one that deals with civil matters. The matter has been set down for hearing, and preparations have been made. Parties have been informed.

So, in fairness, if we allow this House to debate this Motion, there may be no way of knowing which Member will start giving examples of areas where the order issued will be affected, and how that debate is likely to influence or in any way affect the direction that those hearing the case might take. As I said earlier on, we need to be faithful to the Constitution which, through Article 124, allows us to make our Standing Orders and through those Standing Orders, allow for orderly conduct of business of the House. We have, in those Standing Orders, consciously submitted to respecting the rule of *sub judice*.

Therefore, I would want to advise hon. Moses Kuria, much as I may have sympathy to the issues that he has raised regarding issuance of injunctions and *ex parte* orders; that if the matter was to be discussed in general terms, it would be a perfect Motion for this House to express itself on. To the extent that this Motion specifically refers to that particular case, we will be infringing on our Standing Order No.89 if we go on to debate it. Therefore, I rule that hon. Moses Kuria withdraws and rephrases his Motion so as not to specifically deal with the matter that is pending before court.

Hon. Members, for avoidance of doubt, I want to say it from the Chair that the Speaker has not been served with any court order of whatever description. I have heard hon. Chepkong'a describe some orders in a particular way. Not even such orders have been served on the Speaker. It is unfortunate that even people who have been given very hallowed titles like "Senior Counsel" continue to misinform themselves and consequently misinform even judges and the general public that the Speaker of the National Assembly has disobeyed a particular court order. There is no court order that has ever been served on us. Those which have been served have been served in different capacities. As you know, I chair the Parliamentary Service Commission (PSC). As a Commission, we submit to the rule of law. Where we have been sued, we have proceeded to defend ourselves but we have not been served, as the National Assembly. When we are, we will obviously inform this House so that a decision can be made collectively by this Assembly. It is not fair for people to continue issuing statements recklessly in all manner of places to the effect that there are certain orders, whether very cleverly or otherwise described---

(Laughter)

I assumed that all orders made by judges were made out of serious research work. So, even on the ones that people are alleging, if people make statements to the effect that court orders should be obeyed, we have a right, as Members of Parliament, to comment on them. I would even be surprised that actually courts could be said to be issuing those kinds of orders. We have not even been issued with those ones. When we are, we will express ourselves. So, it is only fair that we allow people not to mislead themselves and in the process mislead others in the country that we are about to disobey and, as a consequence, violate our own Constitution. We are not about to do so. I will defend

myself where need be, both in my official capacity as Speaker and Chair of the PSC, as the case maybe. For now, we have not been served.

I would want to challenge any Kenyan out there, however schooled, to proceed to any court of law, however composed or comprised; and swear an affidavit that they have ever served the Speaker of the National Assembly with any court order. This is a challenge I am issuing from the Chair because it is fair that we put this matter to rest. I am sure that all of you, hon. Members are surprised that your Speaker is disobeying court orders. I am unaware of any court order that has been served on me that I have disobeyed but if anybody has any information to the contrary, I challenge them to proceed in the manner that I have indicated to prove that they have served a court order to the House on such a day and that the House, under the chairmanship of Speaker Muturi, disobeyed that order.

Of course, we have expressed our own reservations about some of the orders, but that is only expressing reservation. Every Kenyan has a right to express themselves on anything. Obviously, as your Speaker, I would be very surprised if I am served with an order declaring that the National Assembly should not sit on a particular day. We are supposed to obey all court orders. So, if for some reason somebody walks to court, obtains the kind of orders that hon. Chepkong'a referred to, then comes here and serves us, barring us from sitting on any particular day, even if you are coming to debate the national Budget, I will pin the orders on the entrance to the Chamber and tell you "this is the reason as to why we are not sitting today". It will be upon you, hon. Members, to take a decision on those kinds of orders when and if they come.

Hon. Moses Kuria, please, be kindly advised. You could re-phrase your Motion. Your colleagues seem to have sympathy with the issue of *ex parte* injunctions against all manner of institutions, but not limited to the Executive or even the National Police Service Commission.

Thank you.

MOTION

APPOINTMENT OF HON. MWADEGHU TO HOUSE BUSINESS COMMITTEE

Hon. Katoo: Hon. Speaker, I beg to move the following Motion in an amended form:-

THAT, notwithstanding the resolution of the House on 11th February, 2014 regarding the appointment of Members to the respective Committees, this House further approves the appointment of the Minority Whip, the Hon. Thomas Mwadeghu, MP, to the House Business Committee.

Hon. Speaker, I have amended the Motion in that manner in order for it to conform to Standing Order No.176, which is about the discharge of a Member from a Committee. According to paragraph (1) of the Standing Order, only the parliamentary party that nominated a Member to a Committee can write to the Speaker, if they wish to discharge

the Member from the Committee. Immediately the Speaker receives the notice, the discharge of such Member takes effect immediately.

This Motion is also in accordance with Standing Order No.171 (3). Paragraph (1) of the Standing Order is about the membership of the House Business Committee.

(Loud consultations)

Hon. Katoo : Hon. Speaker, there are loud consultations.

Hon. Speaker: Order! Order, hon. Members! Consult in low tones. I am not telling you not to consult but do so in low tones, so that you can hear the Majority Whip.

Hon. Katoo: Thank you, hon. Speaker. I was saying that Standing Order No.171 is about the membership of the House Business Committee. Specifically, the Standing Order says, in paragraph (3), that in nominating the Members to the House Business Committee, each parliamentary party shall include its whip into the membership of the Committee. It is in the spirit of this Standing Order that I am moving this Motion, so that the Minority Whip, hon. Mwadeghu, can be approved by this House to be able to sit in the House Business Committee.

It is on this House's record that the CORD Coalition made changes in their leadership. The new Minority Whip is hon. Thomas Mwadeghu. Therefore, I kindly request the House to approve this Motion to let the Minority Whip to represent the CORD Coalition in all the House Business organs for purposes of that office.

With those remarks, I beg to move and kindly request the Deputy Minority Whip to second.

Hon. Wakhungu: Hon. Speaker, I rise to second the Motion.

As you are aware, it is the discretion of the CORD Coalition to decide who should be their Whip. Indeed, communication was done, and hon. Thomas Mwadeghu has since been the Minority Whip. In line with Standing Order No.171, he is actually going to the House Business Committee because of the position of Minority Whip that he holds. As my friend has clearly put it, maybe, just to paraphrase, Standing Order No.171, paragraph (3) says that in nominating the Members to the House Business Committee, each parliamentary party shall include its whip.

For the sake of CORD, it is high time that hon. Mwadeghu moved into the Committee. The House Business is the one which makes decisions as far as the flow of business in this House is concerned. As we move on, we must also have the interests of the CORD Coalition and the Jubilee Coalition. It is important that as we have the Majority Whip in that Committee, we also have the Minority Whip sitting in the Committee. So, I do not see much ado on this matter. He has to be in the Committee by virtue of the fact that he is the Minority Whip, so that we can move on in the spirit of team work.

With those remarks, I beg to second.

(Question proposed)

An hon. Member: Put the Question!

Hon. Speaker: Hon. Members, is it the mood of the House that I put the Question?

Hon. Members: Yes!

(Question put and agreed to)

Hon. Speaker: Hon. Members, we will re-organise the order of our Business. We will go to Statements after we hear the Majority Whip.

STATEMENT

BUSINESS FOR THE WEEK COMMENCING 28TH TO 30TH OCTOBER, 2014

Hon. Katoo: Hon. Speaker, as usual, the House Business Committee met on Tuesday this week at the rise of the House to prioritise the business of the House for next week.

On Tuesday, 28th October, 2014, the House will go into Committee of the whole House to consider the Mining Bill, 2014. Bills lined up for Second Reading include the Insolvency Bill, 2014 and the Water Bill, in case they are not concluded today; the Companies Bill, 2014, the Diabetes Management Bill, 2014, and the Prohibition of Anti-Personnel Mines Bill, 2014.

Also prioritised for debate next week include Motions on the Report of the Committee on Regional Integration regarding the protocol for the establishment of the East African Community Monetary Union, and the 17th and 18th Reports of the Public Investments Committee on the accounts of State corporations.

Hon. Speaker, on Tuesday, 21st October, 2014, you communicated to the House that Cabinet Secretaries shall, on every Tuesday between 10.00 a.m. and 12.30 p.m., when the House is sitting, be required to attend Committees of the National Assembly to answer questions submitted by Members concerning matters for which the Cabinet Secretaries are responsible. The provision relating to questions that applied to the Committee on General Oversight – which has since been suspended – shall apply *mutatis mutandis* to questions in the Departmental Committees. Therefore, on Tuesday next week, the following Cabinet Secretaries will appear before Departmental Committees as follows:-

	CABINET SECRETARY	MINISTRY	COMMITTEE	TIME
1.	Mr. Joseph ole Lenku	Interior and Coordination of National Government	Administration and National Security	10.00 a.m. to 10.50 a.m.
2.	Prof. Jacob Kaimenyi	Education, Science and Technology	Education, Research and Technology	10.50 a.m. to 11.40 a.m.

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3.	Mr. Felix Koskei	Agriculture, Livestock and Fisheries	Agriculture, Livestock and Cooperatives	11.40 a.m. to 12.30 p.m.
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Members who have directed questions to the Cabinet Secretaries are hereby notified of the above. However, formal communication will be issued to them.

Hon. Speaker, I would also like to notify the House that we are scheduled for a short recess, starting from Friday, 31st October, 2014, for 10 days, as per our calendar.

Finally, the House Business Committee will meet on Tuesday, 28th October, 2014 at the rise of the House to consider business for the rest of the week.

Hon. Speaker, I beg to lay the Statement on the Table of the House.

(Hon. Katoo laid the document on the Table)

Hon. Speaker: I am sorry, hon. John Mbadi, I want to make a clarification. Administratively, we had agreed that the Statement by either the Majority Whip or the Leader of Majority Party regarding questions should ideally include a statement indicating which Members have asked questions so that nobody forgets that they have questions, and in order for them to prepare to come on Tuesday even though those questions will be appended to the Order Paper on Tuesday. Of course, for purposes of forward planning, at the rise of the House today or whatever time a Member leaves here, they need to check whether their questions are amongst those coming up in the Committee meetings the following Tuesday for response by the Cabinet Secretaries. We have agreed with the Office of the Clerk that before the end of today, there will be circulated a list showing which Members' questions are going to be responded to by the Cabinet Secretaries on Tuesday, 28th October, 2014, at 10.00am.

Proceed, hon. John Mbadi.

Hon. Ng'ongo: Thank you, hon. Speaker.

While I appreciate the Order of Business that the Majority Whip has just read out, I am concerned that there is a Bill I had sponsored, which had actually gone through Second Reading – The Retirement Benefits (Deputy President and Designated State Officers) Bill, 2014. The Bill was supposed to proceed to the Committee of the whole House many months back, just before we proceeded for recess. I am worried that this Bill is taking unnecessarily too long. I would have asked the Majority Whip, who sits in the House Business Committee, to try and prioritise it because this is unusual delay. The practice of this House is that once a Bill has gone through Second Reading, it takes a pretty short time for it to be concluded.

Hon. Speaker: Hon. Mbadi, in fact, you do not have to appeal to the Majority Whip. You should appeal to hon. Mwadeghu or hon. Francis Nyenze, who is relaxing here as well as hon. Jakoyo Midiwo to ensure that the Bill is prioritized by the House Business Committee.

Hon. Ng'ongo: Hon. Speaker, I am aware but you see---

Hon. Speaker: The matter does not need to be a matter to be handled by plenary. The issue that you are raising is valid, but I would appeal to the Leader of Minority Party, the Deputy Leader of Minority Party and the Minority Whip to raise it in the House

Business Committee, so that you can find out why the Bill has not been listed for consideration by a Committee of the whole House, even if it is on Tuesday. It is a legitimate concern that it is taking too long. People might forget what hon. Mbadi had raised in the Bill. He might, even himself, forget some of the salient features that he had wanted included in the Bill.

Hon. Speaker: What is out of order, hon. Chachu Ganya? Is there anything out of order about that concern?

Hon. Ganya: Hon. Speaker, nothing is out of order. I just want to add my voice to what hon. Mbadi has said. Hon. Ottichilo and I are in similar circumstances. We had moved debate on our Private Members' Bills in Second Reading. Four months have passed since. We are almost coming to the end of the current Session---

Hon. Speaker: Hon. Chachu Ganya, please, I am not cutting you short but you are now asking me to do administrative work from the Chair. The way to go about it is to have the matter directed to the House Business Committee. That is the Committee which should take a decision. Whoever it is that communicates here should be challenged on the basis of a decision taken by the Committee. I want to urge the leadership of both sides of the House to take up the concerns by Members so that I am not forced to start doing administrative work from the Chair, which I should not.

Hon. Chanyu Ganya, just approach the leadership of the House.

Yes, hon. Midiwo.

Hon. Midiwo: Hon. Speaker, just to bring it to the attention of the House, we did discuss, as the leadership. We agreed that the Bills pending for Third Reading will be our subject next Tuesday, so that many of them can be dealt with before we go on recess. It is good that the information goes to Members, so that we do not quarrel over a matter which we have already discussed.

Hon. Speaker, as a private Member, I would like to refer to your direction that the Cabinet Secretary for Lands comes and issues a Statement on the Community land being grabbed by unknown people, so that we know the status of the matter. The Cabinet Secretary was initially directed to come on Tuesday. However, the Majority Whip's Statement has not included the orders that you made yesterday. Could that bit be clarified?

Hon. Speaker: Yes, hon. Katoo.

Hon. Katoo: Hon. Speaker, what hon. Midiwo has said regarding the direction that you gave yesterday is true. Immediately after the rise of the House yesterday, the Leader of Majority Party wrote to the Cabinet Secretary for Lands – he even spoke to her on phone – and delivered all the documents that were laid on the Table by hon. Midiwo yesterday. We are still waiting for a reply from the Cabinet Secretary. We anticipate that before close of business tomorrow, we will have gotten the reply because the communication of the Leader of Majority was that we should find time for the Cabinet Secretary to respond on Tuesday. If the Cabinet Secretary asks for time beyond Tuesday, we will find time for her to come and issue the Statement any day before we break for recess. The position was that if she will not get time on Tuesday, then it should not be later than Thursday, when the House is expected to go for the short recess. Therefore, I can assure hon. Midiwo that, within next week, between Tuesday and Thursday, the

Cabinet Secretary for Lands will come and respond to the question that was raised yesterday.

Hon. Speaker: Yes, hon. Midiwo.

Hon. Midiwo: Hon. Speaker, with all humility, I would request that you issue an order from the Chair that if the Cabinet Secretary cannot appear on Tuesday, she furnishes the House with a letter showing she has put a caveat on plot LR209/13332, which somebody is trying to defraud the public of. It would be very important because that sale is supposed to happen within 14 days, of which there are only a couple of days left. We know, from their own documentation, that somebody is trying to make Kshs1.1 billion, in respect of which they have said, in their documentation, that it is non-negotiable.

Hon. Speaker, I plead with you.

Hon. Speaker: Hon. Midiwo, unfortunately, through previous rulings, both by me and my predecessors, the House and the Chair shall never act in vain. There is the possibility of the Cabinet Secretary coming here to explain the matter in a way different from the way you know it. If the Chair were to give directions in the manner that you have suggested, and then it turns out that she has a different explanation, the Chair will have acted in vain. It would not be right for the Chair to issue directives of that nature. The best way is to ensure that the Cabinet Secretary comes to explain this matter to the Committee in the course of the week, as it has been said.

Hon. Members, let me recognize the following institutions in the Public Gallery and in the Speaker's Gallery:- Growland Embakasi Primary School from Embakasi North Constituency; Itumbule Primary School from Mbooni East Constituency; St. James Kiaritha Primary School from Kirinyaga Central Constituency; Njoro Girls from Njoro Constituency; Endow Primary School from Sigor Constituency; Emurkeya Primary School from Kajiado West Constituency. Kalemwani Primary School from Kajiado East Constituency; Gikurune Girls Secondary School from South Imenti Constituency; Jubilant Primary School from Kasarani Constituency; Mandela Complex Primary School from Embakasi North Constituency and the membership of Kabare Water Project from Gichugu Constituency.

Hon. Wakhungu: On a point of order, hon. Speaker. I rise to seek clarification pertaining the next week's business that the Majority Whip has just mentioned. This is on behalf of hon. Wekesa, the Member for Saboti, who is out of the country for parliamentary business. He had nominated me to prosecute the question he had asked the Cabinet Secretary in charge of interior, Mr. ole Lenku. The Leader of Majority Party had indicated that he is supposed to be scheduled for Tuesday but what the Majority Whip – I do not know whether hon. ole Metito is listening – mentioned, it shows that the Mr. ole Lenku will not be appearing. May I seek clarification from the Majority Whip on what is going to happen?

Hon. Speaker: He said that Mr. ole Lenku will be among the Cabinet Secretaries appearing.

Hon. Wakhungu: Thank you, hon. Speaker, I am guided.

Hon. Speaker: He did not read names of the Cabinet Secretaries who will not be appearing. He read the names of those who will be appearing.

(Laughter)

BILLS

Second Reading

THE INSOLVENCY BILL

(Hon. A.B. Duale on 22.10.2014)

(Debate interrupted on 22.10.2014)

Hon. Speaker: Hon. Chepkong'a, you had a point you wanted to make on this matter.

Hon. Chepkong'a: Hon. Speaker, when hon. Midiwo was contributing on a point of order, he kept on referring to you as the Chairman. I looked to see whether Standing Orders have been amended so that you become the Chairman when you are sitting there. I hope the HANSARD will be corrected to show that you were the Speaker. I hope it is not the confusion between the Committee on General Oversight and this House.

I rise on a point of order pursuant to Standing Order No.83 read together with Standing Order Nos.96 and 40. I have two issues. One, I am seeking that the discussion on Bill No.9 and Bill No.11 be adjourned in accordance with Standing Order No.96. The reason is that the Constitution, in Article 118 requires that Parliament shall facilitate public participation and involvement in the legislative process of Parliament and its Committees. As you know, this is a requirement and it is a matter that is at the core of legislation-making of this House, that the public must be given an opportunity to participate in lawmaking. Pursuant to that, the Clerk sent out a notice requesting for memoranda from the public. The notice of those memoranda is due to expire today at 5.00 p.m. So, for us to discuss these two Bills without considering the input of the public would be going against our own principles or jurisprudence of the Constitution.

Secondly, we have also received today comments from the Principal Secretary of the National Treasury concerning the two Bills; the Companies Bill and the Insolvency Bill. The Committee has not considered these comments. We will be looking at the memoranda from the public and see what they have said. We have received something from the Institute of Certified Public Accountants of Kenya (ICPAK) today. We are also waiting for the Law Society of Kenya (LSK) who said that they will be sending a memorandum before the close of business today. These are two institutions which are critical in participating in the making of law with respect to these two Bills that are pending in this House. As a consequence, I am moving that the discussion with regard to the Insolvency Bill, 2013 and the Companies Bill, 2013, be adjourned to a later time when we can then file our report after considering all the memoranda.

Hon. (Eng.) Gumbo: Hon. Speaker, I rise on a point of order to support the position of the Chairman of the Departmental Committee on Justice and Legal Affairs. Like I did yesterday when I was moving my Motion to extend debating time, I have gone through this Bill. I have gone through the Insolvency Bill almost to an extent of doting

the “ts”. When you look at this Bill, there are too many typographical and grammatical errors and it will give a very bad account of Parliament if we debated it as it is. As for the arrangement of the sections of the Bill, we are used to talking about clauses in a Bill but if you read this Bill, almost every page talks of section and the way they are divided.

What I am most concerned about is some obvious cases of serious grammatical mistakes which clearly tend to give--- I understand that this is a very big Bill even for those who drafted it. In fact, I was just talking to hon. Chepkong’a as we were walking and we said that whoever drafted this Bill should, of necessity, have taken more time to recognize the fact that it is abnormal in its size. Maybe they should have spent more time in looking at cases of grammar where there are basic grammatical mistakes like where you are supposed to use past present tense and you are using perfect tense.

Another point that hon. Chepkong’a has not highlighted is that this Bill requires a lot of effort for somebody to go through it from page to page. I have gone through it. I have taken a lot of time but maybe not many hon. Members would do that. It would be useful that even before we started debating it in detail to help hon. Members - those who may not wish to go through it page by page, word by word, comma or full stop - to have the report of the Committee to help them to have an abridged version of the Bill so that they can debate it with information. So, I agree entirely. I have no problem debating it as it is but if we do that, we will be giving a bad account of Parliament because the Bill is in very poor quality, the

For instance, if you go through this Bill, it talks of the Companies Act, 2013, whereas we know that the Companies Bill is before this House. Those are the concerns that we need to look at because I think we have been blamed that as a House we do not take too much time looking at matters, particularly with regard to legislation that comes before us. I think it is an opportunity for us to pull back a little so that we can have a quality Bill that as many hon. Members as possible can go through. I know it will still be voluminous and even if we start to go back to the beginning, it will still be within the framework of the debate of allowing the time that I have asked for. I have talked to some hon. Members who feel that for them to exhaustively debate this Bill, they need more than an hour. So that will still stand but let us have a quality Bill that can reasonably address the areas that are intended; the areas that have been targeted in this Bill.

Thank you.

Hon. Speaker: Are all of them points of order?

Hon. Mulu: I thank you, hon. Speaker. I also want to support the points made by the Chairman of the Departmental Committee on Justice and Legal Affairs and more so because I have taken time to read through this Bill. While I agree with what hon. Chepkong’a is saying, it is important that we also get the communication right because the House Business Committee was informed that the Committee was ready to have this Bill debated. We have taken a lot of time to prepare for this debate. So, in a situation where we come here and we are ready to debate and then we are pushing it forward, it is not proper. Bearing in mind the size of this Bill, if we were to push it by another two months, it will mean somebody will have to sit again and read through this Bill because we will have forgotten all what we have noted. Anyway, the points you are making make a lot of sense, let the public participate. Now that we have the opportunity, it is important that the Companies Bill comes before this one so that we form the companies before we

dissolve them. That is the procedure that makes a lot of sense. Prepare to discuss the Companies Bill and after that we can discuss how to dissolve the companies.

Thank you.

(Several hon. Members stood up in their places)

Hon. Speaker: Hon. Members, because you are rising on points of order, remember hon. Chepkong'a moved that the debate on the Insolvency Bill be adjourned. I want to propose that Question so that you can contribute to it.

(Question proposed)

Anybody wanting to contribute? Hon. Wakhungu.

Hon. Wakhungu: Thank you, hon. Speaker. I want to support what hon. Chepkong'a has just said. Indeed, it is very critical when such a Bill of insolvency is being discussed and yet we do not have any input from the Law Society of Kenya (LSK) or Institute of Certified Public Accountants of Kenya (ICPAK). These are very critical stakeholders when it comes to this Bill. It is always our assumption that before a Bill reaches Second Reading, public participation has taken place. My question is, does it mean that the procedure has changed? It is always an assumption that the Committee, before it comes to the Second Reading, has exhausted public participation. To me, I find it very embarrassing and maybe to be safe from Mr. Nyachae because he is always saying everything about us, has the CIC looked at this Bill? Has the Attorney General looked at it? These are very critical stakeholders as far as the legislation process is concerned. My question is this: Does it mean that this Bill will have to be moved again? I am looking at these key stakeholders like LSK and ICPAK. Suppose they come up with amendments? If the content is going to change, then it makes sense that this Bill should be withdrawn and moved again. Going to the HANSARD like the Mover said, it might totally change when these other key stakeholders come in with their input. If their input is not going to be important, that this Bill will remain the way it is in terms of the content, then we can move on and do amendments at the Third Reading. We need that clarification because these are critical stakeholders and incase they come up with their input which is going to change that content then it requires the Chairman to move this Bill again. I seek your direction.

Thank you.

Hon. Speaker: Very easy. Your own procedures provide for Second Reading. Unfortunately, if hon. Wakhungu was here yesterday, he would have heard the Motion that was moved by hon. (Eng.) Gumbo that was based on Standing Order No.97; time was extended. Each hon. Member contributing will have 60 minutes. The Leader of Majority Party and Leader of Minority Party have 105 minutes. The other hon. Members have got 90 minutes. There is sufficient time. It is not late in time for those institutions to provide their input. Indeed, hon. Chepkong'a has explained that one of the things that he wants after adjournment is to consider those submissions. Therefore, once the report is tabled from his Committee, surely hon. Members will be expected to familiarize themselves with recommendations. Those who care to read reports - nobody is forced to

read -remember again whatever recommendations come even if they propose amendments Second Reading is not a stage at which amendments are made. The report can say “following submissions received from these institutions, we think that it should go this way.” But remember that that report will properly influence the result which will be in the Committee of the whole House. So, it is not late, it is timely for hon. Chepkong’ a to come with this Motion. It is a dilatory Motion. We do not have to make any finding regarding the Companies Bill because that is a matter for prioritization by the HBC and bearing in mind what hon. Chepkong’ a has said, we will be accordingly guided not to put it too early before you have had all the necessary input that you require.

(Question put and agreed to)

(Debate on the Insolvency Bill adjourned)

Second reading

THE WATER BILL

Hon. Speaker: Who is moving? Hon. (Ms.) Abdalla

Hon. (Ms.) Abdalla: I have misplaced my card, if you could kindly allow me to use a card belonging to hon. Njomo

Hon. Speaker: I can see somebody called hon. Njomo has lent you his card. Very well.

Hon. (Ms.) Abdalla: Thank you, hon. Speaker. I beg to move that the Water Bill, (National Assembly Bill No. 8 of 2014) be read a Second Time. The water sector is currently managed through the Water Act 2002, an Act that was developed pursuant to the Water Policy, 1999. The Water Policy, 1999 was one that was moved to reform the water sector so that we could have wider reach of water distribution to the citizenry. The reforms that were brought about by the Water Act achieved three objectives. It separated water policy and development from sector regulation. The separation of water resource management from water provision is a major shift from the past where water provision funding was being diverted to other activities and not to reinvest into the sector.

(Hon. Mohamed Diriye consulted loudly)

Hon. Speaker, if you could protect me from the Member for Wajir South who is consulting very loudly, I would be happy.

Hon. Speaker: Order, hon. Members, please consult in low tones including those who want to consult hon. Speaker. They should consult hon. Speaker in low tones as well.

Hon. (Ms.) Abdalla: Hon. Speaker, as I was saying, the Water Act 2002 intended to separate water resource management and water services because water service provision was in the past managed by municipal councils and city councils that tended to divert the revenues accrued from water provision to other activities thus

reducing investment in water resources. As such, we were not able to expand as fast as possible.

The other objective was to kill corruption in the sector. I want to report that after the water sector reforms and the enactment of the Water Act, 2002, we ended up having more investment in the sector with the international community willing to invest in that sector. Therefore, there was more investment in the water sector. The separation of co-ordination and policy development from water service provision and inclusion of private entities really brought major improvements. The reforms also helped in devolving the infrastructure development in this sector through the Water Services Boards which are currently eight in number. We then ask this question: Why do we really need to reform the sector if it was ahead of the Constitution of Kenya 2010 in matters of devolution and good governance in the water sector? The UN had declared that the crisis in the water sector is a governance crisis rather than a water provision problem. Why did we then need to reform the Water Act, 2002? It had inculcated good governance in the water sector and it was ahead of the Constitution by having devolved water infrastructure development.

Despite all these work that has been done through the Water Act, 2002, water continues to be a problem and waterborne diseases still continue to cost the Government of Kenya over Kshs2.7 billion. Actually, I think it is Kshs27--- Allow me to check the actual figure since I am allowed to refer to the document:

“Poor drinking water quality and poor sanitation continues to cost our Government Kshs27 million each year.”

The document further states that Kshs4.3 billion is lost to healthcare; Kshs2.2 million is lost to accessing time; Kshs300 million is lost in productivity; and Kshs20 billion is lost in premature deaths. During our consultations with the public, one of the inputs we were given is that we seem, as a nation, to be investing disproportionately, that if we did invest more in water we would need to invest less in health. This is because water borne disease cost this country over Kshs20 billion annually.

The other issue that necessitated the review of the sector is that there were lessons learnt during the implementation of the Water Act, 2002 that required to streamline the sector. This includes the fact that we have had difficulties meeting the water demands, especially among the rural poor; there has been poor co-ordination among the institutions working in this sector; and, finally, the Constitution of Kenya 2010 requiring and providing for different functions between the levels of Government. Unfortunately, the Report of the Committee is ready and it is what I am referring to. However, it is still going on through the approval process in Parliament and we hope to table it by Tuesday next week.

During our public consultation process, we advertised in the newspapers for public input. We called different stakeholders to give us oral submissions on different issues in the Act that they wanted us to review. The institutions we consulted include the following: The Water Services Regulatory Board; the Ministry of Water; The Kenya Water Partnership; The National Environmental Civil Society Alliance; The Nairobi City Council; The Kenya Private Sector Alliance; The Kenya County Government Workers Union; The Union of Kenya Civil Servants; the Kenya Union of Commercial Food and Allied Workers; Katiba Watch; and VSO Jitolee which did a joint memorandum.

Having consulted all these stakeholders, we appreciated the fact that the starting point for these matters are the different functions that the Constitution places in the two levels of Government vis-à-vis the management of the water sector. It is for this reason that we looked at Schedule IV. It is very clear that water resources are vested on the national Government. This is an important aspect that needs to be appreciated because it is going to affect how we relate in this sector in totality especially in light of devolution. Once we state that water resources are vested in the national Government, it means, for example, that Nairobi River is vested in the national Government and not in the County of Nairobi. Managing that particular resource and deciding whether or not to abstract water from the Nairobi River and giving licence for water abstraction is a function of the national Government and not the county government. This is an important constitutional principle which we must keep in mind because it translates to what institutions we will allow in this sector and what their functions and roles are.

This morning I read in the newspapers that a court ruled that the Water Resources Regulatory Authority cannot ask for fees to abstract sea water. This will be cured when we appreciate that the Constitution gives the national Government powers of use of international waters and water resources. Sea water happens to be part of the international waters. Now, because of that ruling we will be more explicit in our amendment.

The role of the national Government is consumer protection. This is going to be a very important issue in terms of contention because many stakeholders who came to see us wanted us to scrap the Water Services Regulatory Authority. This is the Authority that regulates water providers. It gives them licence to work and checks on their quality. One of the submissions from the county of Nairobi is that they felt that institution is no longer necessary and that the Act on urban cities gave powers for tariff settlement to the County of Nairobi as early as 2013. It will be impossible for the national Government to be able to protect consumers should the county governments decide to change tariffs either up or down because it depends on the politics of the day. A county governor might decide, for example, to lower the cost of water in his county without appreciating that the service providers need the money to run the water treatment facilities. Based on this constitutional function of the national Government, we will be proposing the retention of the water services boards because it is the function of the water services regulatory body so that it helps the national Government meet its requirement for consumer protection.

Another function of the national Government that we intend to protect dearly is the fact that the national Government is responsible for national public works. Having said that the national Government is responsible for water resources in total, it means that every public work, say, a dam that uses a particular water resource is a function of the national Government. This is why despite input from some stakeholders to kill the national institutions responsible for constructing dams and water pans; we will be urging the House to retain them because how else would the national Government be able to implement this function of providing national public works?

The Constitution also gives the national Government the function of water protection, securing residual water, hydraulics, engineering and the safety of dams.

In fact, hon. Deputy Speaker, there was a funny input by one of the stakeholders who claimed that the national Government has a tendency of “parastatalising” any devolved function and saying that we seem to think that national Government should be

the only level of Government with the capacity or powers to set up parastatals. They were more interested because there were inputs from the counties that they be given permission to do their own dams and those facilities. As I said, because that is the role of the national Government, we will be urging this House to appreciate that for the national Government to meet the requirements of Article 43(d) of the Constitution, that requires us to give water of good quality and in sufficient amounts, it would be impossible for the national Government to meet those requirements without being allowed to have institutions that would manage it for them.

Finally, the fifth function of the national Government that we intend to ensure that it is fully operationalised in this Bill is the function of capacity building and technical assistance to counties. Whereas counties are free to do public works, especially in sanitation and water provision, the national Government would be able to provide capacity building and technical assistance which we have then reflected in the functions of the national Government.

Hon. Deputy Speaker, when we looked at the functions of the counties, it was clear to us that policy development remains a national Government function and implementation of those specific national Government policies on natural resources, environment, soil and water conservation would then be given to counties. Without pre-empting debate, this is an important distinction to make because we will be bringing you another Bill where national Government institutions purport to implement national policies on natural resources and we will be removing that power that happens to be a great source of confusion for that sector.

Hon. Deputy Speaker, the second function of county Governments that we intend to include are the issues of county public works and service provisions, including storm water management in built up areas and sea water and sanitation. For us, it has been a hard decision to make because a lot of us have had to undergo serious metamorphosis. You know, we passed the Constitution but we have not internalized it. A lot of times, we get involved in providing funding for sanitation and water distribution programmes. It is very clear that, that is a county function and in this Bill we will be presenting amendments that clearly do not give that kind of function to any national Government institution because we want to live the Constitution and not just give it lip service support. I believe all Members have read this Bill and I am not sure I have the time to take them through the different sections, but being the Mover, let me just do a quick one on it.

Hon. Deputy Speaker, Part I of the Water Bill talks about preliminary provisions. These are definitions and the rest. Part II talks about the ownership use and management of water resources. Without repeating myself, it is very clear that water resources are vested in the national Government in trust for the people of Kenya. Part III is on regulation of the water management, that is, regulation and use of water resources. This is the section that establishes the Water Resource Regulatory Authority, gives it functions and how it will operate. It also deals with water resource users associations. We will be making a lot of amendments in these bodies in light of the different functions for the two levels of Government.

As I said before, Part IV will be talking to the national water services strategy which is what the Cabinet Secretary, as the head of policy and coordination, will be

producing as the blue print for what the institutions in the sector will be dealing with. We will be proposing and agreeing with the Bill to retain the Water Sector Trust Fund that is dealing with providing funds to provide water to areas where water is not affordable. Part V of the Bill deals with dispute resolution by setting up the Water Tribunal. Part VII of the Bill deals with financial provisions and Part VIII deals with the general provisions such as the notices and conditions of issuance of orders. Part IX of the Bill deals with transitional arrangements. I want you to note that one of the major things that we are going to deal with is that--- I am sure that like the stakeholders, Members will be concerned about retaining the huge number of institutions in this sector. We will be proposing radical transitional provisions that will be dealing with the fact that even when retained, there will be vetting at a certain level in those institutions to clean them off the bad images of corruption and non-compliance with issues.

Hon. Deputy Speaker, the First Schedule deals with membership of boards of the institutions that are proposed. The Second Schedule relates to the construction works. The Third Schedule deals with access rights. The Fourth Schedule provides for abstraction of ground water and that concludes the contents of the Bill which also includes a Memorandum of Objects and Reasons. As I said in the beginning, we spoke to very many institutions and they raised many issues. One of them was the number of institutions proposed in this Bill. The numbers are actually a copy and paste of what was in the Water Act 2002 and so they are a total of eight institutions. We were trying our best to look for mechanisms of reducing the number of these institutions. It was evident, because we invested in experts to advise us that it is impossible to draw an organogram of the water sector. It is a myriad of institutions which relate in many ways. In our attempt to reduce the number of institutions, we went back to the Constitution and realized that for the national Government to meet its constitutional duties, it would be next to impossible to kill any of these institutions. So, the stakeholders raised many reasons for reducing these institutions from the fact that there is a very high recurrent cost; that there was need for coordination amongst these institutions; and that some of them were no longer valid. For example, some two laws, one on counties and the other on urban cities, had already given some roles to county governments before the time required in the Constitution and some of the roles that they were given included the fact that they could set their own tariffs. So, this would have, probably, rendered 50 per cent of the works of the current Wards Representatives redundant.

Hon. Deputy Speaker, the public felt that the independence, transparency and accountability of these institutions are very low, because of that, as I said before, we are going to propose transitional arrangements that will deal with the question of transparency and accountability within the staff in the different institutions.

Hon. Deputy Speaker, some of the functions of some of the institutions proposed such as the basin committees tended to mix policy functions, implementation functions and regulatory functions in bodies that do not have a corporate entity such as the Water Basins Authority. So, we will be urging the House to support our amendments so that if it is a policy function it goes to the national Government or the county government. If it is a regulatory function, it goes to the regulator and if it is an implementation function, it goes to the counties.

Hon. Deputy Speaker, another major issue that we dealt with and we were clear in our minds that it needs to be supported and retained is the issue of ring fencing funding from the water services revenue. We were where we were before 2002 because the funding that people were paying through water bills was not being used to develop the sector. So, that is a principle that I would be urging the House to retain.

Hon. Deputy Speaker, the fourth contentious issue was on the issue of cross-county infrastructure. You know that once the new governors were voted in they jumped very fast wanting to take over some of these water services companies until they saw some of the bills that these institutions have. Everybody wants to be responsible for building infrastructure because there is money.

Hon. Deputy Speaker, as I said, it is the function of the national Government to do water resources and a lot of the water that is used in different areas comes from a different county. Nairobi County is dependent on Muranga County. If you let Muranga County be the decider of the tariffs then water will become unaffordable to everybody including those in the slums.

So, in appreciating the constitutional provision that water resources are vested in the national Government and the fact that most water development would be cross-county, we have retained and will be urging the House to retain all the institutions that will be there.

Hon. Deputy Speaker, I will then move now closely to specific issues that we felt were left out in the Bill and we will be urging the House to support us in including the same. The international community has moved to managing resources through a system known as the "Payment for Ecosystem Services." For example, it is the people of Bomet, the county you come from who manage the Mau Forest that then feeds water into the lake basin. We need to develop a system where the people of Bomet are paid for conserving that resource for other people to use. So, we felt that the Water Bill 2014 left out this important aspect that we hope to include during the amendment stage so that some figures of the tariffs that are collected are given to those communities managing the resources.

Hon. Deputy Speaker, another issue that we have been grappling with is the fact that this Bill does not speak to water research and training. The Ministry has the Kenya Water Institute (KEWI). "Research" has no home in the water institution. Our plea to abolish or rather to repeal the KEWI Act was met with resistance as a result of the fact that KEWI as an institution is partnering with United Nations Educational, Scientific and Cultural Organisation (UNESCO) and has been declared some institution that should cooperate with UNESCO. We finally agreed that we will look at amending the KEWI Act to strengthen it rather than repeal it.

The other issue that is of concern which I have already raised is the fact that sewerage and waste water management has not been given sufficient attention in this Bill. This is for the Members who come to the Committee to ask us to convince the Budget and Appropriations Committee to give them more money to do water distribution in their different counties. The reality is that the proponents of the Bill did not handle it much in the Bill but we also appreciate that this is a devolved function. We must start getting divorced from the national Government and if we have to fund it, we have to fund it when it is cross-county based and not when it is based in one county.

Hon. Deputy Speaker, finally, wetlands are a major source of water and this Bill did not talk to the regulation of the wetlands. A lot of our water sources are related to lakes that have already been declared as Ramsar sites of international importance which include Lake Nakuru, Lake Naivasha, Lake Bogoria, Lake Baringo and Lake Elementaita. We felt that, that oversight was something that should be able to be addressed.

Hon. Deputy Speaker, unfortunately, are not able to reduce the number of institutions from eight. We will however be streamlining their functions. Just to share, the stakeholders gave us two divergent views. One group felt that the water boards that is, the Rift Valley, TANATHI and the rest are no longer necessary in light of devolution. They felt that the counties could unite and do the work. Another group felt that the proposed Water Harvesting and Storage Authority which will be replacing the national water institution is not necessary anymore because the Water Act envisioned devolved institutions that would be closer to the people. We spent a lot of time on this matter.

Our conclusion is as follows: Water resources are vested in the national Government. The national Government, because it has the responsibility of doing dams and ensuring hydraulics and engineering is right, needs a national institution to deal with that and to deal with issues of flood management and the rest. Then I spoke to the fact that a lot of resources are cross-county, that we did invest over Kshs5.5 billion in Chemususu Dam. Chemususu Dam water distribution system is going to serve Nakuru County, from Rongai to Baringo County. So, for that kind of investment it would be wrong for one county to be responsible for doing that water distribution work that is covering more counties. Currently, in Chemususu Dam there is water treatment facility that is only for 5,000 cubic metres of water. The water that is now in the dam can give us 40,000 cubic metres of water per day and that would be something that would cost billions. There is no way Baringo County would be able to afford that and be able to do a system that would then move all the way to Nakuru. It is for that reason that we will be urging this House to retain the water services boards so that Chemususu Dam can be managed by the Rift Valley Water Board.

So, a lot of thoughts and discussions have informed the decisions that we have made. I have already spoken to the issue of aligning the functions of some institutions to what they really are linked.

Hon. Deputy Speaker, this is for the forward looking. When we were looking at those institutions, we realised for example that the water boards, the Rift Valley, TANATHI and the rest, are based on water basins. If it is the Lake Basin or the Ewaso Nyiro Basin and yet we still have regional authorities that are also basin---- Fortunately, these regional authorities are also vested in the Ministry of Environment, Water and Natural Resources. We will be urging the Members in future, that we review all the six or seven legislations relating to regional authorities so that we are in line with devolution and are able to give functions to the institutions that matter.

Hon. Deputy Speaker, we note that the Water Bill may be affected by other existing legislations. Number one, the Committee agreed that it is necessary to amend the Environmental Management and Coordination Act to confine the function of the National Environment Management Authority (NEMA) on water pollution control to coordination. This is a Bill that is going to come to the House very soon but that is an important thing

that the Committee wants the House to note. This is so that you know that if NEMA does any implementation work, they have conflicts with the Water Resources Management Authority (WARMA) at present. We intend to help end that conflict.

The other issue that I have alluded to in the beginning is the fact that the County Governments Act (CGA) and Urban and Cities Act (UCA) need to be amended to reflect the issue of tariff setting of water services. As I said, the CGA devolved some of these functions erroneously to counties, yet if the Government is to meet its constitutional role of consumer protection, it does need to be the regulator to deal with the rest.

Hon. Deputy Speaker, those are the issues that are in the Water Bill, 2014. The number of amendments is substantial but I believe that the Members of the House, after they read the Report will be in a better situation to support the amendments that we will be proposing in the House.

With those many remarks, I beg to move and ask hon. Katoo ole Metito to second.

Hon. Katoo: Thank you, hon. Deputy Speaker. I stand to second this Bill and first let me congratulate the Mover for the way she has ably moved this Bill and actually made the House understand generally this very important Bill. The gist of this Bill is about providing regulations for the management, conserving, usage, developing of water resources and more importantly, the sewerage services which is a very critical component in both our urban and rural areas.

Hon. Deputy Speaker, I picked about six very important aspects of this Bill and one of them, although it has been said by the Mover, is about clearly defining the ownership of and critical management and use of these water resources. That is well spelt in Part II and specifically Clause 5. That may be also in contention. I also noted that the aspect of devolution needs to have been taken into account on that function.

The second one is the issue of establishing the Water Resource Regulatory Authority. This is done in Clause 10 and purposely meant to formulate and enforce standards and procedures for management and use of this water. It also talks about mitigating cases of floods which are very common in this country. The third one is a provision in terms of conserving the water catchment areas and also ground water because if you do not conserve water catchment areas, then we should not be talking of water resources. That is well spelt under Clauses 20 and 21.

Hon. Deputy Speaker, the fourth one is a clear provision in Clause 27 of the establishment of water resources and user associations which have become very common at the grassroots because this is where the communities are involved in the management of these water resources. Fifthly, there is establishment of a trust fund under the water sector and it is well spelt out in Clause 112. I think this water fund is meant to provide both conditional and unconditional grants to the counties. That will go well with the Equalisation Fund so that there will be management of these areas that are marginalised but are in need of water services. I think the national Government is going to be very important here. Just like we have the Tourism Trust Fund that helps in developing tourist activities across the country, this is also going to be critical and even help the country achieve the percentage required in terms of water levels in this country.

The final resolution or provision that I noted is the one on dispute resolution which is clearly shown in Clause 117. That actually has been the cause of animosity among communities and counties because water is a scarce resource. If this Bill is

approved by this House under Clause 117, disputes arising from water uses are going to be addressed.

Therefore, hon. Deputy Speaker, I would like to say that this Bill is very important in management, conserving, use and development of water and sewerage services. In both Parts II and III of the Bill, on the issue of water management, you know that we have so many institutions. I think those are the institutions that the Mover said they were unable to reduce. In every district we have what is called WARMA that manages rivers. We have District Water Services that check on underground water. You talk of boreholes, there is another one that talks of piped water. Those are several offices. You have the National Water and Pipeline Conservation that at times deals with pans and dams. There is also flood mitigation and these are several institutions and offices. I think the Water Act 2000 in a way tried to bring reforms but at times too many reforms may bring confusion. If you go to any district, you will find that the common *mwananchi* does not know which office to go to because there is an office dealing with rivers; there is one dealing with underground water; there is another one dealing with piped water; and another one dealing with pans and dams. They do not even know where to pay their bills. I think it is good that this Bill tries to mainstream these institutions so that they can be clear. It is like having both the left and the right hands not knowing what the other one is doing. I would urge the Committee that as they table their Report, it is good they take into account these issues. They should try to mainstream those institutions and maybe even collapse them into one or two, if need be.

Hon. Deputy Speaker, on water conservation and I said it is well defined in the Bill under Clauses 20 and 21, the issue of protecting catchment areas and water towers or water sources is important. It is also important that the Cabinet Secretary has clearly defined those two clauses. This is where the Cabinet Secretary will gazette these catchment areas and water towers because they are very vulnerable. Also on ground water conservation, because almost all water other than rain water comes from the ground, if we do not conserve this ground water sources then the water towers and catchment areas are going to be a thing of the past. So, I know there is a lot of politics involved in it but the importance of conserving these areas outweighs the political gain by any measure.

Hon. Deputy Speaker, if we are talking about the water towers of the Masai Mara area, Mau and the other five water towers in the country, for example, Mount Kenya and others, surely, we should not talk about political gain or political loss should any need to move people out in order to conserve the water catchment areas or water towers arise. By moving them out, you are even trying to protect those people around those areas so that they move to safer places where they can get water. This is as opposed to having them staying around water towers and there is no water.

Clauses 107 and 108 on water use and development talk about levies that will be levied by the counties. I think underground water, sewerage or drainage need proper planning. There is need for the establishment of a policy both at the county and the national level. This Bill should explain how we can have this policy. For example, if you have towns, urban centres or cities and there is no proper planning in terms of sewerage or how to get underground water, you will not have proper development there.

Hon. Deputy Speaker, this Bill should be passed so that it can sort out those problems. There is the issue of water harvesting and water infrastructure. The infrastructure has been covered very well by the Mover. Water for irrigation need to be increased to enhance food security. The policy of the Jubilee Administration is to increase the amount of food that this country produces. This can be achieved through irrigation. That is why we are talking about irrigating a million acres in Galana, Tana River. This is to increase food production in this country.

This will not be achieved if we do not have clear policies and laws governing the usage, development and management of water in this country.

The water that was discovered in Turkana County will possibly feed this country for about 70 years. There is need for a proper policy on how to tap that potential and develop that resource so that we can develop as a country.

Hon. Deputy Speaker, my final point is on the issue of conflict resolution arising from this limited resource. This is under Clause 27. We are having many conflicts even between counties. You have heard Murang'a County say that Ndakaini Dam water will not be supplied to Nairobi. You have also heard the TaitaTaveta County say that the water from Mzima Springs should not go to Mombasa County. The people of Kajiado have said that the Nol-Turesh water that comes from my constituency should not go to Makueni County, Machakos County or any other county. I think that is very wrong because as communities, counties and as a country we are interdependent of each other. Therefore, we should not argue about these resources because we should make them national resources. We should try and make sure that they benefit all of us. You have seen the pastoral communities or other communities having many unnecessary conflicts because water is life and is limited.

If this Bill is passed, the clause on dispute resolution mechanism will be very important. This is in ensuring that there is harmony among counties and in the country.

Hon. Deputy Speaker, I beg to second this Bill.

(Question proposed)

Hon. Kang'ata: Thank you, hon. Deputy Speaker. I support the Water Bill, 2014. Be that as it may, I have two issues that I want to raise.

The first issue is about the abstraction fees. These are currently payable to the national Government. Abstraction fee is the money that is paid by an entity that is abstracting water from its source. I am of the view that, that fee should be payable to the respective county where that water is being abstracted from. This is for various reasons.

Key environmental factors have been devolved when we talk about management of the environment. Therefore, if you devolve those functions, for instance, to Nandi County, it is this county which will check on afforestation and water sources. If you do not give an incentive to that county, it will not make sense.

Hon. Deputy Speaker, I am saying this in respect of the submission that has been made by my senior, hon. Metito. He has mentioned Murang'a County *vis-à-vis* the water that comes from that county to Nairobi. This county gives Nairobi County about 70 or 80 per cent of its water. It is us the people of Murang'a who look after the Aberdares Forest. So, if we are not going to derive any money, profit or incentive, we can as well decide to

mess up with the water source of Nairobians. Therefore, the country owes Murang'a people something or some incentives so that we maintain that resource. Otherwise, if we see our water being taken to Nairobi and our rivers drying up---

Hon. (Ms.) Abdalla: On a point of information, hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Kang'ata, do you want to be informed?

Hon. Kang'ata: Kindly no. The Murang'a people would like to get some incentives to ensure that they take care of our forests. That incentive can only come in if the abstraction fees is not payable to the national Government but to the people of Murang'a who look after that forest.

Hon. Deputy Speaker, this should not only be done in Kenya because it is the best practice all over the world. It gives the incentive to the indigenous community to look after that natural resource for the benefit of everyone.

Therefore, I will be moving an amendment to this Bill. I will ask the Chairlady to support that amendment so that we, the people of Murang'a, can derive a better benefit out of the water that comes to Nairobi.

Again, without belabouring that point of---

Hon. (Ms.) Abdalla: On a point of information, hon. Deputy Speaker.

Hon. Deputy Speaker: Well, he has told you that he does not want to be informed.

Hon. Kang'ata: No, she can inform me, hon. Deputy Speaker.

Hon. (Ms.) Abdalla: Hon. Deputy Speaker, I just wanted to let him know that one of the issues that we have put in this Bill on the question of ecosystem services is that we will be proposing that 25 per cent of the abstraction fees goes to the communities where the resource is located or the upstream that is conserving that water. So, when we were speaking about the ecosystem services, we meant it is to pay the people such as those in Murang'a County or Bomet County, which was the example I used, who are the ones who conserve the ecosystem that provides the water. So, we will discuss with the hon. Member the amendment that relates to abstraction fee.

Hon. Kang'ata: Hon. Deputy Speaker, the only issue is that 25 per cent is very little. We must also look at other natural resources and see how those counties benefit from those natural resources. I give the example of Maasai Mara. Maasai Mara is in Narok and we know the extent to which that county benefits from that natural resource. In the same manner, we as Murang'a people ask that we derive the same benefit out of the fact that, indeed, we look after that natural resource.

The final issue is on the water that is going to public facilities. I know that in schools presently, parents are being told to look for money to pay for water bills. I am of the view that since education is free we need to ensure that parents do not give out any coin out of their pockets. The Basic Education Act and the Constitution have given the duty to the State to ensure that our education is free and that includes all incidentals that may come along when Free Primary School Education was rolled out. Therefore, I am of the view that this Bill should have a provision where water bills for schools can either be shouldered by the national Government or by the County Government. Thank you.

Hon. Ganya: Thank you, hon. Deputy Speaker for this opportunity to contribute to this Water Bill No. 8 of 2014.

I am a member of this committee and I want to state clearly that as a committee we did a lot of work. We even went as far as getting professional advice and expertise to ensure we understand the Constitution because water is largely a devolved function. We are told that there are some functions still left to the national Government, so we were able to align this Bill with the Constitution of Kenya, 2010. In striving to ensure we separate these functions and align the right functions with the right level of Government, we looked at the current scenario in Kenya. For the most part, the Water Act 2002 that we are trying to repeal is largely devolved already. In that sense the water sector was actually ahead of this Constitution because water services and regulations were largely devolved by the Water Act 2002. But with the new Constitution we had to go further and ensure that these alignments are done, even more so that the levels of Government are able to meet their commitment as per the constitutional functions.

Hon. Deputy Speaker, water resource management still lies with the national Government. This is because if we are to develop large water resources such as Chemususu Dam, Mzima Dam or Ndakaini Dam, first the amount of money required to construct such major water resources is in billions and not many county governments could afford even if they are to commit all the funding they get from the national Government to that specific function. Because of that it is imperative that this role remains with the national Government because at times even this water resource serves more than four or five counties. More to that, the Constitution does provide dam setting and management to the national Government. Large scale dams such as Chemususu Dam or other big ones, is largely a national security issue. Those big dams have to be monitored and have to be managed on regular basis because if that is not done and God forbid, if the dams collapse, an entire city, town or urban centre could be drowned which could be a national crisis and even a national security dilemma. Because of that the fellows who drafted the Constitution felt that even though most aspects of water provisions and others are devolved, this particular one had to remain with the national Government. Water policy as well as regulation functions are largely with the national Government even though there are some elements of this which are also a shared function with the county governments and the Bill did ensure that this is well reflected in the new law.

The other issue is water shared management or water basin management. This is when rivers or basins cross-cut through so many counties such as Tana Basin, Athi Basin or Ewaso Nyiro Basin such that so many counties are actually covered by these basins. Since it cross-cuts through all these counties sometimes even up to eight counties, it is not easy for one county government to actually have the sole responsibility of managing that basin on its own and that is where the national Government comes in, of course, working closely with those counties within those basins. That is why this function is largely with the national Government.

The issue of water governance is well taken care of in this Bill to ensure that the governance of water, both at the county level and the national level, is done well as per the spirit and the letter of the Constitution.

The issue of fund management is still largely the function of the national Government but closely shared with the county governments. Similarly, the county governments do have a major role in this Bill because as I said earlier water is largely a

devolved function. Water provision and water development especially for large scale boreholes and large scale water facilities are largely left to the county governments to develop within their counties. Some services as well as drainage services are also left to the county governments not to mention the need to have water regulations done within counties, especially in terms of water provision. The county governments need a lot of technical support as well as financial support to be able to deliver on their functions. The Bill ensures that the framework is provided within the law so that the national Government is able to build the capacities of the county governments. Therefore, we went as far as enhancing the capacity of Kenya Water Institute (KEWI) to be able to train the staff of both the national Government and the county governments in the water sector. We also saw it fit to invest large resources in training and research in the water sector whereby we hope KEWI will take a lead in this.

It is evident that most counties would like to manage the water resources within their counties but we are one nation and we share the same ecosystem. It is really critical that where a water resource serves many counties, it is imperative for the national Government to come in and ensure that, that resource is managed well. This is because all over the world conflicts are largely over water resources and other resources and the national Government, having that constitutional function and mandate of ensuring that there is security in this country especially resource security, water security needs to be taken care of. This is why we clearly showed that there are some elements of this function that lie squarely with the county government but there are some that are also shared with the national Government.

There are so many institutions that are managing the water sector in this country, whether they are regional authorities, water bodies or State corporations. We have tried our best in this Bill to align their functions with the constitutional provisions so that if they are to work within certain regions, they are able to serve those counties in which that basin is located, and if it is a national authority then it is able to implement the national functions as provided for within the Constitution.

Hon. Deputy Speaker, we have looked at a number of issues in the Bill and there are some which were omitted. We have proposed extensive amendments to ensure that we capture most of those issues so that this Bill will well capture the new thinking and the new practices in the water sector. We have borrowed extensively from other jurisdictions and countries with similar laws so that this Bill will reflect both the letter and the spirit of our not so new Constitution.

With those few remarks I support the Bill.

Hon. ole Kenta: Thank you, hon. Deputy Speaker. I would also like to add my voice to the debate on the Water Bill.

First of all, I would like to commend the Chairperson for the detailed presentation that he has given. Water is a very sensitive commodity and the more scarce it is, the more it becomes an issue that brings conflict. Our Constitution under Article 43 (1)(d) clearly states that every person has a right to clean and safe water in adequate quantities. This Bill that we are speaking to today actually contains the said facts under Clause 61, which says that, every person in Kenya has a right to clean and safe water and in adequate quantity which should be in reasonable standards of sanitization as stipulated under Article 43 of the Constitution.

When we talk about national Government providing or being in charge of water resources, it is a very important thing. This is because most of our water resources actually cross-cut counties. Whereas we believe that counties from which these waters emanate should also benefit, we should ensure that this resource is shared. In fact, the establishment of an agency for the management of water resources is very important. This Bill has actually proposed many authorities which are going to be of use. They will also ensure that these water resources are properly managed and well distributed.

I would like to mention a very important thing about this Bill, which is the Water Sector Trust Fund. It is important because when you look at Clause 1(1)(2), you realize that the objective of the Fund is to ensure that the marginalized communities are able to access water. This will ensure that the community level initiatives for the stable management of water resources and development of other resources in rural areas are considered. I believe this Fund is going to address all people in arid and semi- arid areas. Water problems have actually been the cause of conflict in those areas. This is something we all ought to support when the Bill comes for amendments.

The other important thing is that, because the national Government is the custodian of water resources, it needs a very strong national outfit which is in line with the National Water Conservation and Pipeline Corporation. This will ensure that it carries out its objectives. We need an organization that has capacity, know- how and experience when it comes to provision of water to all Kenyans. Whereas many people did not know beyond the National Water Conservation and Pipeline Corporation, we cannot avoid it. We just need to ensure that it is cleaned so that we have an organization.

When you talk about water harvesting and storage, it is important that we save the water that flows during rainfall that in most cases goes to waste. We have not been able to achieve much when it comes to harvesting water. In some countries where there is no rainfall at all, this kind of harvesting has become very useful to those countries. I believe that if we can have a professional way of doing these things, we shall be okay. We should actually have that and have water acts that are going to support the water systems in the whole country. When you look at the county, its capacity is very minimal. As much as we would want to say everything to these counties, where do we get resources to build very expensive water works worth billions of shilling? We need to have that national touch and control over these water works and resources.

We also have the issue of standards. Water is very sensitive and if it is contaminated at any one stage then it will mean that it will cause a lot of damage to the country maybe through waterborne diseases. I also believe that water standards need to be regulated by a national authority which ensures that water standards in Kenya are uniform and they should measure up to the safety requirements. It will not be good if we leave it to the counties because we have seen some of them using chalk instead chlorine for water treatment.

There is also the issue of tariffs. If we let each county government to decide on its own, that will mean that Kenyans will be in a lot of problems. I also believe that there should be standard charges which can only be carried out by such an important national body. This is because we have always had this problem of trying to raise as much money as possible within the shortest time possible. If we give this to the counties then Kenyans will be in for a rude shock.

When you talk about Water Basins such as Ewaso Nyiro, Tana River and so on it will be very important that we have committees to run them. Even though it is a national Government's responsibility, it is important that we involve the community, just as the hon. Member for Kiharu said. We cannot leave them out. These are the people who are going to take care of these basins, which is now the reason we talk about the water towers. When you talk of splitting them and giving them to individuals, you are destroying the quality of water and lives of Kenyans. So, when people talk about protection of water towers like the Mau, Aberdares, Mt. Kenya and so on, it is very important. It is for the benefit of the country. I believe that, that is something we should look at because we cannot go on saying we need more tree cover in the country, yet we are destroying what we have. We must ensure that all our water towers are safeguarded. For example, the Mara relies on the Mau ecosystem. If the Mara dries up, hotels in Nairobi will be dead and there will be no employment. Tea factories will be closed. So, let us look at this thing in an objective manner. I support this Bill. All the hon. Members of Parliament must look at it because it affects all our people.

Thank you

Hon. Deputy Speaker: Hon. David Ochieng. Well, there is a microphone that is on and there is nobody there. Hon. Joseph Kiuna!

Hon. J.K. Ng'ang'a: Thank you, hon. Deputy Speaker. I begin by thanking the proposer of this Bill because to me, it has come at the right time. Before I make my contribution, I would like to raise some issues. In Kenya, we have a lot of water problems which we should not be having. We have a lot of water from boreholes, rivers, lakes and many other sources. If this water is well utilized and well managed, we would not be having all these problems. We are supposed to be among the few nations exporting food having had enough to feed our nation and our people.

Hon. Deputy Speaker, why am I saying this? Since I was born, I have seen a lot of water being wasted. To come to the point, there are boreholes we have been drilling over in the county and we have been spending a lot of money. That money could have been used elsewhere to develop this nation. But we have rainy water but much of it has gone down to the lakes and oceans. This water ought to have been harvested and started irrigating those semi arid areas in our country like Ukambani. We have many rivers like Tana River, Athi River, River Nzoia, the Mara and many others but all that water goes to the lakes unutilized. When it comes to lakes, we have many of them which could use the water to help our nation. We are looking for water to drink and to feed our populations in major towns but that is not enough. We are supposed to sit down and come up with a strong framework on how we are going to get that water. We should start with water for drinking because it is very little but we need to make sure that, that water which goes down to the lakes and oceans is not wasted. We should make sure that it is used to irrigate those areas. I feel pity and sorry for myself and for our dear country when I see people from Ukambani crying and dying because of hunger yet many of our major rivers pass through those counties down to the Indian Ocean. I see people in Pokot and Turkana starving yet we have rivers there which flow all the way to Lake Turkana. As I support this Bill, I am requesting the Government to come up with a framework on how it is going to ensure that all that water that flows to lakes and oceans is well utilized.

[Hon. Deputy Speaker left the Chair]

*[The Temporary Deputy Speaker
(Hon.(Ms.) Mbalu) took the Chair]*

Hon. Temporary Deputy Speaker, when it comes to devolved governments, we should let the water resource service boards to be managed by the national Government because it will require a lot of money and many of these counties do not have enough money or manpower to manage water. For instance, we have Ndakaini Dam. If it is left to Muranga County to manage it, people in Nairobi will not get enough water. As I wind up, let us not forget our water towers. We have many water towers but we have watched them being destroyed by certain unscrupulous leaders in the Ministry of Environment, Water and Natural Resource and the few remaining ones are almost drying up. Let us ask ourselves what happens when we rush there to get a piece of land yet once we get there, it dries up. What about our future generation; those who live downstream? Where will they get water from? I am saying this with a lot of pain and bitterness because I come from Molo and Njoro where we have invaded the Mau catchment area. All of it is virtually invaded but people on the lower zones. In Njoro, Lare all the way to Gilgil people are crying because they cannot have enough crop harvest. We should protect it and form a serious taskforces to manage our catchment tower. They are a very important for us but if we are just there to get that small piece of land, we shall be condemned by our future generations.

Thank you, hon. Temporary Deputy Speaker, I support this Bill but with reservations.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you, hon. J.K. Ng'ang'a. Hon. Members, you know this Bill affects intrinsically ladies so I will give this chance to a lady speaker.

Hon. (Ms.) A.W. Ng'ang'a: Thank you, hon. Temporary Deputy Speaker. We all know that water is a natural resource and a national resource. We know the national Government holds it in trust for the people of Kenya. Water is life and when we are talking about water it affects everybody across board in the entire country as well as the entire world.

We know that if water is not managed properly, it leads to many illnesses. In Kenya now we have short rains and at times they become long rains because the Ozone layer has really changed. It is high time, as the Government, we get it right. Getting it right is making sure that during this time of the rainy season, we need to harvest a lot of water. We have said this many times. It has been said many times that the only way to have enough water is to harvest rain water. Last week when it rained heavily we saw floods in Nairobi. If it is a place like Budalang'I, when it rains we see the woman on television consecutively for five years saying "*Serikali, Serikali*" to help because when it starts raining the floods are all over and they have to move. So, it is high time now that we have the Water Bill 2014, we came up with innovative and creative ways of harvesting water. As we talk about this Water Bill, I strongly believe it is a natural resource and it should remain at the national level. We also know it is a devolved function and that the county governments need to handle and tackle it. First, we need to

get it right; when the rains come we need to harvest water first. Basically, this is why I say the national Government should come in, because if it is dams, we know they all do not fall within the same region. There are those that are within the county but there are some that are built or constructed at the border of two counties. If the national Government has to come in, these resources belong to all of us. The national Government needs to place those dams in places where they cater for larger areas. For those of us who come from places where these dams are constructed; it is true we are the ones who preserve them, we are part of the ecosystem. We need to be given part of that share because we will preserve them. But then as a county we should not be selfish; just like any other natural resource we should know this is something that is going to be shared across the county. So, when we are asking for recognition, we should be reasonable. We appreciate that the natural resource comes from your region and it is a plus for that county, but also we should see ourselves like Kenyans; we need water. When it rains and given that there is no drainage system here in Nairobi, you will see all hospitals flooded with patients who have developed a cold, typhoid, dysentery and other diseases. You will see hospitals full of people because we are not able to handle the mass of water that comes with rain.

When we sit here representing the national Government as Members of Parliament, this is the time people at home will be calling us because the infrastructure in our constituencies is also affected. It is high time as Kenyans, we get it right. It is raining; we harvest water in pans and dams. The other day on television I saw a man with his cattle; he had walked a very long distance. I will talk of Thika; even as we speak, animals are criss-crossing the whole town. I can imagine these animals come from Kajiado, North Eastern and Samburu. They do not have pasture or water to drink. What else are they supposed to do yet their livelihood depends on these animals? If there is no food, they need to move and look for food for their animals. This man talked about how he had walked for long not knowing whether his animals would survive or not. That is where poverty level now comes in. These animals start dying of hunger. Then it means that the level of poverty goes up. We need at this particular time to have the Government to invest in pans. When there are no rains, the animals can have water to drink, if we have dams. We are 50 years down the line since we got Independence but there are many households that do not have water right now. In my constituency, being a town constituency, there are parts of it where water is a problem. These bodies which were doing very well and they were being handled by municipal councils and town councils are no longer there. Water has become very expensive to a point that your neighbour is getting water and you are not, because you cannot afford what is being charged. The water is there but the little that is there is very expensive.

So, this Bill has come at the right time, but we need to put our heads together to see the way forward. We need to tackle the area of charges. How much should the water cost? That needs to be regulated and captured strongly in this Bill. We also need to capture research and development. We need to put a lot of effort in research. We need to be innovative enough to know how to deal with our people and how to harvest water. Where do we get the water; and with the dams that we have, how well do we protect them? How do we protect the catchment areas? When it comes to consumer rights, at times I wonder whether we still protect the rights of people because if the water bill

becomes very expensive, you do not have somebody to turn to. If the bill is too high, the next thing is disconnection. Then reconnection becomes another cost. These are some of the things that need to be captured and looked at critically. As we are constructing dams, we will need research to know where to put the dams strategically. If at all we are proposing one in Gatundu for example, will it be able to deal with the entire Thika Constituency? Can it also supply water to Ruiru Constituency and lower Ukambani area because I also border part of Ukambani? These are the things that need to be put across. Some of it goes to the counties. We should not be selfish, we should look at our people critically, know what is right and what we are supposed to do. The county government should work with the national Government so that we can have proper service delivery for our people.

These are some of the things that we need to take care of. When it comes to the existing boards, I would say that whether the function was devolved or not, the most important thing is that there was a need. They say a problem is solved when you realize there is problem and need. By the time we were putting in place the service boards, there was a reason and a purpose for that. We have seen them doing a good job. That is why I say we need to retain them for now and see how they will work with the national Government as well as the county government. The national water---

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Your time is over. That is a lady Member of Parliament speaking. You can imagine the scarcity of water *vis-a-vis* the interest women have in this Bill. I have several Members' requests. We are debating the Water Bill, National Assembly Bill No. 8 of 2014 as moved by hon. (Ms.) Abdalla. Hon. Member for Kipipiri, hon. Gichigi

Hon. Gichigi: Thank you very much, hon. Temporary Deputy Speaker. I will rise to support the Bill of improving and reforming the water legal regime within the country. However, I am anxiously waiting to see the Report by the Committee because the Bill as it is has a lot of challenges. Most of the provisions here appear to be directly borrowed from the old Act. Other than changing the names of the many authorities that are in this sector, I do not see a lot of changes that may necessarily assist this country. The Bill is a recipe for a lot of confusion between the various authorities and the county governments. In not less than six provisions, the Bill is suggesting that an authority is going to make a decision in consultation with the officer in charge of water in the county, without saying how that consultation is going to be done.

I trust that the Committee has come up with clarity on the issue. Otherwise, we are likely to go back to the period of talking about consultation; I have not been consulted; counties and water authorities will probably end up in courts. The issue of water coming from one county and flowing to another is not clear. We are aware that the Constitution vests ownership of the water resource in the national Government. That is how it ought to be. It is not fair to say that a county, or an area, that is a source of water that flows to another county should merely benefit from an ambiguous sort of assistance. We would want the relationship to be defined.

In Nyandarua County, where I come from, water is an important resource to us, but it does not benefit the locals. Our people are forced to see it flow through huge pipes to go to our neighboring counties, especially Nakuru. They do not benefit from it. There is a major dam called "Konoike" in my constituency, which was constructed in the 1980s,

and the people who are downstream of that dam in Kipipiri have not benefited from its water for many years. They keep on suffering. These are the things that we need to point out. People in counties downstream of dams that supply water to neighbouring counties should be given water first before the water goes to the other counties. This is the way it ought to be, so that we can reduce disputes.

We also need to define the benefit. I have heard the Chair talk of 25 per cent. I feel that, that is not enough. Let us talk of the net income. Since it is the authorities that are going to determine the payments, that might not be good enough. The counties should also have a say on how much is going to be charged within reasonable boundaries.

The provisions that deal with the protection and preservation of water catchment areas ought to be strengthened. Clauses 20 and 21 deal with this. They need to be strengthened. When I was a kid and what is happening currently--- Where I come from, we are faced with the possibility of most of the rivers drying up during our generation. It is going to be a major disservice and a failure on our part. Posterity might find that there is no water and they might have to go the Israel and other desert countries' way of having to purify salty water from the oceans, yet it is within our ability to restore and preserve these water catchment areas.

I also request the Committee to look at the provisions of Clause 138 under which the relevant authority is given powers to declare a crisis of shortage of water. It is also given powers to order a person in whose control a water resource is to provide water to other areas. Reading through that provision, it does not come out clearly that, that person is going to be compensated for the expenses he will incur pursuant to that order. The regulatory authority is given the discretion to determine which part that person can be compensated for. Even on that, he is supposed to get money from selling or charging for that water, yet he will be ordered to incur expenses in installation of certain works. These are some of the things that we need to ensure are corrected.

There is also the issue of water harvesting. I have seen that there is an authority that is mandated to take care of this. However, in this country, I do not think that sufficient resources have been granted. I am worried because Kenyans fought for devolution, so that resources can be distributed equitably, not necessarily equally, but equitably. The authorities that we have currently have a very opaque way of determining where they are going to allocate resources. In fact, this is one of the sectors that have seen a lot of historical injustices. In Nyandarua, there is an assumption that since we neighbour the Aberdares, people have water. The truth of the matter is 75 per cent of Kipipiri people do not have piped water, yet we see water going to the neighbouring counties and constituencies. This law should also ensure that there is fair distribution of resources that go to the national authorities.

Finally, I urge my able colleague and Chair of the Environment and Natural Resources Committee to look at the number of authorities and see how we can merge a few of them. We should not retain the eight of them. They are too many and duplicate their roles. When you go to the ground, you find that the officers who are supposed to be under the regional water authorities are now with the county governments. This is because water reticulation is now a county function. What are these regional authorities going to be doing? Where are the officers to carry out the work? Where is even the money to do all this?

While I support that we need reforms in the legal regime governing water in the country, let us relook at this Bill. Let us not sort of copy the old Bill. The Committee should especially deal with the likelihood of disputes over the provisions that are talking of consultations between officers of the water authorities and county officers in charge of the water sector.

I support the Bill subject to those many suggested amendments.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you very much. Very well spoken. Hon. Maison Leshoomo, Member for Samburu County.

Hon. (Ms.) Leshoomo: Asante sana, Bi. Naibu Spika wa Muda. Ninaunga mkono Hoja hii kuhusu maji. Kama wenzangu walivyosema, maji ni uhai. Sijui ni sheria gani ambayo itatumiwa ili Wakenya wote wapate maji. Shida ya maji iko kila mahali. Ukipita popote katika Kenya, kuna shida ya maji. Shida hii ni kubwa katika jamii ya wafugaji. Mtu ambaye ameteseka katika Kenya hii ni mama mfugaji. Mpaka wakati huu, utakuta watu wanatembea kwa siku tatu kutafuta maji. Akina mama wanazunguka na punda wakitafta maji. Hata hivyo, ni vigumu sana kutoa maji kwa shimo na watu wanne ndio wanaweza kutoa maji kutoka ndani ya shimo. Kaunti haziwezi kusaidia katika mambo ya maji. Mambo ya maji yanafaa yabaki katika Serikali kuu.

Maji ni muhimu kwa maisha ya binadamu. Kwa mfano, hospitali haziwezi kuwahudumia watu bila maji. Usafi wowote unahitaji maji kama vile vyoo, watoto kwenda shule na pia watoto kuzaliwa. Tunafaa kutafuta njia ya kuwawezesha Wakenya kupata maji.

Jambo lingine ambalo linatushangaza ni kuwa mvua ikinyesha, kunaambiwa kuwa maji yamebeba nyumba na ng'ombe. Ni muhimu tutafute njia ya kuzuia maji mvua ikinyesha. Ardhi imeharibiwa na binadamu. Watu wamekata miti na ili kupanda miti mingine ni lazima tuwe na maji. Mvua ikinyesha, hakuna kizuizi cha kuzuia maji. Maji hayo huaenda mpaka baharini. Mvua ikikosekana, ukame unaingia na kizuizi cha kuzuia maji. Vizuizi ndivyo zinafaa kusaidia Wakenya.

Wakati wa ukoloni, katika kaunti ya Samburu, tulikuwa na vizuizi vya kuzuia maji karibu 94. Sasa hivi, ni vitano tu ambayo vinaweza kuwa na maji. Vingine vyote vimefunga. Vizuizi vya kuzuilia maji ni muhimu sana. Kule kwetu, visima vya maji vinachimbwa lakini hakuna maji. Wakati mwingine maji yakipatikana, yana chumvi nyingi na watu hawawezi kuyanywa. Sehemu nyingine, watu hawakunywi maji ya kisima kwa sababu yamejaa chumvi. Kwa hivyo, cha muhimu ni kuwa na mabwawa mengi ya kuzuilia maji, haswa katika jamii ya wafugaji.

Sisi tuna ardhi. Ardhi ya wafugaji haijalishi. Tuna ardhi ya kuchimba mabwawa. Mwenzangu amesema kuwa ng'ombe wanatembea mpaka Nairobi. Huu ni ukweli. Juzi, watu wangu wameniambia niende nikawaombe nyasi kwa kambi ya GSU. Wakati wanapata nyasi, hawana maji. Kwa hivyo, maji ni muhimu sana katika Kenya yetu. Inafaa tujue ni njia gani ambayo tutatumia ili kila mtu apate maji. Akina mama wa kwangu, wameumia sana. Kule kwetu, mwanaume hawezi kwenda kutafuta maji. Hawezi hata kuibeba mitungi wa maji. Mama ndiye atachukua punda wake mpaka mahali atakapopata maji. Wameumia ya kutosha.

Kwa hivyo, inafaa tutafute namna ya kupata maji. Kama tungekuwa na maji, tungenyunyizia mashamba na tungekuwa na chakula kingi. Tungekua na maji katika kaunti yangu, hatungeuliza Serikali itupatie msaada wa chakula. Watu wangekuwa na

maji wangekuza chakula chao. Kuna sehemu nyingine ambazo zina mchanga mzuri lakini hazina maji. Kwa hivyo, sheria, au njia yoyote, itafutwe kuhakikisha kuwa maji ya mvua yamezuiliwa kila mahali. Wakenya wote inafaa kupata maji. Wafugaji wakilia kuwa hawapati maji, watu wa Nairobi pia wanalia hawana maji. Ni kama hakuna mtu ambaye ana maji.

Hapo mbeleni, tulikuwa tukisema kuwa Ukambani ndiko hakuna maji. Lakini sasa hivi, kila mtu anasema hana maji. Inafaa tutafute njia yoyote ile Wakenya wote wapate maji safi. Kwenye mabwawa ya kuzuilia maji ambayo bado yanatumika, unakuta maji yameharibika mpaka yamebadilika rangi, lakini watu bado wanayakunyua. Hawana njia nyingine na hii inasababisha magonjwa. Mara kunatokea ugonjwa wa maji, ugonjwa wa ng'ombe na hata ugonjwa wa maziwa. Hii inasababishwa na kunyua maji ambayo si safi. Ng'ombe, binadamu na pia wanyama wa msituni pia wanakunyua hayo maji. Ukame ukiingia, ndovu, punda milia, ng'ombe, mbuzi na binadamu wanang'ang'ania hayo maji. Yule ambaye ataingia mapema ndiye atapata maji.

Mambo ya maji yanafaa kuangaliwa. Ninaunga mkono kuwa maswala ya maji yabaki katika Serikali kuu. Kaunti zimepewa kila kitu na sijui kama zitaweza kutimiza maswala hayo au la. Maji yanafaa kubaki katika Serikali kuu.

Ninaunga mkono.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Asante sana, mhe. Leshoomo. Umeongea kuhusu akina mama wote wa Kenya, ikiwa ni pamoja na wa Ukambani. Asante sana umeongea pia kuhusu Kibwezi Constituency.

Hon. (Ms.) Munene: Thank you, hon. Temporary Deputy Speaker. I rise to support this Motion. I also thank hon. Amina Abdalla. Kenyan women suffer so much when in search of water. As the national Government, we need to look into how we are going to help all Kenyans. If you go anywhere in Kenya, there is no water. This is a problem and women are suffering. Young children require clean water, which they are not getting.

If we are going to dig dams, we must think of a way of protecting them. Israel is a desert, yet they have a lot of water. They are using this water for irrigation. In Kenya, we have rivers, we get rain water, but all this water goes up to the Indian Ocean. We do not have proper mechanisms for harvesting rain water, and using this water in places where there is no water.

In the Mount Kenya region, we have dams and we are supplying water to other counties. If we devolve everything to the county governments, some people will suffer. For example, if we are not going to supply water to the people who are bringing animals to the City to drink water, where are they going to get water? We also want to protect our environment. When we cut down trees, we will not get enough water. For example, my constituency is supplying water to Tetu and Mukurwe-ini. If a governor gets annoyed today and blocks that water, what are we going to do? If the President today went to Garissa and told the people that he would make sure that they get water from the national Government, will the chairman kneel down to the governor to supply water to a certain area? That is why we are saying that we want water to remain the responsibility of the national Government.

Even if we are going to have dams, will we ensure that they have clean water? This should be clean drinking water for people and animals, so that we do not get more

water-borne diseases. We know that cleanliness is next to godliness. We want our people to be clean. How are we going to help them? We need to support this Motion. We hear that a lot of money is given to people to do dams in Ukambani and everywhere else, but we do not see the dams. The national Government should think beyond mere talk, so that every Kenyan gets water.

Even in Nyeri, women fetch water from rivers. We want every woman to get clean drinking water. How are we going to harvest rain water? These are the short rains; are we harvesting water for our people? It is raining, but after a short while, we will hear that there is no food. How can we help people? We need to construct big tanks which can be used to harvest rain water, so that even during the dry spells, our people will have water. I support this Motion. However, a lot of work needs to be done. We need to harvest enough rain water during the rainy seasons, so that when there is no rain, people can use this water for irrigation; they can have drinking water and their animals can have water to drink. Our hospitals will also get water to operate in a clean environment.

You find that some hospitals do not have water. You visit other hospitals and you are told that their water supply has been disconnected due to non-payment of water bills. If the water responsibility is devolved to the county government, how are we going to help people? Child birth should take place in a clean environment. If there is no water in maternity wards, babies and mothers will not be safe. Women suffer a lot when there is no water. So, I support the Bill, but we need to think ahead and set aside enough money for construction of dams.

The Temporary Deputy Speaker (Hon. Mbalu): Thank you, hon. Wambui. That is well spoken.

Hon. Member for Kathiani, Robert Mbui.

Hon. Mbui: Thank you, hon. Temporary Deputy Speaker for this opportunity. I rise to support the Water Bill, 2014. I come from one of those counties that have been said to have a lot of problems of water. However, our strategy as Machakos County for now is with our governor. He said that within the first five years, we would ensure that we have running water in our homesteads. We shall have water for showering in our homes. We shall be flushing toilets in our houses.

We know that water is life. The fact is that we have enough water for all of us. The only problem is how this water is managed. During the dry season, people in our region die of hunger because of drought, and during the wet season, when rains come, we cry of floods. Our roads become impassable and almost every other day, you hear of people who have been swept away by raging water in rivers. It is a major issue that needs to be addressed.

I am happy with this Bill because it has come up with a good way of managing water. There are a number of bodies that are going to be set up, and that are going to help to manage water. One of the hon. Members previously said that he thought that there was going to be confusion, but I think we are going to have more effectiveness and efficiency when we have bodies that will manage specific water resources. I have seen boards of management, boards that have been proposed for basin water management, for harvesting and storage of water and water development boards. It is a good thing to come up with different bodies to manage the different aspects of this resource.

Eventually, I expect that we will be able to manage this water by first protecting our catchment areas. We need to have a source of water. It has been unfortunate in this country that from a while back, whenever we have had issues of protection of resources like water, politics would rear its ugly head. Last time, we were had an issue with Mau Forest, which supplies water even our city. People had settled into that forest and taken over its land. When they were being pushed out, it became political. Now, the same problem is still there. One of the things that we need to figure out is how we will avoid politicising water management and protect the water catchment areas.

The other issue is fairness in distribution of the water resource. It is unfortunate that there are some places, for example my county of Machakos, where in Masinga we have a lot of water. This water is harvested and delivered to another county, namely Kitui and the people of Machakos, in particular Masinga, are left without water. It is important that these bodies address these issues. People must get the benefit of the resource that originates in their area. Before water goes to another county or area, the locals must benefit from it. It has also been said by people from the Aberdares area that water is going to other places. Recently, we heard of a tiff between the governor on that side and the Nairobi County Government on issues of water management and catchment areas. Let us look into the issue of fairness in the distribution of water.

On the issue of contamination, because there are a lot of problems of contamination, I want to mention that recently in Makueni, there was a problem like that. Water was contaminated and there was belief that it was contaminated by people who wanted to chase others from certain areas. I want to propose very heavy penalties for anyone who is guilty of contamination of water. That needs to be completely prohibited, so that people do not attempt to contaminate water knowingly.

Our Constitution says that we will be provide people with clean drinking water. But if you go to some areas, you will find that we have dams from which people take water for their use, and at the same time their cattle drink water from the same dams. There is need for regulation of the use of our dams. This includes the design of the dams. We may probably insist that all of them should be fenced off and cattle should drink water from another region, so that we do not increase water borne diseases that are caused by contaminated water.

I want to mention the issue of permits. I have seen there is a proposal for a body that will be issuing permits. I want to suggest that when rates for these permits are fixed, they should not be very high. Unfortunately, the higher the cost of the permit, the higher the cost of the water to the user. Therefore, it is important to ensure that this is not very prohibitive. It should not be very high.

At the same time, I would like to mention the issue of the cost of water. In my constituency, we have several water projects. The management committees of each of those water projects charge whatever they feel like. There is need for a standardized cost of water within certain regions, depending on the source, the cost implication and the investment to extract that water. It is important that we come up with very clear regulation of the cost and the management of water. Many of the committees that are formed at the grassroots collect money as they sell water, and at the end of the day when something breaks down, they do not repair it. Most of these committees are even funded by the Constituencies Development Fund (CDF). They go running to the CDF and say a

water pump has broken down and they require Ksh10,000. They say so yet they have been selling water for a year and have collected money for it. So, it is important to ensure that the money collected from the sale of water is managed properly, so that there is continuity in the provision of water.

Hon. Temporary Deputy Speaker, I also want to mention the issue of drying up of rivers, which has also been mentioned by one of my colleagues. It is a reality that some of our rivers are drying up. I remember reading about the fact that what is causing this drying up of rivers is certain species of trees planted next to the rivers. Those species of trees suck a lot of water. I remember a while back there were regulations that were set up to block, or discourage, the planting of those trees. I do not think it has happened all over. In my region, for example, we still plant those very “water-thirsty” trees next to rivers. This continues to be a problem and we may need to see how to legislate to ensure that certain species of trees are completely banished and cannot be planted in our regions.

The other issue I would like to talk about--- We have just mentioned that during the wet season our roads become impassable as a result of water. I have observed that there are certain roads that are designed in such a way that from the lower side, there are homesteads and those homesteads separate the roads from the river. I do not know what can be done, so that water can be managed and people do not block roads. It is something that we need to look at; it is something that needs to be addressed here. Finally, we know that our dams, public boreholes and other utilities need to be put up on public land. As we address this, we need to look at what is happening with our public land. Is it still public? Every day we come here and read newspapers and we see people making deliberate attempts at taking public land. Public land is where you can construct a dam. Public land is where you can drill a borehole. In my constituency, we are almost being confined to doing these things only in schools because a lot of public land has been taken.

With those few remarks, I beg to support.

Hon. ole Ntutu: Hon. Temporary Deputy Speaker, thank you for also giving me this opportunity to contribute to this very important Bill. First and foremost, I support this Bill and I think it has come at the right time. Water is life as my colleagues have said. I always find it very strange that we have a mismatch in this country. When it rains, there is a lot of flooding around and nobody cares about what is happening with the water that we get from rain. When there is drought, there is a shortage of water. When I look at this Water Bill and I know that we have a very able Chair, hon. (Ms.) Abdalla, I know that her Committee must have done a lot of work. When I look at this Bill, it needs a lot of work and I will personally bring many amendments, so that we can take care of the needs of our people. I come from Narok West and Narok County generally has a serious shortage of water. In most cases, our people travel all the way to Tanzania looking for water. I always ask myself why that is so; when you go to Tanzania, which neighbours my constituency, you see the government has done a lot of work in terms of conserving water resources. But in this country, we are busy grabbing sources of water. We have not done a lot of work particularly in this area. When I was growing up, it was a serious rule that nobody could go close to 100 meters from the river; but when you look around, you see people putting up houses next to sources of water and even grabbing water paths.

I really think we have to do a lot of work to this Bill because it is important. I call upon the Chairperson of this Committee to share with us what the Committee has come

up with, so that we can bring amendments to enrich it. I am also interested in the formation of an authority that will be formulating and enforcing standards and procedures on how we use our water. I think we have just been speaking a lot about the wage bill in our country. I do not know whether we will be coming up with ways of merging these authorities, because there are so many of them. I do not know whether we will have money to pay those authorities that we are forming. We can look at that very keenly and see whether we can save the money that we will be using to pay those authorities. We need somebody who will be regulating and managing our water resources because this is very important.

When you look at the catchment areas, our country has not done well in this area. Communities are moving into forests, particularly in catchment areas and water towers in this country. When you look at the Mau and Aberdares forests, they are seriously affected because so many people are moving into them. The reason is because population is growing, and the Government has not done well because they are issuing title deeds to those people. The moment you issue a title deed to somebody, to remove him from the forest becomes extremely difficult because they will go to court; they will get court injunctions and they will stop you from doing anything. I am saying that because we know that there has been serious deforestation in this country, and, no wonder, you see we have a serious shortage of water.

I am also very happy when I look at what this Bill is coming up with in terms of how we manage harvesting of water. In fact, I have done a lot of work in my constituency on dams. When it rains I can conserve water, so that the people whom I represent in Narok West can use it. This is because they are very important to me and I always feel bad when I see them moving all the way to Tanzania, where they find people with water.

With those few remarks, I support this Bill but I will definitely come up with many amendments to enrich it; I think it is very important. I am sure the Committee has done a good job, but I will also come up with some amendments. With those remarks I will allow my colleagues to contribute, thank you.

Hon. Ogalo: Hon. Temporary Deputy Speaker, thank you for giving me an opportunity to speak to this Bill. I sit in the Departmental Committee on Environment and Natural Resources. As a Committee, we have taken a lot of time going through this Bill. I know most of the concerns hon. Members have, have been adequately discussed and canvassed in the Committee. We have met very many stakeholders in the water sector, and I can assure you that, as a Member of this Committee, I am very happy with the general structure of the Bill that maintains what was created by the Water Act, 2002, the separation of water resource management from the supply of water management. This separation remains the key cornerstone of this Bill; that makes it a progressive Bill.

As you are aware, the water function is a shared one. The regulation of water resources and water supply policy are a national function. Water sanitation services are, however, county government functions. It is this shared nature of this function under the Constitution that necessitated the review of the Water Act, 2002 into this new Bill. This Bill creates bodies which in totality embrace all the actions that take place from collection of water to when water reaches the consumer. Under Clause 9, the Water Resources Regulatory Authority is created. This Authority is supposed to maintain basins to ensure that our water sources are stable and that use of water resources is regulated to

ensure that we sustainably use them. They will also ensure that the basins from which we draw our water are properly managed.

Under Clauses 28 and 29, this Bill creates the Water Harvesting and Storage Authority. This is a sort of a national strategic institution that should help the country prepare so that there is water all the time. Water is a security issue; if you do not have water, the security of a country will not be guaranteed because people will begin to fight for the scarce resource. Our Committee has recommended amendments to the Bill to ensure that those who transit from the National Water and Pipeline Corporation to this Authority are vetted properly to ensure that failures of the current corporation are not carried to the Water Harvesting and Storage Authority. In my opinion, this Authority should take care of all the big dams, whether they are for flood mitigation, water supply, power generation or irrigation. This Authority should take over all these big dams, manage them and offer services to those who use the dams for whatever purpose. If you want to generate power then you pay the Authority. If you want to irrigate land, you also get service from this Authority. This is going to be a strategic national institution to safeguard this country from lack of water.

Under Clause 63 we have created the water works development boards in the different basins. These are the boards that will convey water from the Harvesting and Storage Authority to the counties and to the areas where consumers can begin to access it. These boards are necessary. There are those who have argued that with devolution we should not be having these boards. These boards traverse counties. If you talk of Victoria Water Services Board, you are in essence talking of Migori, Homabay, Siaya, Kisumu, Kericho, and Bomet counties. This board will undertake major works to convey water to the counties.

At Clause 68, we have created the Water Services Regulatory Authority. When water eventually arrives at the counties we need to regulate how its supply is going to take place, and how users are going to be protected. This regulatory authority is an important one and it must remain a national institution. This is because under the Constitution consumer protection is a function of the national Government. The Government must, therefore, have a mechanism for ensuring that the tariffs that counties and service providers charge to supply water are regulated. We cannot allow that to be regulated by counties or service providers themselves.

Hon. Temporary Deputy Speaker, at Clause 75 we have created the water service providers. These are entities that are accredited by the regulatory authority to be able to supply water to consumers. The Bill also proposes that county governments provide mechanisms for delivering water to rural areas, where it is not commercially viable for a service provider to take water.

Hon. Temporary Deputy Speaker, this Bill also creates under Clause 23 the water basin committees to bring in public participation in deciding on the management of water resources. This is very important and the Constitution requires public participation. Under the water basin committees at Clause 23 we also have the sub-basin water resources user associations that will look at much smaller areas within the basins to ensure that management at that level of those water basins is carried out in a manner that satisfies all the stakeholders.

Hon. Temporary Deputy Speaker, I want to bring to the attention of this House the clamour by the Council of Governors. The Council of Governors has met our Committee and the governors have been very adamant on the issue of tariffs. I want to go back to that issue of tariffs. If you allow tariffs to be set by county governments, I can assure that when county governments cannot raise money for other functions, they will look for what people must consume and put levies on it, and the first victim is going to be these water services. They are going to put levies on water and will not use those levies in the extension of water supplies but for other functions. So, this House must put its feet down; we must decide that this Bill, and our colleagues in the Senate must agree with us, must be passed with tariff setting remaining a function of the regulatory authority.

Hon. Temporary Deputy Speaker, I also want to bring to the attention of this House the issue of research and training in water resource management and supply, which is something we have discussed at the Committee level and we have already toyed with the idea of revamping the Kenya Water Institute (KEWI) to ensure that it performs more functions than what it does currently. We are even thinking of repealing the KEWI Act so as to provide for a much more elaborate research and training institute in this Bill.

Hon. Temporary Deputy Speaker, in general, access to water is a very important thing for life and for our economy. I want to take this opportunity to thank the Ministry of Devolution and Planning for the small dams and water pans that they have been doing across the country. As people of Rangwe, we are happy that we were able in the last financial year to get seven dams; we are hoping that we are going to get more dams this year.

I want to respond to a Member who talked of the design of these dams. Actually, in Rangwe, we are seeing these dams being done very nicely. They are fenced. A cattle trough is provided from which cattle can drink water. A tap is provided for people to collect water and they have even gone further to construct a toilet and a bathroom for those who visit those dams. So, I really thank the Ministry of Devolution and Planning.

Thank you, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you very much. That is well spoken.

Hon. Members, as a member of the Committee I must appreciate the debate that we are having on the Water Bill and, maybe, take into consideration Article 43(1)(d), and I quote it: "Every person has a right to clean and safe water in adequate quantities." Of course, this should be read together with the Water Act 2002 and its regulations.

Hon. Member for Makueni County, hon. Rose Museo.

Hon. (Ms.) Mumo: Ahsante, Mhe. Naibu Spika wa Muda kwa kunipatia nafasi hii. Ningependa kuchangia Mswada huu kwa lugha ya taifa kwa sababu jambo hili ni muhimu sana, hasa kwa akina mama wa Makueni na wengine katika nchi ya Kenya.

Nimesimama kuunga mkono Mswada huu ambao unahusu Maji. Ningependa kusema kwamba ukosefu wa maji kama Waswahili husema, ni kidonda ndugu ambacho kimekuwa katika nchi yetu ya Kenya kwa muda mrefu, au tangu tujinyakulie Uhuru.

Pia, ni jambo ambalo limezungumziwa katika sehemu mbali mbali lakini inaonekana bado hatujapata suluhisho la ukosefu wa maji katika nchi yetu ya Kenya. Ni jambo ambalo si la kupendeza. Hii ni kwa sababu tangu tupate Uhuru mpaka leo, yapata

miaka 51 bado tunazungumzia mambo haya ya maji, hasa katika sehemu za Ukambani, kaskazini mashariki na sehemu nyingine.

Sehemu nyingi za nchi zina ukame na watu wengi wanaosumbuka ni akina mama. Ni kwa nini tunazungumza juu ya maji wakati Kenya bado inapata mvua na tunaweza kukusanya haya maji kwa njia mbalimbali? Ni kwa sababu labda mikakati iliyopo yakukusanya haya maji ndiyo imechangia kuweko ukosefu wa maji ya kunyunyizia mimea maji na kupatia wanyama maji. Hii ndiyo sababu ninasema Serikali inafaa kuhakikisha kwamba kila Mkenya ama kila mwananchi anapata maji safi ya kutumia. Inafaa Serikali iweke mikakati mizuri.

Wakati mwingi shida inayochangia ukosefu wa maji ni kamati ambazo zinateuliwa wakati maji yamechimbwa. Kamati inapata mafunzo lakini baada ya miaka michache mashine za maji zinaharibika na hasiwezi kutengenezwa na watu wanakuwa na shida iliyokuwako hapo mwanzoni. Hili ni jambo la kusikitisha.

Kwanza, kamati zingine ni fisadi kwa sababu zinauza maji na hakuna uwajibikaji, au pesa wanazouza maji hazionekani zimeenda wapi. Kwa hivyo, watu wanarudi mahali walipoanzia.

Ningependekeza sheria iwekwe ili wanachama wengi wa kamati hizi wawe ni akina mama. Hii ni kwa sababu wanaume hawatunii maji mengi. Mwenye kuumia ni mama. Akina mama wanajua uchungu wakutafuta maji kutoka mbali.

Ninakumbuka nilipoenda huko Makindu, Makueni nilimpata mama mmoja ambaye alikuwa amejifungua na alikuwa amekaa siku nne bila kupata maji ya kuoga. Mnajua jinsi mama anavyokuwa anapojifungua.

Inafaa Serikali iangalie sana sehemu ambazo ni kame hasa sehemu za Ukambani ambazo hazina maji na tumeongea juu ya jambo hili sana. Pia, inafaa Serikali iangalie ni wapi itachimba maji. Kuna vidimbwi vya maji ambavyo vimechimbwa lakini inafaa tuangalie ni vipi tunaweza kupata maji nyumbani. Kweli kuna njia nyingi za kupata maji. Tunaweza kupata maji ya mvua inaponyesha kwa kuyakusanya katika magari. Ningependekeza haya magari yapeanwe kwa watu na walipie kama bili ya maji kila mwezi. Hii itawasaidia watu kukusanya maji na kila familia itakuwa na maji.

Mhe. Naibu Spika wa Muda, ninaunga mkono Mswada huu. Ningependa jambo hili la maji liangaliwe sana hasa katika bajeti ya Kenya. Inafaa kiwango kikubwa cha fedha za Kenya kitumike kumpatia mwananchi maji ili tatizo la maji lisuluhishwe kabisa.

Ahasante sana, Mhe. Naibu Spika wa Muda.

Hon. (Eng.) Mahamud: Thank you, hon. Temporary Deputy Speaker. I would also like to contribute to this Water Bill, 2014. I support the Bill. Water is life and any population without adequate water supply is not healthy. Water service in this country and issues to do with water need a lot of attention. As we now bring in this new Bill, which repeals the water Act, and which, of course, was sought for many years so as to harmonize the operations within the water sector--- I am happy that at this stage, we are able to bring in a new Bill to replace the current laws. I say that because when the Water Act, 2002 was enacted, we emphasized a lot on institutions and forgot about the utility itself. For the last decade, we have been trying to operationalize the various institutions that were created by the Water Act, 2002. This created a lot of confusion as far as that sector was concerned. I say this because I grew up in that sector. I worked for 20 years as an engineer in the Ministry.

The vision for that Ministry was lost a little when we enacted the Water Act. The water Act 2002, as good as it was in 2006 it actually ought to have been made for a country which is very developed, and where services are available to the people, and there are institutions to manage services. What we lack in this country today is water for drinking, irrigation and industrial use. If you look at the development of water resources in this country, Mzima Springs was developed in 1953 while Sabaki water works were developed in 1981. Up to now, there is no other major water service that has been developed. I really commend the Ministry of Environment, Water and Natural Resource for at least maintaining water supply to those regions. When you look at Nairobi, after the Ndakaini Dam, nothing has happened.

As we now bring a new law, we must be very careful and emphasize a framework that will actually conserve, manage and develop both water and sewerage services for the benefit of this nation. The Act proposes an overall water resources management authority which, of course, has existed in many forms since this country came into existence. It is important to have an authority that regulates the use of water in this country. There is a lot of indiscipline when it comes to the use of water in this country. Many individuals have been able to use the water resource without following the law. It will be important when we have that authority in place for us to make sure it will actually work, so that nobody will misuse water. I am also happy that the ownership of water is properly pronounced in the Bill; all water is vested in the national Government. For that reason, nobody can actually misuse water.

In terms of water resources, unless we conserve our water towers--- We all know what has happened to many parts of this country in terms of environmental degradation. Our rivers have dried up as a result of occupation of Mau Summit by individuals. So many things have happened. This authority is supposed to manage water towers. There was a plan to have a water towers management authority, but if this authority is properly constituted and managed, then I think that will be dealt with.

I also see there is established the Water Services Regulatory Authority. I tend to think this is duplication. I urge the Committee, at the Committee Stage, to look at the relationship between the Water Services Regulatory Authority and the Water Resource Management Authority. Although one is in charge of the service while the other one is on resources, it is important that we do not have many regulatory bodies in the same sector otherwise, there will be some conflict. Water is life and it cannot be done away with. I think 80 per cent of the human body is water. It is said that if you provide water to your population you can actually do away with hospital-based diseases since many diseases today are water related. It is important that we see water in that light.

Water has a price. Water pricing is a very serious matter, and we want to see the cost of water regulated for consumers, so that there will be no abuse.

The problem we have today is that water service cannot be reliable, if you look in your house you have water Bill and you have electricity Bill; you tend to pay the electricity Bill faster. Electricity is a continuous service that you cannot do without; equally water is a service that you cannot do without, but because it is not reliable people tend to ignore it and pay for electricity Bill. I am happy that Nairobi Water and Sewerage Company is on alert nowadays. We need to have the pricing properly put in the law, so that it is done at the national level. No county or institution should be allowed to set

tariffs. Tariffs should be set nationally the way you fix tariffs for electricity. Maybe you can have zones, but it is important that it is properly controlled. I see there are three authorities; I think the Water Harvesting and Storage Authority will actually replace the National Water Conservation and Pipeline Corporation. These two are actually national bodies. We have a provision for National Water Works Board for supply and distribution. Water that comes from very far to towns like Nairobi, Mombasa, Kisumu passes through many other parts, and must actually be availed to the people who live along its route. I remember when this country put in place the Nol Turesh pipeline project from Loitoktok to Machakos, that water never reached Machakos because the rangelands had it transferred elsewhere; this really has affected these counties todate. Machakos, Athi River and Kajiado depend on other sources of water, and not that one. That is why when you are planning for large bulk supplies, we must take into account the needs of the people along the route.

I think water is a commodity that this country must take seriously; this country must invest in water resources, and the laws that we make must be able to allow that to take place. Regulations are important but the funding--- I see we have the Water Trust Fund, though it behaves like a Non-Governmental Organization (NGO). But I think we should have the trust fund transformed into something that is bigger than a small organization. We must be very careful when we try to fund water through community-based organizations (CBO) and NGOs. Unless you have integrated water supplies in the regions, these small bodies will not help.

When you look at big cities in Kenya today--- For example, most parts of this city are on stand-alone programmes and septic tanks that operate individually. To be able to have proper sewerage systems, you must have water that carries sewage. We also urge that in this Bill when you develop any institution or estate, you must be forced to connect to the public sewer, if it exists, because it does not exist in many places.

I think I will be able to contribute more on this Bill in the next stage. It is a good change from what I see at a glance; it is a good move from the current Water Act, which has so many institutions which are quite unnecessary.

The Temporary Deputy Speaker (Hon. (Ms) Mbalu): That is well spoken. Your time is over.

Hon. Members I have five more requests. Next is the hon. Member for Sirisia, hon. Waluke. I must appreciate that we have hon. Member for Kitutu Chache North, hon. Member for Igembe North, hon. Member for Rongo and hon. Member for Limuru, who are really interested in contributing to this. But because we have the list, the next on my list is the hon. Member for Sirisia, hon. Waluke. Hon. Angwenyi you will be there; you will get your time. You will have more time to debate.

Hon. Koyi: Thank you very much, hon. Temporary Deputy Speaker, for giving me this chance. Let me thank hon. Amina for bringing this very important Bill. Water is life for human beings and also for animals. It shows that hon. Amina is a very serious Chairperson of her Committee. Yesterday, when I went through the Mining Bill, I was impressed with what that Committee is doing. Other committee chairs should learn from hon. Amina Abdalla, because she is ever serious with her work, as the Chair of that Committee.

It is important that our Government invests a lot in the water sector. We have lost many people during the dry spell in areas like north eastern, Mandera, Maralal and Wamba. When I was in the military, I used to see women fetching water from very far. The Government should invest a lot in water projects. It should have a water pipeline, for example from Lake Victoria to north eastern. I know it is not impossible for the Government to do that.

It is not only in dry areas like north eastern where we lose people, but even in areas like western Kenya we have lost people to typhoid. Sometimes, in our constituencies we bury two, three or four people who die from typhoid. Typhoid is a very expensive disease to treat and our people cannot afford the cost of the treatment. This is a very serious issue and the Government should invest in the water sector.

It is a shame to our Government because it is 51 years since we got Independence, yet many areas in this country do not have water, for example in Ukambani, where you come from.

Again, there are Kenyans who take the law into their hands by interfering with forests. For example, Mount Elgon Forest is being cleared. I think it is in hon. Amina's docket. We must come up with strict laws to protect our forests. Water catchment areas must be protected, so that we can have enough rainfall in this country. Two years ago, the Rift Valley was affected by lack of rains. Areas like Narok were affected when the Mau Forest was interfered with. So, we must be strict and protect our forests because our 10 per cent forest cover has gone down.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Member, you will have your five minutes in the next sitting.

Hon. Members, this is a Bill that we will have more time to debate on at the next sitting. Hon. Angwenyi, you will be the next. You will speak so as to represent your county. Hon. John Kiragu, Member for Limuru, is also interested in contributing to this. Hon. Dalmas Otieno, Member for Rongo and hon. Jessica Mbalu, Member for Kibwezi East, of course, will be contributing at the next sitting. Hon. Members, this is a House of rules and procedures

ADJOURNMENT

Hon. Members, the time now is 6.30 p.m. This House stands adjourned until Tuesday, 28th October, 2014, at 2.30 p.m.

The House rose at 6.30 p.m.