

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 30th October, 2014

The House met at 2.30 p.m.

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

PRAYERS

PAPERS LAID

Hon. A.B. Duale: Hon. Speaker, I beg to lay the following Papers on the Table of the House:-

The Report of the Auditor-General on the Financial Statements of Kenya National Trading Corporation 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 Sports Stadia Management Board 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 National Development Fund for Persons with Disability 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 Commission for the Implementation of the Constitution 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 Official Receiver (State Law Office) 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 Consolidated Bank of Kenya 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 Ministry of State for Immigration and Registration of Persons 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 Kenya Tourism Board for the year ended 30th June, 2013 and the Certificate of the Auditor-General therein.

The Annual Report and Financial Statements of Kenya Medical Supplies Authority for the year ended 30th June, 2013 and the Certificate of the Auditor-General therein.

Thank you, hon. Speaker.

Hon. Speaker: Hon. Dawood, what is the nature of your intervention?

Hon. Dawood: Thank you, hon. Speaker. I pressed the intervention button when the Order on Petition was called out. There is a Petition I brought to this House on 14th August but, to-date, nothing has been done about it. It is not even before the Committee responsible for internal security. I do not see the point of bringing the Petition to this House, if it has not even reached the Committee. It is already 90 days since then. So, could you give us your guidance as to what should happen in that case?

Hon. Speaker: When did you bring the petition?

Hon. Dawood: I brought it on 14th August, 2014. It was approved and I read it out in the House but, to-date, nothing has happened. It was about a police officer who was shot in 1999. A court order for compensation was issued in 2008 but, to-date, the family of the deceased is still waiting for compensation. It has not been forthcoming.

Hon. Speaker: What effort have you made to pursue the Committee? It is an administrative matter. I gave you the opportunity to read it out. We committed it to the Committee. Have you made any effort to get in touch with the Committee Chairman?

Hon. Dawood: Hon. Speaker, I went to the relevant Committee but the Committee Clerk said that they have never received a copy from the Director of Committees. When I went to the Table Office, I got communication to the effect that they had given it to the Committee. So, I am at a loss as to where I should go next. I even gave copies of the same petition to the Committee Vice-Chairperson. I have even spoken to the Committee Chairman, hon. Asman Kamama.

Hon. Speaker: Hon. Dawood, now that we have restored Question Time, would you not prosecute that matter faster if you framed a Question and directed it to the Cabinet Secretary responsible for those matters, so that when he appears before the Committee, he can give you the answer directly without having to be taken round by the Committee? Is that a route you are willing to consider even as we direct that the Clerk's Office ensures that the Petition is received by the relevant Committee?

Hon. Dawood: Hon. Speaker, I take note of what you have said, but it will contravene the rules on petitions. If petitions are not dealt with, then there will be no point of bringing them to this House.

Thank you.

Hon. Speaker: I fully agree, but I do not see the Chairman or the Vice-Chairperson of the Committee here. So, we have to give instructions through the Office of the Clerk, which should ensure that the Committee on Administration and National Security processes the Petition.

Hon. Dawood: Thank you, hon. Speaker.

BUSINESS FOR THE WEEK COMMENCING
11TH TO 13TH NOVEMBER, 2014

Hon. A.B. Duale: Hon. Speaker, pursuant to Standing Order 44(2) (a), on behalf of the House Business Committee, I rise to give the following Statement regarding the business scheduled to appear before the House for the week beginning Tuesday, 11th November, 2014.

As usual, the House Business Committee met on Tuesday this week to give priority to the business of the House for this week and the week beginning 11th November, 2014. On the outset, without anticipating debate, I wish to remind hon. Members that the House is scheduled to proceed for a short recess commencing tomorrow as per our calendar. Since the House is scheduled to go on recess, the House Business Committee has not scheduled any business for next week; save to say the following:-

(i) There is a general concern regarding the passage of Bills with constitutional deadlines. The Constitutional Implementation Oversight Committee of this House is, therefore, requested to expedite the publication of the remaining three Bills to ensure that they are introduced in the House in good time. In this regard, it would be prudent for the sector Ministries, the Commission for the Implementation of the Constitution and the Office of the Attorney-General to publish the Bills by the time the House resumes on 11th November, 2014.

I also want to confirm that I wrote to the Attorney-General of the Republic of Kenya and copied the letter to the Commission for the Implementation of the Constitution and the relevant Ministries yesterday morning, informing them of the urgency of the matter and stressing that the Bills must be brought to the National Assembly by next week for you to approve, so that the House can receive them by the time we come back.

(ii) The following Cabinet Secretaries will appear before the relevant Departmental Committees on Tuesday, 11th November, 2014 as follows:-

(a) The Cabinet Secretary for the Ministry of Devolution and Planning, Ms. Anne Waiguru, will appear before the Departmental Committee on Finance, Planning and Trade between 10.00 a.m. and 10.50 a.m. to answer Questions from hon. Gideon Ochanda, MP and hon. Gladys Wanga, MP.

(b) The Cabinet Secretary for the Ministry of Environment, Water and Natural Resource, Prof. Judy Wakhungu, will appear before the Departmental Committee on Environment and Natural Resources between 10.50 a.m. and 11.40 a.m. to answer Questions from hon. Timothy Wanyonyi, MP and hon. Jacob Waweru, MP.

(c) The Cabinet Secretary for the Ministry of Transport and Infrastructure, Eng. M.S. Kamau, will appear before the Departmental Committee on Transport, Public Works and Housing between 11.40 a.m. and 12.30 p.m. to answer Questions from hon. Joseph Nkaissery, MP, hon. Bernard Shinali, MP and hon. (Dr.) Wilbur Ottichilo, MP.

Hon. Speaker, the matter raised by hon. Jakoyo Midiwo regarding the Ministry of Land, Housing and Urban Development will be dealt with on 4th November, 2014 before the Committee on Lands. The venue of the meetings will be communicated by the Clerk's Office, through the Director of Committee Services, and the Questioners will be notified officially.

(iii) Fourteen Bills are before the Departmental Committees for consideration and are waiting consideration by Committees of the whole House. The Committees are, therefore, asked that they must submit amendments, if any, to facilitate consideration of the Bills in the Committees of the whole House, by the House Business Committee, on Tuesday, 11th November, 2014.

Hon. Speaker, I also want to inform the House that the National Treasury has released the first tranche of Kshs8 billion to the Constituency Development Fund Board. I hope that the Chairman of the Constituency Development Fund Committee, hon. Lessonet, is here. This is a very serious Committee. I called him before I came to the House and told him that he must be here this afternoon. He told me that he is around. His Committee should confirm to the House when the real disbursement will be done. Therefore, however late he comes, he must brief the House. But a sum of Kshs8 billion is with the CDF Board for disbursement to all the constituencies whose projects have been approved.

Hon. Speaker, finally, the House Business Committee will meet on Tuesday, 11th November, 2014 at the rise of the House to consider business for the rest of that week.

I beg to lay the Statement on the Table of the House.

(Hon. A.B. Duale laid the document on the Table)

Hon. Speaker: What is it, hon. Midiwo?

Hon. Midiwo: Hon. Speaker, let me congratulate the Leader of Majority Party for the communication. On the issue that he has raised, of the CDF Committee, this House used to be careful not to pass the Finance Bill before we see the scheduled disbursement for the CDF. I would like to disclose to hon. Members that I was in the Office of the Leader of Majority Party yesterday. He had called for the list of the constituencies to which the money has been disbursed. That list had only Kshs7 million. I would wish that he clarifies the matter because in my presence, he had sent for the full list of the Kshs8 billion.

The Committee should also be told that it should not be the Leader of Majority Party who should be doing their work. The Committee was appointed by this House. We went for a very long recess and we understand the challenges that the Government may be having as regards the availability of the money. However, we need to be made aware of the situation, so that we do not go out there and fail to work for Kenyans. Whichever way you look at it, given my experience in this House, it is only the CDF which is working for Kenyans. Despite the huge sums of money being given to the governors, there is nothing to show for it on the ground. Even in my county, there is nothing that has been constructed with the money that has been given to the governor for the last two years.

Therefore, the CDF is dear to our hearts. I want to plead with the Chairman and the Committee Members, through your Office, that they stand up and do their work. I know that you can do it. I have seen a lot of criticism about you, personally, but so far so good. I wish to tell my friend, Ahmednasir to slow down. I have seen that every Sunday, it is like you are his plate of breakfast. I do not think it is fair because even the accusations that are levelled against your Office are not true. I even heard it on radio this morning that you have defied court rulings. As far as I am concerned, unless there is something you have not told us, this House has not been served with any court injunction. It is good to clarify this matter, so that people do not just go on peddling lies about the National Assembly and your Office. When it wrong, we should say that it is wrong and when it is right, we should say that it is right.

Hon. Speaker, let me end there, but I would like the Leader of Majority Party to clarify to hon. Members whether the Acting Chief Executive Officer of the CDF Board has told us which constituencies have received the money so that, as we leave here tonight, we know that we are going to work for our people.

Hon. Speaker: Hon. Midiwo, even before we get the Leader of Majority Party to clarify that bit, you have raised a very important point. Indeed, this matter has been raised in the public domain. Some people are wondering why the House is taking a recess for 10 days given that it has been on a long recess. Our explanation has been that during that long recess, the CDF money had not been released to the constituencies and this time hon. Members would want to go back to the constituencies and organise matters to ensure that, as they come back, they leave their constituencies up and running.

If you are not sure that the money is available to the constituencies, it is a very sad occasion. The Constituency Development Fund Committee owes it to this House. Even as the Leader of Majority Party, who has gone out of his way to try and get some information on the Constituencies Development Fund money, makes his clarification, the Committee has an obligation and duty to the entire House to inform Members where we stand with regard to CDF funds. If all the constituencies have not been given money, there should be a Report from the Committee explaining why some constituencies got money and others did not get money so that, as Members break for recess, they can be aware.

If it is your constituency committees that have not done what they are supposed to have done, you know that is what you are supposed to go and address. If a Committee of this House does not explain to Members, it means that it has assumed that upon its election into office, they can take leave of absence. It is not fair. Who is the Vice-Chairman of the Constituency Development Fund Committee? Does the Committee have a Vice-Chair? I have all along known the Chairman of the Committee to be very active. He is particularly concerned about CDF matters, but I think he has decided to relax a bit. Maybe, he has left the job for the Leader of Majority Party. Perhaps, you should take up the matter, hon. Duale.

Hon. A.B. Duale: Hon. Speaker, in the last Parliament, the Chairman of the Constituencies Development Fund was the Speaker of the Senate. Since he did so well during the last Parliament, he did not have time to campaign for votes, amongst the Members of the last Parliament who are in the Senate; the likes of hon. James Orendo and hon. Moses Wetangula. So, we will tell hon. Lessonet to go and get some induction from the Speaker of the Senate because the Constituency Development Committee is very critical.

Hon. Speaker, as hon. Jakoyo Midiwo said, as a leader of this House, I realised that it was getting too late. I realised that we were approaching the end of October but the National Treasury had not released even the first tranche of the CDF money. So, after I engaged the Cabinet Secretary for the National Treasury, Mr. Henry Rotich, by yesterday, the CDF Board then confirmed that they had received a total of Kshs8 billion in their account. What they have disbursed to 85 constituencies is Kshs7 million. They have since confirmed that they have done the paper work, and that they are waiting for their Chief Executive Officer, who came back yesterday evening.

I have talked to both the Treasury and the Constituency Development Fund Board so that they give me documents showing that the money is there and the timelines within which they are going to disburse it. I will table those documents before the end of the session today. I also want to tell my colleagues that they will not disburse money to your constituency as per the regulations, if your accounts still hold money. Make sure that you have spent the last financial year's money and that your account must have less than Kshs10 million shillings. If you have millions in your account, then they will not disburse the money. I am not telling you to go and commit money, but you should ensure that by next week, during the recess, hon. Members give out projects for the first quarter. I will not leave this to the Chairman alone. We will ensure that money is disbursed to all constituencies whose projects have been approved and have met the regulations of the bank balances.

The other issue that has been raised by hon. Jakoyo is that of the media always highlighting in the newspapers that the hon. Speaker of the National Assembly has disobeyed court orders. This has also become breakfast for the former Prime Minister, hon. Raila Odinga. He was in the Senate and he was saying that the National Assembly Speaker--- We are not aware of any court order that the hon. Speaker, either in his personal capacity or as the Speaker of the National Assembly, has disobeyed. There is an instance in which you said that you will disobey idiotic court orders. The first person who said that even idiotic court orders must be obeyed is none other than the Chief Justice. So, the word "idiotic" has the owner. The initiator of the word is Dr. Willy Mutunga. If any Kenyan says they are not going to obey idiotic court orders, they should go back and ask the owner of that word. He did it in a Press conference at Serena Hotel.

This House has also been accused of allowing unconstitutional Bills. As Speaker, you do not have any powers to make any law. Your work is to moderate the House. This House, under Article 94 and Article 95 of the Constitution, has powers to make laws. Even the law that is being referred to as the controversial County Devolvment Act originated from the Senate and was initiated by the Senator for Nandi County. This House, therefore, had no choice because it came here and then through the Mediation Committee. When we were dealing with that law, we were actually complying with the constitutional provisions. That is the law which everybody, including Charles Nyachae, keeps on talking about; that the Speaker and this House have passed an unconstitutional law.

On the same matter, any Kenyan has recourse to go to the Judiciary to challenge any law passed by Parliament. It is a common trend in all devolved democracies. That is the reason why the Constitution has created and given powers to the Judiciary.

Finally, I read a judgment given by some judges in Nyeri, on the case of Embu. If you look at the judgment, the judges are saying they have supervisory powers over Parliament. We should share the judgment with hon. Members of Parliament. A judge is saying that the court has supervisory powers! It can never happen. The Constitution is very clear. There is a whole chapter on Legislature. We draw our powers from Articles 93, 94, 95 and 96. If you want to negate the powers of these Articles, then the same judges should join *Pesa Mashinani* or *Okoa Kenya*, call for a referendum and close the National Assembly and the Senate. They can then become the *alpha* and *omega* so that they can rule the country. In fact, the Judiciary should find a way of using a constitutional

mechanism to close the Executive and the Legislature. They should let the Chief Justice become the President of the Executive and Judiciary and also the Speaker of both Houses.

When Kenyans went to the Referendum in 2010, they knew what they were doing. They were clear in their minds that there would be three arms of Government - the Legislature, Judiciary and the Executive. The 349 hon. Members who are in this House were elected by the people of Kenya to do what those four Articles; 93, 94, 95 and 96 stipulate. People are now enjoying the fruits of the Constitution. Let them write what they want to write, but they should not write false statements. There is no court order that you, as the Speaker of this House, has been served. There is no unconstitutional Bill. If they want someone to blame, then it should be the Senate because it is the originator of that Bill. Even the Senator for Nandi Hills, just like any other hon. Member, is within his constitutional right to bring a Bill. The Bill went through the Commission for the Implementation of the Constitution (CIC), the Kenya Law Reform Commission and the Attorney-General's Office. Also, there were stakeholders who gave their views. The Committee of Parliament called everybody and so there was public participation. If one is aggrieved, then one can get recourse in the corridors of the Judiciary because that is how the system works.

I am not a member of the Senate but it is very sad that today, the Governor of Embu is still in office. I do not know why the Judiciary is not very much concerned. However, it is business for the Senate. It is for them to see why the Judiciary has decided to close their House. I hope they will live to the reality.

Finally, hon. Speaker, because you are leading a serious House, please, do not mind what people write. I will talk to my very good friend, Ahmednassir Abdullahi because we come from the same community. I might need to use elders to ask him, "Please, tell us what the Speaker has done to you." Even if it means looking for two camels, then we will take them to him on your behalf. Jubilee believes in dialogue and consultations. Ahmednassir is a very serious member of the Jubilee Coalition. So, we will talk to our member. Maybe, he is part of the internal democracy just, like hon. Keter. When there are problems, you know you have to talk. We will deal with him within the house of the Jubilee Coalition.

Hon. Speaker: Hon. Chachu, had you indicated some intervention?

Hon. Ganya: Hon. Speaker, I wanted to intervene when the Leader of Majority Party was speaking. There is moderation in anything you say. Going that far on the Chief Justice, the Judiciary and even Ahmednassir is not in order. It is uncalled for.

Hon. Speaker: What is your intervention, hon. Gichigi?

Hon. Gichigi: Hon. Speaker, I want to add my comments on the issue of separation of powers. I am a strong supporter of that doctrine and concept. Looking at the Judiciary during the KANU days, there was every reason for everyone to fight for that separation. The Judiciary is becoming the dictator in this country. It is emasculating the authority and the constitutional mandate of the Executive. It is actually tying the hands of the two Houses of the Legislature. In my opinion, when we decided to give jobs to people based on qualifications of activism, that is where we went wrong. Some characters came who had no record of serving the public even in the private sector or the legal fraternity. We did not know them. We saw them in the streets fighting with briefcase NGOs.

Those are the people who are determining the fate of this country. They think they can injunct the President from going to State House or Harambee House. It is important that the Judiciary realized that without Parliament and the Executive, we cannot have a country. In the very near future, the other two arms of Government and this country might say enough is enough and that is going to be very dangerous. Let them respect the principle of separation of powers without becoming the dictator of the three arms of the Government.

VISIT BY MAYOR OF BARKING AND DAGENHAM

Hon. Speaker: Hon. Members, before we proceed, allow me to recognize, seated in the Speaker's Gallery, Councillor Elizabeth Kang'ethe, the Mayor of Barking and Dagenham in London Borough, accompanied by one Jane Kangethe.

STUDENTS/PUPILS IN SPEAKER'S GALLERY

Also in the Speaker's Gallery are students from Munyu Girls High School from Thika Town Constituency, pupils from Hospital Hill Primary School Westlands Constituency, Innercore Bethwel School, Embakasi West Constituency and students from Karima Mixed Secondary, Naivasha Constituency.

Hon. Members, I am alive to the issues that have been canvassed but, before I make this communication, let me state this point. This is a House of rules which relies on traditions, precedents and is guided by the Constitution of the Republic. Some of the issues that we are canvassing, if we could reflect our minds back a little bit, especially those Members who were in the Tenth Parliament, you will recall that pursuant to a point of order raised by hon. John Olago Aluoch and hon. Nyamweya - and we are lucky that hon. Olago Aluoch is still with us in this Parliament - my predecessor from this very Chair, hon. Kenneth Marende, on 10th of February, 2011, did make a very profound and lucid pronouncement regarding the principle of separation of powers. And at the conclusion of that very sound ruling - and it remains a precedent for this House - there is no appeal. It is, therefore, the precedent that both myself and any other person coming in the future, must follow. It did say that nobody, not the Executive; not the Judiciary talks to Parliament in a compulsive manner.

(Applause)

Nobody tells Parliament what to do, when to do and how to do it.

(Applause)

As your Speaker, I promise to remain faithful. We appreciate what was contained in that precedent. We acknowledge the role of the other arms of Government. The Executive in the legislative process makes proposals. It is for this House to finally decide what to make of those proposals. They remain proposals. Even when the President refers back to this House a Bill by way of a Memorandum, he does not compel the House. It is a

Memorandum and the House proceeds clearly as provided for in Article 115, to either override the veto or pass it as it is. It is never compulsory that what is referred back to the House must be passed in that form.

We also appreciate - and it is in that same ruling by my predecessor - that other institutions like the Judiciary must wait for this House to do what it must do in the way it will do. Thereafter, any Kenyan who is aggrieved by a decision made by this House is at liberty to seek redress in our courts of law. When we are seized of a matter, it must remain within our ambit. Similarly, we faithfully observe this. In our own Standing Order No. 89, we observe the rule of *sub judice*; that when a court of law is seized of a matter, we avoid as a House from debating or discussing it, simply because we respect the principle of separation of powers. We allow the courts to do what they must do. If the courts find a particular law that is passed by this House to be unconstitutional in whatever way, they are at liberty to express themselves. But even then, they do not direct the house on what to do. They merely express themselves and say that this particular provision of this law is unconstitutional to the extent that they may feel it is.

That is the essence of that ruling by hon. Marende, when he said that nobody should speak to Parliament in a compulsive manner. That is because we are the House that represents the will of the people. This is a principle which is followed the world over in many civilised jurisdictions. We will not discuss what is before the courts. Similarly, we expect the courts to respect what is happening within the House. That is the best we can do.

If any unconstitutional law has been passed, it is for the courts to declare so. Other Kenyans are at liberty to express opinions, but those are mere opinions. It is the court which will declare. We should just let the matter rest at that; that yes, there is a lot of freedom in this country. Therefore, people are at liberty to express themselves. But those opinions must only remain opinions. They are not the findings of courts of law. When courts of law make findings regarding any laws that we have passed then, hon. Members, it is you again who will decide what to do; whether you will propose amendments to comply or to reflect the findings of the courts or not.

Again, that is not the work of the Speaker. Article 122 of the Constitution is very clear that the Speaker has no vote and the Speaker will not attempt to even exercise any right in the making of law, save to direct as guided by the Constitution and our own Standing Orders.

Hon. Members, that is sufficient as we take the short recess, if we do. The Leader of Majority Party indicated that members want to go and organise themselves. What I have been made to understand in the House Business Committee is that members would want to go and attend to matters of the constituencies, especially regarding the Constituency Development Fund (CDF).

ESTABLISHMENT OF AD HOC COMMITTEE ON MEMBERS' WELFARE

However, even as you do so, hon. Members, you will recall that, at our last Speaker's *Kamukunji* held on 26th August this year, it was agreed that a committee comprising of members of this Assembly be formed to consider issues which were raised

by several members touching on the welfare of hon. Members, including facilities within Parliament.

As a result of that resolution by you in the Committee, the following members have been nominated by the leadership of both sides. These are:-

- (i) Hon. Jakoyo Midiwo, MP – Co-Chair
- (ii) Hon. (Dr.) Naomi Shaban, MP - Co-Chair
- (iii) Hon. (Ms.) Florence Kajuju, MP
- (iv) Hon. David Kangogo Bowen, MP
- (v) Hon. Benson Makali Mulu, MP
- (vi) Hon. (Ms.) Joyce Lay, MP

This being an *ad hoc* Committee, nevertheless, is expected to start sitting during this short recess period and consider all the issues that were raised during the *Kamukunji* and receive representations from members.

The Committee will later report its findings and recommendations to a *Kamukunji*, once it completes its work. Any member who has a representation on matters of welfare of hon. Members, not limited to those which were raised at the last *Kamukunji*, including provision of facilities, are requested to meet the Committee and make such submissions.

That Committee, notwithstanding that it is *ad hoc*, will be facilitated to do its work through officers provided by the Clerk's Office.

Thank you, hon. Members.

MOTIONS

RENAMING/UPGRADING OF KITALE TECHNICAL INSTITUTE

Hon. Speaker: Those hon. Members who are on their way in, could you please do so quickly. Take your seats. Those who do not want to take their seats could prefer freezing, whichever is easier.

Hon. Members, the business appearing as Order No. 8, even though it is a Private Member's Motion, nevertheless, it has been deemed necessary that you, as the House, makes a decision which is only to vote. The Motion relates to renaming and upgrading of the Kitale Technical Institute. The Motion was moved by hon. Chris Wamalwa, MP, and reads as follows:-

THAT, aware that the Senate passed a Motion that every county should have a public university; further aware that this country traditionally recognizes its heroes and heroines for their contribution towards development in various capacities, and in cognizance of the role played by H.E. the late Hon. Michael Wamalwa Kijana who hailed from Kitale in Trans Nzoia County, this House resolves that the Government renames and upgrades Kitale Technical Institute to be Wamalwa Kijana University of Science and Technology.

(Hon. Wakhungu on 29.10.2014)

(Resumption of Debate interrupted on 29.10.2014)

Hon. Members, you debated this Motion yesterday in the morning but, for some reasons well known to you, I am told the Question could not be put. We intend to put the question now and so, pay attention to the contents of the Motion and be ready to vote.

(Question put and agreed to)

ADOPTION OF REPORT ON PROTOCOL FOR ESTABLISHMENT
OF EAST AFRICAN COMMUNITY MONETARY UNION

Hon. Speaker: Once again, hon. Members, I have sympathy for the Member for Kamukunji.

Hon. Members, Order No. 9 again is a Motion that you deliberated on yesterday, but for similar reasons, the Question could not be put. I now proceed to do so. This is a Motion by the Chairperson of the Select Committee on Regional Integration. The Motion reads as follows:-

THAT, this House adopts the Report of the Committee on Regional Integration on the Protocol for the Establishment of the East African Community Monetary Union, tabled in the House on Tuesday, October 21, 2014.

(Hon. (Ms.) Kajuju on 29.10.2014)

(Resumption of Debate interrupted on 29.10.2014)

(Question put and agreed to)

COMMITTEE OF THE WHOLE HOUSE

(Order of Committee read)

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

IN THE COMMITTEE

[The Chairlady (Hon. (Dr) Laboso) took the Chair]

CONSIDERATION OF PRESIDENTIAL MEMORANDUM ON
THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

(Loud consultations)

Hon. Chairlady: Order, hon. Members, We are now in the Committee of the whole House to consider the Presidential Memorandum on the Statute Law (Miscellaneous Amendments) Bill, National Assembly Bill No 24 of 2014.

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Hon. Members, just for the record, it is now time to do the business that we are all here for. Just to bring to the attention of hon. Members, Article 115 of the Constitution is about the presidential assent and referral of Bills to Parliament. I would like to remind hon. Members that Article 115(2) of the Constitution says that if the President refers a Bill back for re-consideration, Parliament may, following the appropriate procedures under this part:-

- (a) amend the Bill in light of the President's reservations or,
- (b) pass the Bill a second time without amendment.

Article 115(4) says "Parliament, after considering the President's reservations may pass the Bill a second time, without amendment, or with amendments that do not fully accommodate the President's reservations, by a vote supported:-

- (a) by two-thirds of members of the National Assembly; and,
- (b) two-thirds of the delegations in the Senate, if it is a Bill that requires the approval of the Senate."

So, hon. Members, be alive to that constitutional requirement even as we proceed to process those amendments by His Excellency the President.

Hon. Midiwo: Thank you, hon. Chairlady. I appreciate your Communication. But could you kindly further clarify the import of the President's Memorandum so that we understand what we are about to do?

Hon. Chairlady: As we get to each of the amendments, we will make that clarification.

PROPOSED AMENDMENTS TO THE INTERPRETATION
AND GENERAL PROVISIONS ACT (CAP. 2)

Section 3

Hon. A.B. Duale: Hon. Chairlady, I beg to move:-

THAT, the proposed definition of the expression "the Cabinet Secretary" be deleted and replaced with the following –
"the Cabinet Secretary" means the Cabinet Secretary for the time being responsible for the matter in question, or the President where executive authority is retained by him:

Provided that for the purposes of the administration of laws relating to the legal sector, the expression shall, subject to any assignment under Article 132(3)(c) of the Constitution, include the Attorney-General.

Initially, the Bill was about the definition of "Minister" in the old Constitution and it changed to "Cabinet Secretary". In the Bill, "the Cabinet Secretary" means the Cabinet Secretary for the time being responsible for the matter in question, or the President using his executive authority as the head of the Cabinet, where executive authority is retained by him. For the Attorney General, where the executive for that matter in question has been conferred on him.

The position in the proposed definition has always been the law, and the amendment was only intended to harmonise the new Constitution and the new Executive structure, of removing "Minister" and replacing it with "Cabinet Secretary". This definition, however, was amended by the House. They removed the reference that was

made to the President and the Attorney-General. So, that was the bone of contention that made the President refer this Bill back to us.

This means that unless Parliament specifically assigns the administration or performance of any Executive function into these offices, why do we have it? The President and the Cabinet interchange in terms of authority. When you come to the Attorney-General, the Office of the Attorney-General or for that matter the State Law Office or the Department of Justice, as it is referred to in other jurisdictions, it will be most affected by the change.

The State Law Office is a department like any other Ministry or department of Government dealing with matters of marriage, copyrights and legal education. The Kenya Law Reform Commission is based there and so is the National Council for Law Reporting and the National Crime Research Centre. So, this makes the Attorney-General to fit within that definition of a Cabinet Secretary. Basically, the President is returning this Memorandum based on the amendment by the House in removing the presidency and the Attorney-General from that.

Thank you.

Hon. Midiwo: Thank you, hon. Chairlady. Let me say that I tend not to be clear in my mind whether the Leader of Majority Party is explaining the import of what we are about to do, particularly in respect of elected State officers. Hon. Members need to understand this. The import of what we are about to do, and I am sure that is why the President threw this back at us. The intention was that people who are accounting officers – and that was the import of the miscellaneous amendment –if they are charged with misappropriation of public funds, for example, they need to step aside so that they do not preside over their own investigations. That was the import of the miscellaneous amendment. We are also State officers.

Hon. Chairlady: Hon. Midiwo, that is why I was saying: Let us debate a point when we reach that particular item. What I have said is on the general interpretations.

(Question of the amendment proposed)

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be inserted in place
Thereof be inserted, put and agreed to)*

*(Provisions relating to Interpretation and
General Provisions Act as amended agreed to)*

PROPOSED AMENDMENTS TO THE ANTI-CORRUPTION
AND ECONOMIC CRIMES ACT, 2003

Section 62(1)

Hon. A.B. Duale: Hon. Chairlady, I beg to move:-

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THAT, the proposed subsection 62(1) be amended by deleting the words “with executive responsibility”

What I am going to read are the views of the Executive and, more so, the President. In Section 62(1) of the Statute Law (Miscellaneous Amendments) Bill that was before this House, it proposed to amend that 62(1) of the Anti-Corruption and Economic Crimes Act, 2003 by deleting the existing provisions and substituting therefor with the following new sub-section--- That is what Parliament did. Then from there, I will take you through the concerns of the President and what he has proposed.

Parliament said that a public officer or a State officer with executive responsibility, who is charged with corruption or economic crimes, shall be suspended at half pay with effect from the date of the charge, until the conclusion of the case. That is what Parliament provided; that the cases shall be decided or determined within 24 months. That is what the house decided then. The President is saying that this amendment can be construed to be discriminatory against public or State officers with executive responsibility, in that this provision excludes other public officers who have similar responsibilities within the Executive.

What the President is saying is this: “In the foregoing, I recommend that the proposed sub-section 62(1) be amended by deleting the words “only with executive responsibility”. So, he has agreed with Parliament but he says; State officers or public officers should all fall within that category, but when you say “State or public officers with executive responsibility”, that is discriminatory. So, he is calling for the removal of only that part. I want to read it, “In the foregoing, I recommend that the proposed sub-section 62(1) be amended by deleting the words “only with executive responsibility”.

Hon. Chairlady: Okay, hon. Members, remember I read to you what the Constitution says about changing.

Hon. Midiwo: Hon. Chairlady, thank you. That was precisely my concern. What we are about to do, read together with the Constitution that says a Member that misses eight sittings in any session may or can lose their seat is something that can be used for witch-hunt on elected leaders all across, including governors, members of county assemblies and many other people. The intention of the Statute Law (Miscellaneous Amendments) was to rein in on corrupt State officers. Let me also bring it to your attention that on Tuesday, the House Business Committee (HBC) sat and if it was known that this was going to be on the Order Paper, we would have come up with an amendment that takes care of what the intention of Members of this House was. Let me just bring it to the attention of hon. Members that if we pass this thing, then you are “cooked” as Members of Parliament. This is a very bad thing because it was not the intention of what we wanted to do. The rejection by the President of the intention of hon. Members negates--- It brings another intention which was not the intention of this House.

If you go to the County Government Act, the then President, hon. Mwai Kibaki - we need time to bring that argument - rejected where we said the governors would be responsible for security in the counties. If you remember that ruling, we then as a House set a precedent which was ruled upon by the then Speaker, hon. Marende, that, if we could amend the intentions of the Memorandum of the President and leave his intention there, because we could further amend this, it would mean something else. But we would also achieve what we wanted and also accommodate the views of the President.

So, this is my proposal. We could stand down this particular business and deal with it on Tuesday when we come after we have submitted our amendments to it. Otherwise, the HBC never deliberated on it. We could then defeat it if hon. Members understood the import of it. We could defeat what the President is trying to do, but because the leadership that sits in HBC was not seized of the matter, we did not tell our hon. Members what was coming. We never told Members of the National Assembly. I want to plead with you, make a decision from your Chair, because the House Business Committee never deliberated on this. This is not what we want to do. We would have set a very dangerous precedent where even you, hon. Chairlady, somebody will wake up tomorrow, take you to court and you will lose your parliamentary seat. That is not something we are about to agree to.

(Several hon. Members stood up in their places)

Hon. Chairlady: Hon. Members, let the Chairman comment and then you will get the time to make your comments.

Hon Chepkong'a: Thank you, hon. Chairlady. Of course, as you know, we have already filed our Report, which I tabled on Tuesday.

Hon. Members: No! Do not talk like that!

Hon. Chepkong'a: I am addressing hon. Chairlady. Of course, hon. (Maj-Gen) Nkaissery knows that we respect leadership, including himself when he was a General. We discussed this matter, but it would have been neater if we left this matter and deliberated upon it later when we come back from recess. That is because we have a number of concerns. We want all hon. Members to be present. There is misinterpretation. I do not know the advice that was given to the President. We believe that it was not good advice with regard to particular amendments here and I think if the House was properly briefed, I am sure we would get the numbers. I do not think the President intended it to be that way. For instance, it is about one chief executive officer of the Ethics and Anti-Corruption Commission.

The CEO is appointed with the approval of the House. We had recommended that the CEO be removed with the approval of the House. Now, someone is saying that the CEO can just be removed after the House has approved. That is unprocedural and unconstitutional. So, I was suggesting - and I totally concur with the Deputy Leader of Minority Party - that we stand down this until Tuesday when we come back.

Hon Chairlady: Can we get a clarification on whether we are standing down the whole document or only with respect to these two?

Hon. Wakhungu: Thank you, hon. Chairlady. We had discussed this issue and I agree with what the Chairman has said. The initial import when you talked of executive responsibility, the person was stepping aside to give room for investigations; so that he does not interfere with investigations. He or she should step aside and be on half pay.

However, when it comes to State officers, we have some who are appointed and others who are elected. So, the moment you remove the issue of executive responsibility, that brings in the State officers who are elected like Members of Parliament. This includes the MCAs and the governors. I do not think the President was misadvised. I do not think he meant what this particular clause is supposed to bring on board. I agree with

the other speakers that this issue should be suspended because the implication is that somebody can go to court. Even the usage of your CDF, much as it is just an oversight, you will be suspended, get half pay and yet you are elected. You are not an appointed State officer. That is the implication of this clause. So, I agree with what the others have said that it should be suspended. There should be further consultations or it be suspended for that matter.

(Loud consultations)

Hon. Chairlady: This is not an issue to really debate for a very long time. No need. Okay. I will allow hon. Gichigi and then the Leader of Majority Party.

Hon. Gichigi: Hon. Deputy Speaker, my colleagues who have spoken before me have given a good explanation of what is happening. I want to suggest that we should report progress, but we need to be very careful – although I have not had a chance to look at the timelines - to ensure that the proposed amendments by the President do not carry the day when we are on recess. We must be very careful even as we debate the Motion when it comes. As a lawyer, I am telling you that the moment the Ethics and Anti-Corruption Commission makes a funny charge against any elected leader, it means that you stand suspended. You should remember that you have a contract with your constituents. Time is going to run out and you will not be able to execute your duties, unlike a person who is employed on permanent and pensionable terms. So, it is important that we report progress, suspend this particular debate and look at the timelines so that the Constitution does not defeat us. Then we can debate the issue.

I support that position.

Hon. Chairlady: Hon. Leader of Majority Party.

Hon. A.B. Duale: Hon. Deputy Speaker, I want to read for my colleagues the timelines. The timelines in the Constitution are more when the President is assenting. When the Speaker takes it for assent, it is seven days. If the President does not assent within a certain period, at what time does it become law? But we have no timelines for the period it will be in Parliament. So, before I ask whether Members want the Committee of the whole House to report progress and seek leave to sit again, you know in this House, I am the conveyer and the carrier of the President's Memorandum. Even if we sit another time, we must be alive to the constitutional provisions, that for us to defeat the Presidential Memorandum, we must have 236 hon. Members in this House.

(Loud consultations)

Hon. Members: We will get it!

Hon. A.B. Duale: Yes, it is very easy to say that you will get this number. It is like saying that getting a wife is easy.

(Loud consultations)

Hon. Members: No! No!

Hon. A.B. Duale: No! I am entitled to my view. Saying it is one thing, but getting 236 Members is a different thing. It is like two days - Monday and Tuesday. That is because even the coalitions will talk.

PROGRESS REPORTED

CONSIDERATION OF PRESIDENTIAL MEMORANDUM ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

Hon. A.B. Duale: On the basis of that, I want to move that the Committee of the whole House doth report progress and seek leave to sit again.

(Loud consultations)

Hon. Chairlady: Before I put the Question, I just want to clarify that it is not a constitutional requirement. The 21 days is the requirement of the Standing Orders. The days that we are on recess are not covered. Therefore, we can still be able to recoup and get the 21 days after we come back.

Hon. Members, I, therefore, then put the Question, which is that the Committee of the whole House doth report progress and seek leave to sit again.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[The Deputy Speaker (Hon. (Dr.) Laboso in the Chair)]

Hon. (Ms.) Shebesh: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Memorandum from His Excellency the President on the Statute Law (Miscellaneous Amendments) and seeks leave to sit again.

Hon. (Dr.) Shaban seconded.

Hon. A.B. Duale: Hon. Deputy Speaker, the new whips in town are consulting. I beg to move that the House doth agree with the Committee in the said Report.

(Question proposed)

(Question put and agreed to)

BILL

Second Reading

THE WATER BILL

(Hon. (Ms.) Abdalla on 23.10.2014)

(Resumption of Debate interrupted on 23.10.2014)

Hon. Deputy Speaker: Hon. Waluke had a balance of five minutes. Is he still interested in his five minutes? I see no request and, therefore, hon. Onyango Oyoo, Member for Muhoroni, you have the Floor.

Hon. Oyoo: Thank you, hon. Deputy Speaker. I want to make my contribution. I have my reservations about this Water Bill in its current form. I remember that after Independence, during the former President Kenyatta's regime, Kenyans were promised that by the year 2000, there would be clean piped water at every doorstep. The Government is not run by a Minister. It is an institution and even after Paul Ngei fell off with the Government, if the Government had good faith in the implementation of that, it would have walked its talk and by now, there would be piped clean water for everybody.

As I speak, we have had opportunities which have been misused. For instance, when the Government was working on a major programme to supply water through the so-called Kilimanjaro Water Project, some few individuals grabbed the opportunity and directed water to their farms. That was of no consequence to Kenyans.

I want to say that the Government should be serious and put in place a proper mechanism to enable the public benefit from this concept which is meant to bring water to needy Kenyans.

Currently, as a devolved function, water has been taken to the county governments. Given the standards that are manifested by county governments in performing their various functions, I believe the Government needs to rethink about the issue of water. I believe if the Government means well, water is like health and education. The Government should think about bringing water back to the national Government so that it can run it directly.

Hon. Deputy Speaker, I am sure we have had several NGOs which have meant well and they have used a lot of money to make sure that there is good water ready for people's use. But, unfortunately, that money has been misappropriated by several "fat cats" and a few unscrupulous NGO officials. To my consternation, those people who have misappropriated that money are left to walk away scot-free.

The Judiciary is a different arm of the Government. Kenyans are wondering how somebody who is known can steal pipes and embezzle money that is meant for water supply. Corruption is not done by one person; it done by people. Therefore, when people steal water pipes, they know where to sell them. When the courts declare them innocent, it is very unfortunate. It is not in tandem with Uhuru Kenyatta's concept of leading a corruption-free country. This is very bad. We need people who are assisting, like my respected Leader of Majority Party, to shed more light so that people who steal public property like pipes and land are punished. They should be taken to court immediately. They should not only be taken to court, we should escort them to jails. We should not make people appear in court and they are given the opportunity to change suits everyday and hit news headlines. That opportunity should be given to more decent people.

Hon. Deputy Speaker, I want to rest my case and say that water should not be a devolved function anymore. That is because the county governments are not equal to the task and water is very essential in this country.

Hon. Tonui: Thank you, hon. Deputy Speaker, for giving me this opportunity to contribute to this Motion.

Before I continue, kindly allow me to condemn the beating of hon. Magerer Langat, the ODM Executive Officer by the “men in black” who have just done it in the Orange House. This frequent whipping of hon. Magerer Langat by the “men in black” is uncalled for and should be condemned by all. I know that hon. Magerer Langat has opted---

(Loud consultations)

Hon. Deputy Speaker: Order! Order, hon. Members! Hon. Tonui, does that have anything to do with the Water Bill? Hon. Tonui, stick to your contribution on the Water Bill, so that we do not get into any murky grounds. Stick to the contribution on the Water Bill, hon. Tonui.

Hon. Tonui: Thank you, hon. Deputy Speaker. I was only sympathizing with hon. Magerer because he comes from my area. I wanted to express sympathy with this constant whipping by “men in black” in the Orange House.

(Loud consultations)

I know he is sticking to ODM because of his problem of unemployment.

Thank you.

Hon. Deputy Speaker: Order! Order, hon. Members! Hon. Tonui, help us keep this House in order. What is your point of order, hon. Simba Arati? Order, hon. Members, let us give each other a chance to speak.

Hon. Arati, what is out of order?

Hon. Simba: On a point of order, hon. Deputy Speaker. Is it in order for the hon. Member to continuously mention the name of the party that is respected in this country; ODM, whereas we know that the Jubilee Coalition has “eaten” land in Karen and we have not said anything? With the leadership of Jubilee, the two have grabbed land---

Hon. Deputy Speaker: Order, hon. Simba Arati! That is not a point of order, please!

Hon. Simba: The Leader of Majority Party knows that.

Hon. Deputy Speaker: Order, hon. Members! Hon. Tonui, stick to your contribution on the Water Bill.

(Hon. Oyoo stood up in his place)

Order, hon. Oyoo!

Hon. Tonui: I was just expressing sympathies and nothing else.

Hon. Deputy Speaker: You have done it. Can you now move to your contribution?

Hon. Tonui: You are exhausting my time. Kindly, allow me to continue.

(Loud consultations)

Hon. Deputy Speaker: Order! Hon. Members, can we have some order in the House? Hon. Tonui, you have expressed sympathy with your former colleague. Can we now get on with the business that is here before us, which is the debate on the Water Bill? There is no need of bringing in other issues. Please, wait until we finish the matters before us, then you can do it in any part of the building outside this chamber. You have enough platforms to discuss Karen land and other issues. Let us concentrate on the Water Bill, hon. Members.

Hon. Tonui: Thank you, hon. Deputy Speaker, for your directive. I will stick to that. I wish to support the current debate on the Water Bill. I believe the Water Bill is timely. It is geared towards providing guidance on how the water sector should be run.

(Loud consultations)

Hon. Deputy Speaker: Order, hon. Members! We cannot hear the contribution!

Hon. Tonui: Thank you so much. I am saying that I support the Water Bill because it is going to provide guidance on how the water sector should be run, owing to the current Constitution. The new Constitution came with different roles for different levels of Government. The national Government under our Constitution is assigned certain roles. One of the roles is the management of water as a resource to perform certain functions. Among the notable ones are; national public works, consumer protection and provision of adequate water. The county governments have certain roles of providing water services and sanitation to the public and county public works. I believe this Bill will be very crucial in demarcating the different roles by the different levels of Government. Therefore, this Bill is quite timely because it talks about conservation of water catchment areas and ground water.

The people who are in the water catchment areas must be captured in this Bill very well. Incentives should be given to those people so as to protect those areas. One of the catchment areas is the Mau region, which is within my constituency. Our people conserve the Mau Forest, but nobody appreciates the efforts being made by the people in Bomet, Nakuru and Kericho counties in conserving that catchment area. Certain incentives should be extended to our people to continue conserving the water catchment areas.

I am happy that this Bill is handling the issue of disputes which might arise on water issues. The Water Tribunal is in-built in this Bill so that the problems which may arise can be sorted out within the shortest time possible and it will also protect the interest of various counties.

I remember during one of our Committee sittings, the people from Nairobi came to our committee and made a special plea to us to ensure that in this law, we protect the water that comes to Nairobi from other counties such as Kiambu and Murang'a. Those counties should not block Nairobi from accessing water. Therefore, this law will protect access to water by everyone wherever they are; whether they are in a county with little

water or in those areas which are water catchment regions. I believe those will be well protected.

Hon. Deputy Speaker, there is also the issue of Water Sector Trust Fund (WSTF) which is captured in this Water Bill. I think this should be well supported so that water can be provided in all the sections of this country.

My greatest concern here is how the funds that are available in the Water Sector Trust Fund are distributed. Looking at the past, going through the reports on how water from those old resources has been shared, there has been quite some discrimination. A county like Kitui, where the Leader of Minority Party comes from, has been one of the greatest beneficiaries. In the last four or so years, it has benefited from funds to the tune of Kshs1 billion whereas a county like mine - Bomet County - has only benefited to a tune of Kshs11 million during the same period. You can see the kind of discrimination which is happening in the water sector, depending on who has been in charge of this. Such a thing should never be allowed to recur. That discrimination should never be entertained. So, we must in-build in this Bill the idea that sharing of resources in the water sector must be fair and transparent. There should be a lot of accountability.

This is one of the areas where we have been experiencing a lot of corruption. When we talk about those huge dams like Umaa and Badasa, where we have pumped a lot of money, people are yet to enjoy water services owing to corruption in the water sector. That should be handled and those who have been involved in those issues should be prosecuted and asked to refund the money which they have misappropriated. I am also happy that this Bill is creating a National Water Harvesting and Storage Authority to take care of rain water. Currently, that water just goes to waste. It is not utilized. It is not collected anywhere and it is not stored. We need to store that rain water because it is easier to provide it to our homes. It is water that can be collected from rooftops. That has been captured here very well. The Water Services Regulatory Authority has been captured in this Bill to protect the interests and the rights of consumers so that there is adequate water for everyone. I believe that should be encouraged.

There is the issue of pollution. The Water Services Regulatory Authority will ensure that water, which is provided---

(Hon. A.B. Duale consulted loudly)

Hon. Deputy Speaker, the Leader of Majority Party is a real noise-maker.

Hon. Deputy Speaker: Leader of Majority Party you have a *Kamukunji*. Can you take your *Kamukunji* elsewhere?

Hon. A.B. Duale: It is (Eng.) Gumbo.

Hon. Deputy Speaker: Okay. It is hon. (Eng.) Gumbo.

Hon. Tonui: He has been bought to sabotage my contribution.

Hon. Deputy Speaker: Your time is getting finished.

(Loud consultations)

Hon. Tonui, ignore them and finish your contribution. Your time is almost up.

Hon. Tonui: Thank you, hon. Deputy Speaker. I was saying that the creation of some certain authorities to take care of the interests of consumers is highly welcome, so that we have adequate water in our homes. The issue of pollution should be well taken care of because the quality of water provided in our homes is so important and it should be protected. So, the creation of the Water Services Regulatory Authority should be supported by all in this Bill.

Hon. S.S. Ahmed: Thank you, hon. Deputy Speaker. I would like to support the Water Bill that is coming up. However, I have some concerns. Water is a right for all Kenyans. The way we have dealt with water over the past few years is that we have privatized and thus taken it away from the poor and given it to the rich. I was the Mayor of Kisumu and at times there was tap water in Milimani and other places yet Nyalenda and other places had to buy water at Kshs20 a jerrican. Things have not changed.

This Water Bill that is coming up has gone the same old way that the World Bank wanted. They tried to push for privatization. I shall be bringing some changes at the Committee Stage but at this moment, I would suggest that there is no community participation or devolution involved in the water sector. In my constituency, there is a water treatment plant in Kajolo and it treats water and sends it down to the city and the people who live next to the water supply have no water. So, water seems to be the preserve of the rich and so this Bill is not pro poor. This needs to be sorted out.

We need to make sure that the Water Bill has not forgotten about sanitation. Water and sanitation go together. The water is the one that makes the money, the sanitation is the necessary item that must work with it. The Water Bill has forgotten all about sanitation. As a result, there are barons making a lot of money on selling illegal water but nobody wishes to follow up on sanitation. So, that is one major point that this Bill has forgotten.

This Bill has also brought up the Water Sector Trust Fund. I was in workshops and I was against this proposal because it puts it under the Ministry of Environment, Water and Natural Resource and tries to change the whole financing in the water sector. It believes that since privatization has failed, they should now put up the Water Services Regulatory Authority, the Water Resources Management Authority and the distribution at all levels as they are now devolving. The Water Bill is trying to suggest that there is devolution. The county governments' role in the distribution of water to the poor is definitely not there and I feel that it is very important that the county government is involved.

My final point is that privatization has failed in Kenya and I do not think the Water Bill that is coming up here should follow the same lines.

With those few remarks, I thank you.

Hon. Waiganjo: Thank you very much, Hon. Deputy Speaker, for giving me this opportunity. The Bill we are discussing today is a very important one. As a matter of fact, every hon. Member has situations in their constituencies regarding water. The Bill as drafted is good but there are certain areas that we need to take a harder look at because of what appears to be duplication of functions within the authorities that have been under this Bill. To get to the gist of this Bill, perhaps we need to look at the constitutional provisions that anchor the need for this Bill. Section 4 of this Bill clearly gives the guide that the applicant of this Act has to be within those confines. It talks about Article 10

which is on national values and principles of governance. I want to close in subsection 2(b) on social justice because water is life and when you are talking about life then you have to talk about constitutional provisions that give the basis of this Bill.

What we are creating are establishments within this Act that will require the governance of these establishments to have good governance. I think that is why Article 10 of the Constitution comes into play. Then, of course, Article 2(c) is on sustainable development. Water must be sustained. It is a national resource that has to be sustained.

If you look at Article 43, which also anchors this Bill, it talks of economic and social rights. It is a constitutional provision that everyone must have access to water. So, in Article 43(1)(b), we talk about access to housing and reasonable state of sanitation. We are talking about sanitation here because, this Bill, as much as it talks about water, it also talks about sanitation.

Article 43(c) talks about freedom from hunger. You really cannot talk about freedom from hunger when you do not talk about accessibility to water and plenty of water for that matter. Then (d) talks about clean and safe water in adequate quantities. All these are anchored in our Constitution. So, when we are debating this Bill, we must know that the Constitution came first and buttressed the need to create some sort of law which will regulate the use and management of water.

Then when you go to Article 60 of the Constitution which is also mentioned in Clause 4 of this Bill, we are talking of the principles of the land policy because we want sustainable and productive management of land resources. Water is one of the land resources because water basins, dams, pans, rivers and even oceans are on land. We are also talking about sound conservation and protection of ecologically sensitive areas. We are talking of conservation because water must be conserved. So, whatever we are talking about is anchored in the Constitution. Article 232 is on values and principles of public service. Why public service? It is because the personnel that will run these establishments will come from the public service and if you look at Article 232(1)(b), it talks about efficient, effective and economical use of resources.

This is serious and it must be emphasised because if you look at Article 232(1)(c) of the Constitution, then it talks about responsive, prompt, effective, impartial and equitable provision of services. So, if we want then to create establishments that will respond well to our public service, then we must do something that is lean, neat and one that does not have bottle necks and bureaucracy.

If you look at Part III of this Bill, I think we are not doing very well on it because we have created the Water Resources Regulatory Authority as a corporate body which means that it is independent, it can be sued, it can sue and it has got directors. However, if you look at the membership of the Water Resources Regulatory Authority, the chairperson is to be appointed by the President, then the other members are the Principal Secretary for Finance, Principal Secretary for Water, Principal Secretary for Environment, Principal Secretary for Land and four members appointed by the Cabinet Secretary. It also has got a Chief Executive Officer (CEO) who is appointed by the Cabinet Secretary upon recommendation of the Board. Therefore, this regulatory authority has under it a Board of Management which is the one that employs the CEO; it can hire and fire the CEO.

Under Clause 28 of this Bill there is established something called the National Water Harvesting and Storage Authority. If you look at the membership of the National Water Harvesting and Storage Authority and you look at the membership of the Water Resources Regulatory Authority, they are exactly the same because they have the chairpersons, of course, appointed by the President, then they have got Principal Secretary for Water, Principal Secretary for land, Principal Secretary for Finance and four members appointed by the Cabinet Secretary.

So, I ask myself, these two authorities are created within the same Bill, but their functions and membership is the same, so when shall they sit as Water Resources Regulatory Authority and as National Water Harvesting and Storage Authority? So, we are duplicating and I think the Committee must really look into this and propose amendments. In my view, we must expand the functions of the Water Resources Regulatory Authority to encompass those that are under National Water Harvesting and Storage Authority to create one authority to handle all the functions and everything that is under those two authorities. Instead of creating two separate authorities, two separate boards and two separate CEOs--- These CEOs are supposed to be hired and fired by the Board. Hence, there is a problem there.

If you look at the other examples of the various Commissions that we have, you realise that CEOs of Commissions and Boards have a lot of problems. In fact, they are fired at will everytime there is a problem within an establishment, it is the CEO who takes the flak because the Board can very quickly sit and even if it was its problem, it would decide to fire the CEO. I think the CEOs must be appointed on the recommendation of the Board, but by approval of Parliament so that even when they are to be fired, then Parliament also has to be involved so that we do not expose the CEOs of serious establishments to their Boards.

If you look at the other creation at Clause 68, we have the Water Services Regulatory Authority. If you look at the provisions, functions, powers and the membership of the Water Services Regulatory Authority, and then look at Clause 63 and find something called Water Works Development Boards, they will be doing the same thing. I am wondering why we are creating within this Act so many establishments, duplicating their functions, powers, membership and then that becomes law. The Committee has done a good job, but they need to re-look at what they have done so that instead of creating so many establishments, we create a few ones which will do almost the same functions and save the country some money.

Then the other thing that I have a problem with is this Act at Clause 117, which creates a Water Tribunal. This tribunal has the same jurisdiction as a subordinate court. We have subordinate courts everywhere in Kenya, but if you create a Water Tribunal, it will not be in all the counties, for instance, in Nyandarua where I come from. So, you are creating a tribunal to sit in Nairobi yet this tribunal is under the Judicial Service Commission.

So, whoever sits as the Chair of that tribunal has the same jurisdiction as a magistrate, for example, a Resident Magistrate, or a Principal Magistrate. So, why do we need a Water Tribunal? Why can we not resolve our disputes within our Magistrate Courts and then if there is a problem, you come for an appeal in the High Court in the Land and Environmental Court? That way, every dispute will be handled at the county

level. The magistrate is an employee of the Judicial Service Commission. I do not see the need of the Water Tribunal.

The water service providers is a good one because it is a public limited enterprise as well, but if you look at its outreach, it goes down to the counties. So, hon. Deputy Speaker, I think it is a good law, but it requires to be re-looked into so that we can remove duplications and then we propose amendments and reenact it.

Otherwise, I support.

Hon. Deputy Speaker: Hon. Mary Seneta.

Hon. Seneta: Thank you, hon. Deputy Speaker. I rise to support the Water Bill, 2014. It is a very important Bill. Water is a very important resource in our country and majorly it concerns very much those people who come from the rural areas of this country. When we talk of water, it is a resource that has even caused so many conflicts in some areas. It is a resource that many people compete for.

Therefore, to have this regulation is really timely. However, I still feel that to have a Bill or regulation is one thing and to implement it is another thing. I really support the issue of forming this Water Authority but looking at it, I was thinking that we shall also need to possibly come up with an amendment to also make communities with this resource to be involved in these boards or in this Authority.

Hon. Deputy Speaker, one thing that I really support in this Bill is the formation of the Water Sector Trust Fund which goes a long way in supporting initiatives to support sustainable water resources. In many of our areas we drill boreholes, dams and wells but when it comes to sustaining them it becomes a problem. However, when we get such kind of a body which goes a long way in helping the community to sustain these water resources, then I think we shall have helped these communities to sustain the water resources. This Fund also goes to help those areas which have no water to get water resources.

So, I totally support this Bill but I also concur with my other colleague who has just spoken about having two authorities. Many a times we create authorities that have the same or serve the same roles and that also brings another conflict in terms of these roles and even much more tax for the citizens of this country.

Therefore, hon. Deputy Speaker, I really support this Bill but with a few amendments on the issue of involving our counties or the communities that have these resources, at least for ownership of the resources.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: John Kobado.

Hon. Kobado: Thank you, hon. Deputy Speaker, for giving me the opportunity to contribute to this very important Bill. Water is essential for life and without it there is no life. Access to adequate, safe and affordable water is, indeed, a basic human right because water is a key driver of economic and social development.

Hon. Deputy Speaker, we know that water is one resource that is there in plenty because three quarters of the earth surface is occupied with water but incidentally water again is, indeed, very scarce. This is because out of those three quarters of the earth's surface that is occupied by water only 0.08 per cent of that water resource is available for agriculture, manufacturing, drinking and sanitation. Therefore, there is serious competition for little water that is available for human use.

[Hon. Deputy Speaker left the Chair]

*[The Temporary Deputy Speaker
(Hon. Kajwang') took the Chair]*

Hon. Temporary Deputy Speaker, we recently visited Israel as a Departmental Committee on Agriculture, Livestock and Cooperatives and we could see what the water resource can do to revolutionise an economy like Israel's where certain areas receive only up to one millimetre of water density.

Indeed, hon. Temporary Deputy Speaker, solution to water problems require proper water resource management. It requires proper reforms in water governance for us to be able to utilise this rare commodity to be able to really feed our people.

Millions in this country and elsewhere live with insufficient fresh water. This is often caused by polluted fresh water resources, over- exploitation of ground water and mismanagement of wetlands. What we need to do is to optimise the use of water resources while at the same time we attempt to minimise the environmental impact of water use.

Hon. Temporary Deputy Speaker, the solution is an integrated approach because we find that water is needed in industrial use, for manufacture, agriculture and domestic use. Therefore the only solution to proper management of water resource is an integrated water resource management approach.

Hon. Temporary Deputy Speaker, this should be done at various levels. We require a hierarchical approach where at national level the national Government will be dealing with the institutional framework formulation of policies and plans.

At the county level, we would expect the management issues to be dealt with. Those are planning, organization, coordination and development of water resources and then we go further down to community level where we need to involve the stakeholder participation and involvement of community and private sector in the day to day running and management of water resources.

Hon. Temporary Deputy Speaker, water rights is an emerging challenge and I would like to give examples of how water resources have been mismanaged in this country. My constituency which is Uriri is spanned by two fresh water rivers. We have River Kuja running to the western side and it is used to irrigate Nyatike which is a neighbouring constituency. Then we have River Oyani to the southern side of the constituency. River Oyani is the main feeder and source of water used in Migori Town which is the headquarters of Migori County.

Hon. Temporary Deputy Speaker, if you look at the way it has been done, the one which is used for irrigating what we are calling the Lower Kuja Irrigation Project which, indeed, is over 7,000 hectares and a project which is estimated to cost about Kshs4.2 billion, this water is pumped to the next constituency yet the people of Uriri from where that water is sourced do not benefit at all. They do not participate. They do not oversee the management of that water resource. The same thing has been done with River Oyani which is actually the major supplier of water used in Migori Town.

The people of Uriri are not participating in the management of that resource. They are watching as that water is being pumped to be able to be used in the headquarters of the county. Therefore, what we need to see is participation of the stakeholders in the management of water resources, particularly the communities from where the water is sourced. This is because once that water is pumped there is an effect on the environment and proper environmental impact assessment needs to be done so that people are enlightened and sensitised on the effects of such a project. We need to weigh what the economic benefits of that project are against the social costs particularly when we talk about management of water resources.

Hon. Temporary Deputy Speaker, with those few remarks, I strongly support the Bill so that as it is enacted we will be able to manage these resources properly and more so the water catchment areas. Catchment areas have not been properly managed because the wetlands act as the sponge for holding water. They act to avoid soil erosion because they hold the water. All this, if properly managed, I believe the resources that we have in plenty in this country will go a long way in changing the economy of this nation.

Hon. Temporary Deputy Speaker, lastly, I hope that the Galana Kulalu Irrigation Project which is supposed to irrigate up to approximately one million acres in this country will be able to address the issues of food security using water resources, if properly managed. If it is not properly managed then we may end up utilising that water but in the end it may not benefit Kenyans in overall terms.

With those few remarks, I beg to support the Bill.

Hon. M'uthari: Thank you, hon. Temporary Deputy Speaker. I rise to support this particular Bill. Water is life. It is an important component of development. This Bill is critical in the sense that it harmonizes and updates the Water Act, 2002. It takes into consideration Articles in the Constitution in order to bring to focus issues to do with management of water resources.

It is important to note that this Bill proposes the formation of various institutions that will manage our water resources. Of essence is Part II of this Bill which entrusts the ownership of water resources in the national Government. This is important because we have some water resources which run from one county to another. Given what we have been experiencing of late in the country, if water is not entrusted in the national Government there is a possibility that, perhaps, one county could decide to deny a neighbouring county water. This law ensures that there is fair distribution of the water resource so that one area does not deny the other water.

There is established the Water Regulatory Authority. Its mandate is regulating the management of our water resources. The National Water Harvesting and Storage Authority has been set up. We need to put more emphasis on this institution. Development of water resources is part of infrastructure development. We know that water has the capacity to transform even arid land. Here in Kenya, there is no place that should be considered arid because almost all parts of this country experience rain. We are now experiencing rain in some parts of the country.

In the dry areas, we experience floods. If we harvest waters from the floods, like it is done in other parts of the world, then we will have water for drinking by human beings and livestock. The water could also be used for irrigation. This will enable us have a secured livelihood. It is said that after 51 years of Independence, many of our

communities are not able to feed themselves and they have to rely on donations of food. It is not because people are not hard working; rather the Government has not supported water resource development. If water resources are developed, even the areas that are considered less potential in terms of agriculture will do well.

In my opinion the potential of Kenya lies in the 80 per cent of land which is considered not arable at the moment. This land is expansive and if we invest seriously in the water sector, we could develop it for livestock keeping, tree farming and so on. This will be a departure from depending on small pockets of the country that have reliable rainfall. We could convert the northern parts of Kenya into areas that support our country in terms of food production.

We need to put our energies where they are required. There are some attempts by the Government in this sector. However, I believe that more can be done, especially by supporting the institutions that have been set up in this Bill, for example, the National Water Harvesting and Storage Authority. If this Authority is given resources, I believe it will invest in the areas considered to be less potential. This will help us improve human life in Kenya.

In Igembe North we do not have rivers, but when it rains like it is doing now we get a lot of water. The water drains into valleys creating havoc. The water could be harvested to help people in terms of water for drinking for human beings and livestock and also irrigation. Water is a basic human right as is enshrined in our Constitution.

There are proposals for mega projects in certain parts of this country. However, I believe that it is not only in those areas where we have rivers that water can be harvested. It is proposed in this Bill that the water could be harvested from the run-off. Such water could be cleaned and utilized to better the lives of Kenyans. When we pass this Bill, it should be enacted immediately so that we have harmony as far as water resource management is concerned.

I would like to ask the Government to consider all parts of the Republic of Kenya. This calls for equity in terms of distribution of the national resources. If we do that, all the regions of this country will enjoy the water resource. My place, Igembe North, requires particular consideration so that people do not walk long distances with *mitungi* looking for water.

I support the Bill.

Hon. Lati: Thank you, hon. Temporary Deputy Speaker. Just when I was feeling that I have stayed for too long, you called me.

This is a very good Bill and I support it. There are so many good things in this Bill. Before I address them, let me start from an area that I find a little problematic. I am talking about Clause 111 which provides for the Water Sector Trust Fund. This is a good idea.

If you read this Bill further, you will find other things that are self-contradictory and I do not know what the drafters were thinking, particularly in Article 112. Hon. Temporary Deputy Speaker, if you look at the problems we have in our country, particularly pertaining the national Government and the county governments, there are provisions of the Constitution that are not explicit; that are not clear on who has a particular role; whether it is a county role or national Government role. Those areas have provided great fodder for conflict between the national Government and the county

governments. This Bill, instead of providing solutions to that, it goes further to add fuel to the fire. If you look at Article 112, the objective of this Fund, which is okay if it is there, is to provide conditional grants to counties in addition to the Equalisation Fund to assist in financing of management of water services. Where the Equalisation Fund---

The Temporary Deputy Speaker (Hon. Kajwang'): I think the microphone levels are down. Can they be brought up so that we can hear in the Chamber?

Hon. Lati: Hon. Temporary Deputy Speaker, what I am saying is that the problem we have in our country today as far as constitutional provisions are concerned are issues that are not explicit and clarity of roles between the counties and the national Government.

This Bill in clause 112 tends to further that because I do not know what the Equalisation Fund is doing here. If you are trying to establish a water sector trust fund, let it be a water sector trust fund. I do not know what role the Equalisation Fund is playing here. This even goes further to complicate the issue by not clearly stating whether an area is a county or an area could mean anything else in this world because I believe areas are not only counties. That to me sounds like one thing that does not help this Bill.

If we go further to clause 155, it further complicates the whole issue because at the beginning it is said very clearly that this Fund in addition to the Equalisation Fund--- Clause 15(b) goes on to say how you fund this trust fund. It says: "to provide funds from the Equalisation Fund." At the beginning you said "in addition to the Equalisation Fund". You cannot again say to get funds into this trust fund, the Equalisation Fund is the one that provides funds to it.

If this was in addition to the Equalisation Fund as it says very clearly in Article 112, then it cannot also be that it is the Equalisation Fund to provide funds to this trust fund. That provides a lot of problems. If you look at it in Article 151(a), it says that these funds are provided by Parliament. So you wonder within the Division of Revenue Bill, is this fund a national fund or a county fund because that has to be clear on who gets funds here.

The same thing happens when you get to Article 115(c), because it says "provide funds for county governments." So you wonder; is this a national Government function or it is a shared function? It is a mix up and in our Budget we have two very important Bills; the County Revenue Bill and the Division of Revenue Bill. If any fund was to be established, it must be clear where funds are coming from in order to fund this trust fund, particularly the issue of Equalisation Fund where it is completely self-contradictory. Other than that, I want to say that this Bill is timely because we truly need a Bill that does help to provide water for our country and to have such a Bill is very good.

Clause 9 establishes the Water Regulatory Authority and to me that is a good body because we then start managing and conserving water areas in our country. Clause 20 gives powers to that authority to conserve vulnerable water resources, particularly areas that are vulnerable or very fragile like the Mau Forest and many other forests around our country. There are many other small forests in other counties including my own county of Samburu. There are areas that need serious conservation of water towers to provide our people as far as water is concerned for many years to come.

Clause 21 also provides for the protection of ground water which is very necessary with the kind of pollution that we see in ground water. We need to conserve

ground water for public use and public water aquifers. The Bill declares ground water conservation areas, which means with good research and knowledge of where ground water is, we need to declare those ground water areas as conservation areas just as we do on areas above ground. Clause 22 provides for establishment of basin areas so that run-offs and areas that get a lot of rain and water that collects in big pools or lakes also gets to be conserved. More importantly is the committee that is established to run these areas. It is the local communities or local people in those areas, under this Bill, who will make sure that they manage, run and regulate water resources within those water basins that are very important for the daily lives of our people and our country at large.

Hon. Temporary Deputy Speaker, clause 61, basically says what has been said for so many years, the old adage that water is life. Water is life and every Kenyan has a right to clean and safe water. We need to actualize the provisions of Article 43 of our Constitution that every Kenyan gets clean water. If I was to tell you today how many Kenyans in rural parts of our country, particularly the pastoralist areas have access to clean water, you will be ashamed of being Kenyan.

We are way below any standard of development with the enormous resources that we have and I think we need to do things better in that area. I am particularly also impressed by clause 100 that provides for regulation; a regulatory regime for people who have licences to do water management. Their licences can be regulated and managed to make sure that they do not overstep some issues. That provides a stop-gap measure and protection for the people of Kenya to make sure that they are protected.

With those few remarks, I support this Bill but I will bring amendments to make sure that the Equalisation Fund does not come here because it is unnecessary.

Hon. Ogolla: Hon. Temporary Deputy Speaker, I rise to support the Bill. It is opportune both in terms of timing and what exactly the country is undergoing at the moment. It is important that a lot of legislations that were in existence before we adopted our new Constitution are brought here to be in line with the provisions of the Constitution.

For sure, the Bill has done quite a bit in terms of moving forward a lot of the Acts that were there, particularly by 2005. We have had a number of pieces of legislations and regulations that the Bill has attempted to bring together into one kind of a composite law. However, there are a number of things that the Bill has pushed forward and it has also inherited some of the challenges that were in existence. This time could have given us a good opportunity to reshape them.

There are many problems in terms of issues of enforcement. There are problems in terms of service providers and payments. There many problems in terms of relationships between what the Constitution now requires and exactly what the Bill has put forward. One thing that the Bill has brought forward that we needed to have looked at in a very different way is that most of the times, we have the board, the authority and the trust fund. A lot more times, there are service providers who are largely public utility companies and many more times we have water disconnections.

A lot more times when there are water disconnections, largely arising because payments were not done on time, you realise that the blame largely goes to the transfers in terms of how money is transferred or how payments are done by the boards. Like in my place, many more times when we have power disconnections it is because money has

not been paid. You realise that the water company that exists in the county pays its part which is largely 20 per cent and the 80 per cent that is supposed to be brought by the board takes too long to come. So, I think the Bill has not looked properly at some of these things.

In terms of the provisions of the new Constitution in Schedule Four, the issue of water services is really repositated at the county governments. The Bill has not done good work in terms of interfacing the water boards that are created with the county governments. In fact, the mention of county governments is so limited. It is only in terms of how the authorities are supposed to be constituted that we see that the Council of Governors is supposed to be nominating one or two people to be in the boards or in the Authority.

Hon. Temporary Deputy Speaker if you allow me, the Constitution in the Fourth Schedule lists these things properly. However, what it lists for purposes of the national Government is found under Item No.22, “water protection, securing sufficient residual water, hydraulic engineering and the safety of dams.” These are the main things that are listed for the purposes of a national Government.

However, if you go to the list of functions that are down there for purposes of the county government and look at where water is, you realise that it includes county public works and services, including storm water management systems in built-up areas and water sanitation services. So, water services are with the county governments but the Bill still places services elsewhere. I think this is something that we must look at the Bill again to see exactly that it adds up to the spirit of the Constitution, where issues of water services are repositated at the county governments and issues of regulation, standards and all that are repositated at the national Government. So, this is something that the Bill must be checked afresh.

The other thing that I had mentioned earlier is in terms of how water subsidies particularly from Treasury flow down to the county governments or to water service providers. That is not at all mentioned anywhere in the Bill, but that has been one of the major problems that we have had from time to time.

Hon. Temporary Deputy Speaker, the other problem that the Bill has not looked at is the whole issue of enforcement, particularly where the beneficiaries of certain water bodies are in the lower parts or sections of the rivers in relation to the highlands. Where you get the water flowing to the lake regions, it passes through tea and pyrethrum plantations. At the end of the day, there is a lot of effect on the water upstream. So, downstream users are constantly faced with a lot of problems, which include health complications. Again, that has not been mentioned very clearly.

The other thing that the Bill has not brought out very clearly is the interfacing between water and other land use arrangements. For sure, this House needs to come up with legislations in terms of land use. However, as it is now, the arrangements or the interface between water and land use is still not very clear in the Bill to the extent that we are budgeting in terms of a budget to replace quite a bit of money for purposes of irrigation and stuff like that. However, the entire Bill hardly mentions anything. It does not interface. It does not mention any relationship between water and the kind of land use system that we are supposed to have.

There is the other problem of the Trust Fund. The Trust Fund, in as much as it has been established before, has a very academic process in terms of how the funds are acquired. One has to go through all manner of proposals and things like that for purposes of getting money from the Water Fund.

In terms of implementation, sometimes, certain areas apply and get funding and yet, they have other service providers. So, you will get a number of pipes or service providers in one area and a lot more other areas are not covered by water services. So, what there is this: The Water Trust Fund, before the funds are given to any applicant, I think due diligence needs to be conducted so that we do not have services heaped in one place and yet, we have very many other places that do not have water.

Hon. Temporary Deputy Speaker, the other thing that the Bill really must look at is the whole issue of changes that we are constantly having in the water sector, but with little public knowledge or information in terms of how those services are supposed to be rendered. So, by the end of the day, users or water consumers do not know exactly where you place the blame when there are problems.

Like now, the Constitution makes it very clear, if you look at Article 43 1(d), every citizen has a right to clean safe water and in adequate quantities. That provision of the Constitution has not, in any manner, been looked at very properly by the Bill. The Bill is not clearly indicating to what extent we are able to meet or provide that right as is properly indicated in the Constitution. It is the right of every Kenyan or citizen to have clean and safe water. It is not just clean and safe water, but also in adequate quantities.

That now gets connected with the issue of payments. If water services are disconnected, at a period when the citizens have paid their bit and on the other hand, a water board for example has not, what happens? I think the Government and the Ministry concerned must be very serious in terms of looking at exactly what happens if the lower service providers have played their part very well and the upper echelons in terms of the national arrangements have not done their part.

The Bill further brings in the bureaucracies that initially were there, including those many other bodies that were created. In my view, the best thing is to have one regulatory body. That will be enough such that we do not have many other bodies. For example, if you look at how they are constituted and what exactly they are supposed to do, there is a lot of duplication. Those are some of the things that the Bill must address adequately.

Hon. Temporary Deputy Speaker, I want to support the Bill and I want to believe that the Bill will be much better when some---

The Temporary Deputy Speaker (Hon. Kajwang’): Member for Vihiga.

Hon. Chanzu: Thank you, hon. Temporary Deputy Speaker for giving me the opportunity to support the Water Bill. As much as we have got a large part of this country being arid and semi-arid, it is also endowed with a lot of water sources.

The Temporary Deputy Speaker (Hon. Kajwang’): I see there was confusion. Yes, it is correctly Member for Vihiga, but this is Vihiga County. That chance was for hon. Yusuf Chanzu, Member for Vihiga Constituency. Is that correct? The hon. Kedogo Dorcas is the Member for Vihiga County. I apologise but that will come. Member for Vihiga County, you will have your space, no problem.

Hon. Chanzu: Thank you, hon. Temporary Deputy Speaker. I was saying that we are lucky as a country because we are endowed with a lot of water sources and resources. The only problem that we have - and I am hoping that we can be able to address it now - is how to make use of that resource. That is because we lose a lot of water. All the time, there is lack of preparedness.

When rain comes, there is flooding and people die. When it is not there, people are dying because of lack of water and yet, we have got a lot of water. For some of us who come from places near Kisumu, I sometimes find it very strange that you go to a hotel in Kisumu and there is no water; yet, you are by the lake. The same thing happens when you go to places like Mombasa.

Hon. Temporary Deputy Speaker, I think reference to the Constitution is very important because the Constitution of Kenya 2010 felt that water should be a devolved function. When we looked at it, we realized that it was too premature for water to be devolved. The only way we can do it is by bringing up the kind of aspect that I see the Bill trying to bring up, that is strengthening those that were there. I really want to commend the Government that came into place in 2003; the NARC Government because it created quite a number of institutions which were able to shed some light on the fact that we can benefit from water.

Previously, there were empty promises. Successive governments, through their campaign manifestos, promised that by the year 2000, there would be piped water in every household. But in that year, there was nothing.

Hon. Temporary Deputy Speaker, right now is a time for reforms. It is important that the aspects that have been talked about here such as the National Water Storage Authority; be responsible for the national waterworks. We need to do a lot of harvesting of water, even in schools. Some of the schools which have already put some tanks do not have water problems. You do not have to get piped water because you can collect quite a lot of water from the roofs.

We need to strengthen the National Water Storage Authority. We have had the Water Sector Trust Fund, which should be more transparent because previously, it had been at the discretion of a few individuals such as the Minister and a few of his or her officers to decide where the funds should be utilized. It is high time that it is made open so that everybody knows what is happening. If there is allocation of money to every part of the country, it should be based on the needs, and everybody should be made aware.

The other most important thing is to co-ordinate all the activities in this sector because if you compare it with the energy sector, we are very responsive to the issue of electricity. If water was run in the same way we run the Constituencies Development Fund - We have made suggestions in this House that we run it in the same way we run the CDF or the Constituency Road Funds - it would be much closer to the people and then we would have teams to manage it. Therefore, we need to put in place institutions to co-ordinate the Boards that were established after 2003. They have done well. For example, the Lake Victoria North Water Board or the Lake Victoria South Water Board, have worked well. But there is a disconnect between what they are doing and the services that they are supposed to render to the people. Therefore, we need to strengthen committees that deal with those Boards to make them more responsive to the needs of the people. We need political goodwill for this to happen.

When it comes to the issue of the Constitution, Article 6, which talks about the two levels of Government being distinct but inter-dependent, the need for mutual consultation is very important when we deal with the sector. That is because, as a natural resource, the national Government must make sure that we harness all the waters that are within our borders. When it comes to utilization, we must make sure that we work very closely with the county governments so that every part of the country gets water.

With those few remarks, I beg to support this Bill.

Hon. (Ms.) Kedogo: Thank you, hon. Temporary Deputy Speaker. I want to support the Water Bill.

We know that water is a very essential commodity in life. The responsibility of fetching water has always been a burden to women and children. That is why the Kenya Counties Strategy on Integrated Water Resources Management Act, in Section 4, stresses that gender should be considered when forming the management; meaning that women should be incorporated and represented in the management. That is because, during policy-making, women are under-represented.

Therefore, we urge that in the Bill, women should also be represented so that when it comes to policy-making they can be there. That is because they are the people who do most of the fetching and even harvesting of rain water. Women in most parts of Kenya rely on rainfall to provide drinking water. Therefore, women are principally responsible for the household food production across the country. That is why they should be incorporated in the water resource management.

Climate change, which has brought changes in the water resource patterns, has forced women to adopt and mitigate food production losses associated with floods and droughts. Most rivers and water basins cross counties and even country borders. The Nile Basin and the Lake Victoria Basin crisscross and, therefore, such resources should be managed collectively. The county governments, the national Government and authorities in other countries should manage water resources collectively. If we want to increase food production through irrigation, we must use those scarce water resources well.

The conservation of our water towers is another crucial thing for water security. If we come up with water towers where we can conserve the water, our country will be rich in agriculture. When it comes to rainfall harvesting, techniques should be used in all homes and even office buildings so as to conserve ground water supplies.

In conclusion, the emphasis is on the need for equitable sharing of water resources, ensuring sustainability of the resources and the need to build trust and co-operation among riparian counties. There is need to protect our water resources. If we put effective management in place, this Bill will really help Kenyans.

With those remarks, I support the Bill.

Hon. (Ms.) T.G. Ali: Hon. Temporary Deputy Speaker, I stand to support the Water Bill, which is very important. Water is life and most of the time, issues of water are handled by women. If we have legislation in terms of how we are going to deal with the issue of water, it will be very important.

I come from an area where water is very scarce. Most of the time, when people sit and plan how they are going to get support, even from the national Government, communities are never consulted. People sit and send some people down to do whatever is required without consulting communities.

I know of a case where Isiolo Community is looking into a way of doing away with water pans and boreholes in some areas. In the last financial year, a lot of money was allocated but it went down the drain. Contracts were advertised and tenders were awarded, but the community refused to allow that particular water pan to be put in place. This was because it enhances conflict in some areas. So, there needs to be harmony and co-ordination in terms of how water points can be put up, for example by the national Government. If we do that, we will be able to sort out some of the very pressing needs of water in our respective counties.

We have scarce resources in this country, and so we should have projects in this country, which should give communities, who are the taxpayers, value for their money. If this Bill is passed, then communities will get value for the money that is spent by the Government. Most of the time, conflicts occur because of water, for example, in my county. If we strategise and ensure that communities are involved and water points are put up with the blessings of the communities, there will be a lot of goodwill from them.

I support the Bill.

The Temporary Deputy Speaker (Hon. Kajwang’): If ladies are going to take that short time, then we will have more ladies speaking.

Member for Kajiado East.

Hon. (Ms.) Tobiko: Thank you, hon. Temporary Deputy Speaker. I appreciate this time. I am glad that this Bill has found me in this House because just before joining politics, I had worked in the water sector with the Leader of Minority Party, hon. Nyenze. I appreciate the work that has gone into this Bill. We started it and know a lot of thought has gone into it. I believe it is going to make the water sector work better for Kenyans.

The object of the Bill is to provide for and regulate the management and conservation of water and the sewerage services. I realise that it seeks to improve the existing Water Act by establishing the Water Regulatory Authority and the National Water Harvesting and Storage Authority and their boards. .

Article 43 of the Constitution provides the right of every Kenyan to have clean and safe water. We still have a long way to go to provide clean water to Kenyans. In some areas in this country, we do not even talk of clean water. For those of us who come from arid areas, all that we want to see is just water. It does not even matter the quality of the water. A number of places in this country have faced neglect by subsequent Governments. So, it is our hope that when this Water Bill becomes operational, the Jubilee Government will use it to reach all Kenyans and provide clean water, because water is life.

When I was working in the water sector, I had a chance to work at the Water Services Trust Fund as a trustee. I also had a chance of being the Chairperson of one of the water boards, namely TANATHI Water Service Board. In Clause 63, I can see that former water boards have been renamed “Water Works Development Boards”. These boards are doing a lot, but as the speakers before me have said, we need equity. All the regions of this country should be reached. I have major concerns because since some of us left the water boards to join politics--- For example, the TANATHI Water Service Board, has almost stopped its operations in Kajiado County. It has now concentrated only on the eastern side of the country. This is because we do not have representation on that board any more.

I was the one representing the Kajiado area and I left it for politics. It is of concern that the boreholes that I initiated to be drilled in various parts of Kajiado County are still pending completion. They have not been equipped. So, the people of Kajiado have not been able to enjoy the services that they should enjoy. Honestly, it is too long a time for that water board not to have operationalised these boreholes.

I want to urge the national Government to think seriously of having major dams in all parts of the country. I have seen what hon. Ngilu, the Cabinet Secretary for Lands, has been able to do, particularly in the eastern region of the country; she has done mega dams. This has worked for the people of eastern Kenya, and even more than 100 years to come, people will still remember this good lady. I would wish to see similar dams done in arid counties like Kajiado and the northern part of this country. These are the places that are in dire need of water.

Hon. Temporary Deputy Speaker, we also need to harvest a lot of water that is wasted during flooding in the western and Nyanza parts of the country. You realise that studies have gone into the water regulation, and it is said that come 2022, major wars that will be fought in the world will be over scarcity of the water resource.

Since we want to avoid wars and conflicts, it is important that we start putting a lot of thinking, good policies and regulations in the management of water. I want to support this Bill and just tell the House that this is very important for the country.

Thank you, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Kajwang'): Thank you very much. The Member for Butula.

Hon. Onyura: Thank you very much, hon. Temporary Deputy Speaker, for giving me this opportunity to also contribute to this very important and timely Bill. I rise to strongly support this Bill. We all know the importance of life. We have all agreed that water is life.

The Temporary Deputy Speaker (Hon. Kajwang'): The Leader of Minority Party, you are seeking to be heard but I do not see your request.

(Hon. Nyenze spoke off record)

The Temporary Deputy Speaker (Hon. Kajwang'): Your system must, therefore, not be functioning because I do not see it here.

(An hon. Member spoke off record)

The Temporary Deputy Speaker (Hon. Kajwang'): Only for constitutional office holders. All right; proceed, Member for Butula.

Hon. Onyura: Hon. Temporary Deputy Speaker, I was just emphasising the importance of this Bill and the fact that---

(Loud consultations)

Hon. Onyura: What is going on?

The Temporary Deputy Speaker (Hon. Kajwang'): No, you will be heard.

Proceed, Member for Butula. Order, hon. Members! Well, Members, you are seeking to speak. All of us will speak. We still have time to speak. I have a list of requests here and I am trying my best to get everybody a chance to say something.

Proceed please.

Hon. Onyura: Thank you, hon. Temporary Deputy Speaker. I am hoping that the country will take advantage of this good Bill. It is very comprehensive and fairly extensive to ensure that we are able to provide water to everybody. It has already been commented that successive regimes have been promising water. We waited for it in the year 2000. That year came and passed. I think the then Government must have talked of 2010. I am hoping that the current regime will ensure that by 2030 the promise of clean water for everybody will be realised. They should put in every effort to, at least, disprove those who are now saying “*tangi ni cheque*,” then, that is not likely to happen until 3020.

I think we will have a good law. What is important is that we make use of this law to ensure that this very essential commodity is made available to everybody in the country. Indeed, the Constitution does emphasise that provision of water is part of human rights. The Government is, therefore, very much under an obligation to provide it.

The issue of conservation of water is very important and it needs to be addressed with the seriousness it deserves. We need to ensure that we use all the appropriate technology that is available, first of all, for harvesting water and for preserving it. We are fairly wasteful with water. God has endowed us with a lot of rain. You will find that no matter how much we suffer---

When it rains too much, we suffer floods, overflows and so on. When it is dry, again we suffer because we allow water that we should have harvested and preserved to drain away into the soil or into the rivers, lakes and oceans. This is an area that we need to address very seriously. We can learn good practices that take place in other parts of the world. Many leaders at various levels from different parts of the country go all over the world looking for benchmarking and best practices. However, when they come back you do not see that knowledge applied despite the fact that maybe quite a bit of money has been used to visit places that have mastered this art. This may be because either we do not learn very quickly, or we do not have the will to apply what we learn.

Hon. Temporary Deputy Speaker, this sector demands that we invest a lot of money in it, given its importance. One of the areas we really need to invest money in, in the water sector is the rehabilitation of the different water points and sources. If you go to various rural areas, you will find there are many rivers, wells and springs which our people have been using over time. However, they are getting degraded. We need to put in money, so that we can rehabilitate them and preserve them for use by our people.

I do not know what happens in terms of water supply. You find some fairly big budget projects starting in counties in different areas. However, a lot of money put into them goes to waste. Maybe the system works for a few months. If you are lucky, it might go for about a year and then it just collapses. There is a lot of inefficiency, negligence and lack of consistency. This needs to be looked into, so that where something has been done it can be maintained, and the investment put into such a project is made beneficial to the people. It is really sad to find that a lot of money is pumped into a water project. It starts but within a short time it has collapsed, and then there is no water for the population.

From what I see, this law should be able to allow for private-public partnerships, partnerships with Non-Governmental Organisations (NGOs) and partnerships with well wishers, so that we can fully exploit this resource that God has given us in plenty. You also find that at times you feel you have no explanation. For example, areas like western and Nyanza are endowed with a lot of water, leave alone the lake water. We have large rivers in western Kenya and Nyanza. However, you find that these are some of the places where access to clean water is very poor. I do not know why we do not make use of all the kinds of resources that we have. I do expect that with such a good law we should now be able to make use of it.

Another area that we need to invest in is education. We need education and awareness about the importance of the water resource, conservation and how to do it, so that when we talk about preservation of water towers everybody can appreciate why we must do this. This is one area we must really remove politics from, so that we rely on the technical and scientific knowledge of the importance of the water towers. I also do expect that before this important Bill is finally passed, there will be sufficient consultations with all the stakeholders.

Finally, hon. Temporary Deputy Speaker, I want to take this opportunity to thank Busia County leadership; among the priorities in their programmes is the provision of water. Last Monday, the Governor was in my constituency launching a very important and elaborate water programme. It is deep-drilled water that will be pumped using solar power.

The Temporary Deputy Speaker (Hon. Kajwang’): Yes, hon. Member for Migori.

Hon. (Ms.) Ghati: Thank you, Temporary Deputy Speaker for this opportunity to talk about this important commodity. From the outset, I do support this Water Bill. This is because it touches everybody in this country. There is no doubt that water is life. Human beings and even animals depend on water. This Bill has come at a very critical time; it seeks to streamline the water sector that has been marred with a lot of corruption and undue processes in terms of how people in this country access water.

When people talk about lack of water, they think that it is only the arid and semi-arid lands (ASALs) that lack water. I come from a region where it floods every other year. We have times of floods and times when the area is completely dry, and people cannot access water. I want to single out Nyatike Constituency in Migori County. There is an area there called “Kolanya” in north Kadem.

Here, you cannot get clean water for drinking. This is inhuman. It is not right that you find areas in this country, in this time and era, where one cannot get a cup of clean water to drink. We need to ensure that even as we talk about this Water Bill, people of this country must get water. We need to also ensure that we have equitable distribution of this vital commodity. This is so that every other county and constituency accesses this commodity.

We also need to ensure that we put in place mechanisms to harness and harvest water. We have a tendency of depending on natural rain. It should not be the case that when there is no rain our people become poor simply because they cannot harvest water and irrigate their farms. We seriously need to ensure that we have appropriate mechanisms in place to help our people harvest water.

I fully support this Bill because it is in line with the Constitution. Clean water for everybody is a constitutional right. For that reason, I feel very much obliged to support this Bill. There are so many institutions that have been established here. They are going to ensure that we have accountability and other mechanisms in place, so that the water resource in this country is not wasted.

With those few remarks, I beg to support.

The Temporary Deputy Speaker (Kajwang’): Hon. Member for Jomvu.

Hon. Bady: Asante sana Bw. Naibu Spika wa Muda kwa kunipatia fursa hii ili nichangie mjadala huu. Kwanza, ningependa kuunga mkono kwa kusema kuwa maji ni uhai. Sote tunatumia maji kwa haja nyingi za kimaisha, kukiwemo kilimo na kadhalika. Katika Kipengee cha 43 cha Katiba yetu ya Kenya, tunaona kuwa maji ni haki ya kila mwananchi.

Katika usimamizi wa sekta hii ya maji, ninaunga mkono kuwepo kwa bodi za usimamizi. Lakini, lazima zihuzishe washika ndau wote, hasa wananchi ambao hutumia bidhaa hii.

Ukiangalia katika Kaunti ya Taita Taveta, maji yanapitia kwangu ndio yaende katika Kisiwa cha Mombasa. Lakini cha kushangaza ni kuwa sehemu za Mikindani, Miritini, Jomvu, Mikanjuni, Kasarani, Kizurini, Mugusi na nyingine nyingi, ambako maji haya yanapitia, mpaka sasa watu wanaishi katika hali ambayo hawawezi kupata bidhaa hii adimu; maji. Kwa hivyo, kuundwa kwa bodi hizi kutaweza kuhusisha washika dau wote ili kuona kuwa sehemu zote, ambako wananchi wanatakikana kutumia maji haya, wanayatumia ili waweze kupata haki yao ya kikatiba.

Mswada huu ni lazima pia uzingatie zaidi mbinu za kuchimba mabwawa ya maji katika sehemu nyingi ambazo hazijapata njia za kupata maji. Hii itawezesha kuona kuwa wakati ambapo hakuna mvua, wale ambao wameweza kuvuna maji katika mabwawa wataweza kuyatumia kwa kilimo na vile vile matumizi mengine maishani. Ninaunga mkono Mswada huu.

Vile vile, nikiangalia kauti yangu ya Mombasa, ninampongeza gavana wangu; Ali Hassan Joho, kwa sababu maji ameyapa kipaumbele. Vile vile, ameona kuwa bali na kufanya juhudi katika kaunti, tunawavuta wafadhili kutoka nchi ya Ujerumani ili waweze pia kuwasaidia wananchi wetu wa Mombasa katika shida hii ya maji. Kwa hivyo, Mswada huu ukipitishwa, nina imani kuwa tutaweza kusaidia jamii katika sehemu zetu, hasa, katika sehemu yangu ya Jomvu, kwa jumla.

Shukrani sana, Mhe Naibu Spika wa Muda.

The Temporary Deputy Speaker (Hon. Kajwang’): Thank you. We are doing very well.

Yes, Member for Kilome.

Hon. (Ms.) Muia: Thank you, hon. Temporary Deputy Speaker. I stand to support the Water Bill. A person like me, who has come from a very dry area, will always stand with people who are supporting this Bill.

As we discuss this Bill, we want to make some recommendations to the national Government. During the rainy season, or during the floods, a lot of water goes to waste. They should come up with a strategy of collecting the rain water and conserving it. It can be used in the future in a place like Ukambani. When it rains in Ukambani, water spoils everything. Then after just three months, the place is so dry. We are left with nothing. So,

I propose that the Government should come up with rules and regulations on how to collect and conserve rain water.

The Government should also think of sinking dams and boreholes. That is the only way we can help the people. In Ukambani, there are no irrigation schemes. The only people who are doing irrigation are those who have private dams. They irrigate small pieces of land. There should be water to help people and their animals. We expect to receive rainfall from 15th November, or at the end of November. The national Government, or even the county governments, should come up with a decision to sink dams. They should also do gabions along rivers. This is the only way in which you can help people in our areas.

They say that the national Government is going to form management committees. I request that women be involved in these committees. Men know very little about water. During the dry season, women in Ukambani wake up at 4.00 a.m. to go and look for water. They walk very long distances.

Our women in Ukambani wake up at 4.00 am to go and look for water. They walk for very long distances. I am sure if women will be involved in these management committees, they will also come up with strategies of how to conserve and save water. These areas are always given relief food because there is no irrigation. It is like the Government has ignored them.

Therefore, as we discuss this Bill, I am proposing that we also come up with ways of collecting and conserving water so that human beings and animals can be saved during the dry season.

I support this Bill. Thank you.

The Temporary Deputy Speaker (Hon. Kajwang^o): Thank you. There is a member whom I am informed does not have a card. Can you proceed to the Dispatch Box and that will be the last time we are indulging you. You need to have your card always or if you do not, you approach the reception for a temporary card to use during the sitting.

Hon. Saney: Thank you, hon. Temporary Deputy Speaker for giving me this opportunity. I apologise for losing my card and I promise, I will not repeat it.

The Temporary Deputy Speaker (Hon. Kajwang^o): Pronounce yourself on the HANSARD; you are a member of which constituency?

Hon. Saney: I am hon. Ibrahim Abdi Saney, the member for Wajir North Constituency.

The Temporary Deputy Speaker (Hon. Kajwang^o): Thank you, you may proceed.

Hon. Saney: Hon. Temporary Deputy Speaker, water is basic to life and human development. It has immense ecological significance. Water has socio-economic value. The socio-economic development of this great State, to a larger extent, depends on water.

Water is a finite resource, and its supply is so much disproportionate to the demand. There are so many studies, both official and unofficial, which indicate that in a couple of years to come, the world will be under serious water shortage. Serious water shortage will come with so many deficiencies; food insecurity, prevalence of water-borne diseases especially in the tropical areas and disasters. Some studies go ahead to indicate that there will be a loss to the country's economy of, at least, 10 percent of the Gross Domestic Product (GDP).

Hon. Temporary Deputy Speaker, in view of this and with the reality that climate variability and climate change are with us, it is prudent that we come with good legislations to manage water in a holistic manner. In a manner that is encompassing and an integrated approach that brings together all the stakeholders in the sector.

Hon. Temporary Deputy Speaker, the Bill is well thought and it has some key developments, especially in the establishment of the Water Sector Trust Fund. The fact that there are prudent mechanisms for dispute resolution, a water tribunal is being proposed.

However, there are issues worth mentioning that need fine tuning. There are so many structures that are being espoused by the Bill and it is so confusing. There is the Water Services Regulatory Authority and the National Water Harvesting and Storage Authority. There is so much duplication, and I believe we need to have one stable independent institution that will oversee the management of the water sector in this country.

Hon. Temporary Deputy Speaker, this Bill gives the Cabinet Secretary for Environment, Water and Natural Resource immense power; the power to make regulations at will. We need to bring on board stakeholders before the Cabinet Secretary is given the leeway to make regulations.

It is good to know that laws are made for this country and it is only worthy if all stakeholders are being brought on board than giving the Cabinet Secretary, who is an individual; sweeping powers to make regulations.

Further, in the Bill there is so much confusion on the mandate of the National Water Harvesting and Storage Authority under Clause 28 and that of the Water Resources Regulatory Authority. It would be better to merge these institutions since having different institutions with similar mandates would burden the taxpayer, who is already bearing the burden of the bloated wage bill about which we cry every day.

Hon. Temporary Deputy Speaker, there is also much confusion in Clause 8 in terms of references being made to National Water Harvesting and Storage Authority, which is in other circumstances being referred to as Water Storage Authority. So, there is confusion. It sounds as if it is the same institution yet the readings indicate that these are two different institutions.

Under Clause 68, there is the Water Service Regulatory Authority which, again, duplicates the functions of the Water Resource Regulatory Authority, under Clause 9. This creates more confusion and, therefore, we need to come up with one strong institution that will oversee the management of water resources.

Hon. Temporary Deputy Speaker, one major mistake contained in this Bill is the proposal to use Equalisation Fund, which is a constitutional fund under the purview of the national Government. This Bill seeks to limit the use of the Equalisation Fund to only water. It proposes that the Fund be used to resource the Water Sector Trust Fund, which is unacceptable.

We, in the ASAL areas, who also benefit from the Equalisation Fund, have other uses beyond water in as much as water is a serious need. The proposal tends to limit the needs to which the Equalisation Fund is to be used. We have roads which are yet to be done more than 50 years since Independence. The education sector also needs attention. In any case, the Equalisation Fund is supposed to be used for trans-country projects.

Limiting the use of the Equalisation Fund, which is a constitutional fund, to only water would be negating the Constitution.

With those few remarks, I beg to support the Bill.

The Temporary Deputy Speaker (Hon. Kajwang⁷): Member for Kitui West, you are a former Minister in charge of water. I know that you will be speaking on the Motion for Adjournment. I thought you would allow your colleagues to be heard on this matter since we are going to hear you more during the debate on the Motion for adjournment. You would probably want to spare this time for the Members that you lead. If you are comfortable with that suggestion, I will allow you to speak but, please, limit your contribution to the normal 10 minutes that every Member is using.

Hon. Nyenze: I am much obliged, hon. Temporary Deputy Speaker.

Thank you for giving me the chance to contribute to this very important Bill. I support the Bill subject to some amendments. A good example is on page 219 of the Bill, where a non-existent Clause 67(e) is mentioned. I believe that the drafter was referring to Clause 66(e), and not Clause 67(e).

The Constitution of Kenya, 2010, in Article 43(1), guarantees every person the right to clean and safe water in adequate quantities. Article 56(c) states that the State shall put in place affirmative action programmes designed to ensure that minorities and marginalised people have reasonable access to water, health services and infrastructure. This Article compels any regime to put in place affirmative action. What is that affirmative action?

One is trying to put large and medium size dams in arid and semi arid areas, like where I come from in Ukambani, areas like Kajiado, the Maasailand and North Eastern. Those areas where there are big rivers and whenever it rains, water drains to the ocean and a few weeks later people have nothing to celebrate because water has gone and there is no rain for close to a year. In our budgets, both the county governments and the national Government, because water has been devolved, we have to put in a lot of money for building mega dams, not for generation of hydro- electric power but dams that will also provide water for irrigation.

The English say, “water is life”, they do not say “road is life”, “health is life” or “railway is life”. Water is very important. That is why every hon. Member either in the county governments or in the National Assembly have to put a lot of emphasis on the funds that are allocated to water. Where I come from there are big rivers such as River Kauwi, River Matinga, Mutonga River, Tiva River and Athi River. All those are big rivers that pass through my place. It would be very good for this Government to put up dams because we have big areas which are uninhabited which can be used for agriculture.

When we concentrate in doing agriculture in places which are highly populated like in Western Kenya or Kisii, you do not get a lot of land for farming but when you go to areas like Ukambani where I come from, there is so much land but there is no water. The soils are fertile but there is no water. We do not want any relief food. We want dams so that we can irrigate our farms and grow our foods. We want to be food secure.

We also have dams that are silted over many years. We have Masinga Dam which is a very big dam that was done during the colonial period. We have appealed to various governments to excavate that dam. That will give the people of Kitui water. If that dam can be done, we will sort food problems in that region.

I want to say that there is a lot of contradiction in this Bill and we need to bring amendments. I had an opportunity to serve in the Ministry of Water. I have been a chairman of the Water Resources Management Authority and as hon. (Ms.) Tobiko said, we work together.

The reforms that were done on the Water Act, 2004, were good in that they brought about various organs and organisations that managed the water sector. This was an improvement from the previous laws that used to govern the water sector.

As I speak, the Water Resources Management Authority has transformed water use. It has protected and promoted communities through the Water Users Associations. People in the rural areas own part of that water and they derive benefits from it. Water catchment areas have been saved through Water Resources Management Authority. If that Authority was not there, we could be talking about deserts in places which are flourishing today.

So, the Water Act, 2004, that has been operational over the period, and which was reformed over years, has served us very well. However, this Bill, that seeks to improve on that, because there is further improvement, is good because it brings on board other actors. They will be managed under fewer bodies, so that there will be accountability.

Clause 62(5) of this Bill, which deals with a national water sector investment and financing plan, does not provide the time, the intervals, creation of the plans and the publications of the plan. Under a human rights-based framework, this information must be put in the law to ensure that the creation of the plans is statutorily prescribed in time, content and interval to bind the Government.

Clause 64(1)(b) of the Bill gives the Cabinet Secretary a blank cheque to appoint any four persons to the Water Works Development Boards. There should be some guidelines on the institutions the Cabinet Secretary should nominate from, for instance, the Institute of Certified Public Accountants of Kenya (ICPAK) or universities.

Secondly, Clause 67 of the Water Bill, 2014, also entrenches an unworkable paradigm in asset management of water services where the assets, after being developed by the Water Works Development Boards, are handed over to the water service providers. This transfers the accountability and the risks of those assets not to the person who created them, but to the persons who are operating them, which I feel is wrong. There is no incentive for the asset developer to be efficient and to ensure value for money. I want to go back to the issue of scarcity of water in areas of Eastern Province.

The Temporary Deputy Speaker (Hon. Kajwang’): There will be a lot of things to say about water. Hon. Member for Nakuru Town East, will you please take five minutes, so that somebody from my left can also take five minutes. You know we are going into another Motion. I am using my discretion because as you know, we had resolved that we will have a Motion for Adjournment. However, the Speaker has the discretion to determine how long that Motion will be discussed. So, you are under my command now. Do not take ten minutes; take five minutes.

Hon. Gikaria: Thank you, hon. Temporary Deputy Speaker, for giving me this opportunity. I want to remember the former Minister for Water, hon. Martha Karua, in 2001/2002. She brought some water reforms which assisted in terms of water management and supply. If you look at what we have in this Bill, it is a very progressive

Bill. The mandate that the Cabinet Secretary has been given for compulsory acquisition of land is very important.

Hon. Temporary Deputy Speaker, there was a time when somebody wanted to poison the water towers in Nakuru and because of that people did not drink or use water for three days. It is important that we keep that area free of any other person who might want to poison the water. It is important for us to give the Cabinet Secretary that mandate so that he can compulsorily acquire some piece of land for purposes of water management.

As it has been mentioned earlier the Government is, through the Bill trying to fight the escalating wage bill and you can see, with so many other authorities, committees, boards and all these stuff coming in, how expensive it is. It is important to critically look at whether we require all these authorities and boards so that we can, first of all, manage and secondly to get the benefit of this Bill.

Hon. Temporary Deputy Speaker, in Nakuru, as we are talking now, we have a crisis where one of the directors went to court and he was awarded Kshs36 million in compensation, just for being removed from directorship for two months. These courts need to be a little bit careful in what they are doing. The money that is acquired from the water companies is supposed to assist the local *mwananchi* to get water. But you can see one director was only out of office for two months and he was awarded Kshs36 million. I think the court needs to be a little bit serious as regards issues do with water supply and management.

Hon. Temporary Deputy Speaker, if we look at Article 78, it talks about members of a board not holding a public office. This is something that we need to look at, to see whether we can amend it. If we deny public officers, like Members of County Assemblies (MCAs) or Members of Parliament a chance to hold office, it will be an exercise in futility. The directors who will be appointed may not have the interest of a county at heart. They might not have the interest of the Government at heart and they might misuse their powers. I urge that Article 78 be amended. That is something that we need to look at and see whether we can bring amendments before this Bill is fully approved.

Hon. Temporary Deputy Speaker, the accreditation of water service providers is a good idea. You find some of these service providers, like the ones who sell water in trucks----

The Temporary Deputy Speaker (Hon. Kajwang'): You have exceeded your five minutes. You even know it.

Hon. Members, as you know, this issue is evoking a lot of interest. I have a long list of requests; hon. Member for Igembe Central, hon. Member for Seme, hon. Member for Limuru, hon. Member for Mbita, hon. Member for Dadaab, hon. Member for South Mugirango, hon. Member for Wajiry, hon. Member from Baringo South; hon. Member for Shinyalu *et cetera*. All these hon. Members want to contribute to the Bill. Therefore, because water is very important for life, we have decided that we do not have to end this debate today. We do not need to do so. It will continue after recess. Therefore, those of you who have not contributed to this Bill, just keep your notes so that you can contribute to it after recess.

I now want to call upon the Leader of Majority Party to move the next Motion.

MOTION FOR ADJOURNMENTADJOURNMENT TO A DAY OTHER THAN
THE NEXT NORMAL SITTING DAY

Hon. A.B Duale: I beg to move the following Motion:-

THAT, pursuant to the provisions of Standing Order No.28, this House adjourns until Tuesday, 11th November, 2014, in accordance with the Calendar of the Assembly (Regular Sessions).

The House is expected to proceed on recess of 11 days beginning today and resumes on Tuesday, 11th November, 2014. This break will allow Departmental Committees time to focus fully on their work. They will concentrate on the several Bills that are before this House that we have raised today in the House Business Committee (HBC). The time will allow hon. Members to prepare their amendments.

Secondly, the Chair of the Constituency Development Fund Board is here and he can attest to the fact that Kshs8 billion has been sent to the board. I am sure he will make sure that within the next seven days---They have confirmed to me that they are doing the paper work. In the next 10 days, they will send money to our constituencies, at least 50 per cent, so that hon. Members can use the recess to start a number of projects.

After the recess, the HBC has given priority to the following constitutional Bills for Second Reading as soon as we come back: The Public Service (Values and Principles) Bill, 2014; The Persons Deprived of Liberty Bill, 2014 and The Environmental Management and Coordination (Amendment) Bill, 2014

Hon. Members, note that we ought to conclude all the stages of these Bills and forward those Bills that relate to county governments to the Senate in good time. I do hope that the Constitutional Implementation Oversight Committee of Hon. Baiya will take advantage of this recess to engage the Attorney-General's Office, the Office of the Commission for the Implementation of the Constitution (CIC), the Kenya Law Reform Commission (KLRC) and the relevant departments of Government that are dealing with those specific constitutional Bills.

Also given priority after we come back are the following Private Members' Bills, to be considered on Wednesday mornings for the Committee of the Whole House: The Alcoholic Drinks Control (Amendment) Bill, 2014; The Physiotherapists Bill, 2013; The Retirement Benefits (Deputy President and Designated State Officers) Bill, 2013; The Persons with Disabilities (Amendment) Bill, 2013; The National Drought Management Authority Bill, 2013; The Climate Change Bill, 2014; The Order of Precedence Bill, 2014; and The Children (Amendment) Bill, 2014

All these Bills are ready for the Third Reading of the Whole House so, we expect hon. Members to prepare amendments and all of them are Private Members' Bills. Finally, also scheduled for debate are a number of Committee reports including the 17th and 18th reports of the Public Investments Committee (PIC) on the accounts of State corporations and the Report of the Privileges Committee regarding absence and conduct of Members of the National Assembly.

I hope this break will give hon. Members time to meet their constituents and also ensure that they give out projects for the first quarter of 2014/2015 Financial Year, for those which have been approved by the board.

Finally, we are also waiting for the Public Accounts Committee (PAC) Reports. There was a lot in the media just before we resumed for these three weeks. Hon. Keynan, you do not need to look at me because I have already said all your reports are coming. So PAC Reports for 2009/2010, 2010/2011, 2011/2012 will be tabled once we come back.

With those many remarks, I will ask my very able colleague, the Leader of Minority Party to second.

The Temporary Deputy Speaker (Hon. Kajwang'): We want to hear from everyone so that we know what everyone has. Any Member from the House Business Committee can second this.

Hon. Midiwo: I thank you, hon. Temporary Deputy Speaker. I rise to second. As the Leader of Majority Party has echoed, we have a lot of work pending, especially the Private Members' Bills. In the House Business Committee, we said that we want to give them priority because the issue was even raised on the Floor of the House last week by Private Members. We need the recess to plan our work as it has been alluded to by Leader of Majority Party and I earlier on.

The House is not happy with the way the Treasury is disbursing money from the Constituencies Development Fund (CDF). It is already the end of October - I can see the Chairman is here. I thought we were magnanimous enough to let go the Finance Bill. Ever since CDF was occasioned, we have always got our CDF before we release the Finance Bill. However, we entrusted in your Committee--- I hope you do not betray that trust because, like I said earlier, CDF is the only working fund in this country. The rest are marred in controversies.

Hon. Temporary Deputy Speaker, as you can see, the people who are supposed to be monitoring how the county funds are used, that is, the Members of County Assemblies--- I am saddened because even the ones of Nairobi from your party were busy in the afternoon committing criminal acts, which I thoroughly condemn.

(Laughter)

The Temporary Deputy Speaker (Hon. Kajwang'): Hon. Member, are you associating the Speaker of the National Assembly with criminals?

Hon. Midiwo: No, I am not hon. Temporary Deputy Speaker and if I appeared to do so, I withdraw and apologise. I am only saying that they need to be in the Assembly to monitor how the governors are using the money as opposed to playing perpetual politics. Violence in our country is not politics and it cannot be part of our politics.

A crime is a crime and I personally want to condemn that crime on the Floor of this House. Let me, first of all, take the opportunity as a member of the Orange Democratic Movement (ODM) and Coalition for Reforms and Democracy (CORD) to apologize to hon. Magerer for unnecessary--- Such things can be avoided. I believe that 60 years after Independence, people need to resolve their issues by talking and not fighting. There is no end to violence when it starts. I think it is a bad example. I personally condemn it and I do not want to be associated with it.

(Applause)

It is even embarrassing that the goons in the name of Nairobi MCAs were doing it in front of our party leader. They were embarrassing the party leader and the Wiper leader. Some things are just very shameful.

So, I want to say that as we go on recess particularly our side of the House, we need to go and tell our people that things have changed; that we need to play our politics differently. I think that is what the Constitution was all about.

Hon. Temporary Deputy Speaker, I want to appeal to the police and the Inspector-General to arrest the known criminals and take them to court within very few hours. This is so that our children also see the police working and not the police harassing journalists in Kisumu and criminals are seen everywhere.

Hon. Temporary Deputy Speaker, that is not something we want to accept from the police. When you see a criminal, whether he is in Machakos he is still a criminal. There is nothing rosy about Gor Mahia fans going to Machakos and even burning a bus that took them there.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Eldama Ravine, are you sleeping on your job? That is the question.

Hon. Lessonet: Thank you, hon. Temporary Deputy Speaker for this opportunity. I want to start by concurring with my colleagues that truly we must really preach peace in this country. We must also insist on compliance with the law and, of course, we are all disappointed that our colleagues in leadership, whether Members of the County Assemblies or Members of Parliament did such a barbaric act today in the name of assaulting our friend, hon. Magerer.

Hon. Temporary Deputy Speaker, as I stand I also want to give assurance to Members on issues of the Constituencies Development Fund and confirm to them that we are doing a wonderful job.

(Laughter)

The Temporary Deputy Speaker (Hon. Kajwang’): Could you be doing a wonderful job of withholding the funds?

(Laughter)

Hon. Lessonet: Hon. Temporary Deputy Speaker, early this year on 3rd of July we set a precedent by tabling the allocations for each constituency three days into the financial year. It has never happened in the 11 years of CDF other than this year.

Hon. Temporary Deputy Speaker, the CDF Act requires the National Treasury in every quarter to disburse at least 25 per cent and I want to confirm that two weeks ago, we received the first tranche of Kshs2 billion. On Monday, we received a further additional Kshs6.3 billion to make a total of Kshs8.3 billion which we have received.

Hon. Temporary Deputy Speaker, the CDF Board has since disbursed Kshs2 billion to constituencies and I even have evidence of remittance advice from the Central

Bank of Kenya (CBK), of the Kshs6.3 billion which arrived on 24th. I have just come from the CDF Board. They have succeeded in preparing a disbursement schedule of the Kshs6.3 billion which will reach your constituencies by Monday next week.

Hon. Temporary Deputy Speaker, the problem always has been lack of funds. We did not have money, but now I am telling you we have money. The money is going to reach you by Monday next week. As I say that, of course I also want to really inform my colleagues, Members of Parliament that you are doing very well in lobbying for funds to CDF. You successfully lobbied this year to get an allocation of Kshs33 billion to CDF without taking even one signature. We did not go out there to collect signatures to increase CDF from Kshs22 billion to Kshs33 billion. It is these Members who did so and I really want to thank you for working very hard to increase the allocation of money from Kshs22 billion to Kshs33 billion.

Hon. Temporary Deputy Speaker, as I say that, I want to beseech my other colleagues that when they go on recess, they utilise their CDF monies. After leaving the CDF Board this afternoon, the total money held by constituencies which has not reached projects, schools and which has not been disbursed in terms of bursaries, meaning banks are earning interest on it, is Kshs1.5 billion.

I would like to request hon. Members to use their time during this recess and ensure that the money is used on the intended projects. Of course, hon. Members, it may not be in your best interest that I table the list, but we would like to request hon. Members to work very hard---

The Temporary Deputy Speaker (Hon. Kajwang’): That was music to my ears and I would have given you more time.

Member for Mbita, I can hear cries of gender!

Hon. (Ms.) Odhiambo-Mabona: Thank you, hon. Temporary Deputy Speaker for giving me this opportunity. I support the Motion because we need to go back to our constituencies and do work for which we were elected. I want to thank the Chairman of the CDF Committee for raising the issue. At first, we were able to increase the allocation percentage but, of course, we still must challenge him on the timeliness of the remittance of the money. On that account, I want to tell you, hon. Lessonet, you are failing us.

Hon. Temporary Deputy Speaker, the reason the Chairman, hon. Lessonet, is failing us is because priority in the Executive has always been given to governors and other sectors. We are in politics. I am encouraging the Leader of Majority Party now that he is in the House; please, use the tyranny of numbers wisely. Do not use the tyranny of numbers to remove yourself from your own seat. Increasingly, that is what you are doing. You are using the tyranny of numbers to set Members of Parliament up. When you come back, please, use that tyranny properly.

I acknowledge that the Chairman has indicated that there are constituencies that have not finished their allocations. I want to indicate that Mbita is one of them. The Chairman knows that it has to do with a problem in the Act, something I have told him. We have to amend the Act. When you are dealing with transition and, say, you have a poor manager who has been stealing money, when you want to change, the transition takes a while. I want to indicate that we must bring amendment. I know most Members, because of the political nature, do not want to put their hands in it. However, the control measures are completely weak, especially if you are a person who does not want to be

involved in taking bribes. This is frustrating some of us. We must provide mechanisms of making it impossible for people to steal money from CDF. That money is meant for members of the public.

Hon. Temporary Deputy Speaker, I want to join hands with hon. Midiwo and congratulate him for condemning the barbaric act that was visited upon our party Executive Director. I want to thank the Leader of Majority Party for---

The Temporary Deputy Speaker (Hon. Kajwang'): Hon. Member for Mbita, I hear you, but style it in such a way that it is related to the Motion. We had a resolution here in February that matters about a Motion on recess should be strictly related to adjournment.

(Hon. A.B. Duale talked off the microphone)

I am advised, but I have looked at the text of your resolution. There is the English you used, that is, "strictly".

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Speaker, I stand advised, but I will request that we go back to what is in practice, that during an Adjournment Motion one can speak to anything.

The Temporary Deputy Speaker (Hon. Kajwang'): Unfortunately, you had resolved and so I am working within that resolution.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Speaker, I am a very astute lawyer and I will follow your advice accordingly. While in recess, I will use that time to advise members of my party that if we want to effectively be watchdogs over Jubilee, we cannot do that by coming with dirty hands; we must come with clean hands. We must be better than Jubilee to deal with Jubilee. We cannot say that we want to tell President Kenyatta that his Government is bad by dealing badly with our own people. I want to congratulate hon. A.B. Duale for not speaking to this issue.

The reason I am saying this and I want you to listen to me carefully because I am not saying this for politics, when we came in, in 2007 this country was extremely divided, ethnically and politically. Over 1,000 people died yet by the time we were leaving this Parliament, that gap had been closed; ethnically and politically by pronouncement of leaderships.

Ordinarily, you say pronouncements that are extremely divisive in this country by the position you hold, where you sit. I can get away because I am not holding any big position. But the position you hold, please use it to unite this country, the same way if my own party does something bad, I tell them off. Please use it to unite this country.

I support.

The Temporary Deputy Speaker (Hon. Kajwang'): All right. We have three minutes. Let us see if hon. (Dr.) Nyikal will use the digital clock. Do not use the clock I am seeing up there. The digital clock says I only have three minutes.

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Speaker, I support this Motion. I appreciate that we are going to get the Constituencies Development Fund and we will use it. I also know that we are getting the Uwezo Fund. I would like to use the three minutes to point out that the structure of the Uwezo Fund is such that if we do not look at it, reorganize it, I do not think it will work. It has no secretariat and the act of training

committees, identification of groups, vetting of groups, disbursing and monitoring and getting them to pay back will need a proper secretariat.

Again, I have noted that the capacity building that the groups need to use this money resides in Nairobi and the service providers that come to the constituencies to train; I find them, at least, in my constituency, in many ways negligent and not working diligently. Unless we move the capacity building back to the constituencies and also set up secretariats, I do not think the Uwezo Fund will work. We have to do something towards that.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Members, time being 6.29 p.m. this House, therefore, adjourns until Tuesday, 11th November, 2014, at 2.30 p.m.

The House rose at 6.29 p.m.