

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 14th February, 2024

Morning Sitting

*The House met at the Senate Chamber,
Parliament Buildings, at 9.30 am.*

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

PRAYER

DETERMINATION OF QUORUM AT COMMENCEMENT OF SITTING

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

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

Serjeant-at-Arms, kindly ring the quorum bell for 10 minutes.

(The Quorum Bell was rung)

The Speaker (Hon. Kingi): Serjeant-at-Arms, I am informed we now have Quorum. You may stop the bell.

Clerk, proceed to call the first Order.

MESSAGES FROM THE NATIONAL ASSEMBLY

PASSAGE BY THE NATIONAL ASSEMBLY OF THE CONFLICT OF INTEREST BILL (NATIONAL ASSEMBLY BILLS NO.12 OF 2023)

The Speaker (Hon. Kingi): Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No.46(3) and (4), I received the following Message from the Speaker of the National Assembly regarding the passage by the National Assembly of the Conflict of Interest Bill (National Assembly Bill No.12 of 2023).

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The Message, which is dated 6th December, 2023 was received the same day in the Office of the Clerk of the Senate. Pursuant to the said Standing Order, I now report the Message -

“PURSUANT to the provisions of Standing Order No.41(1) and 142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly-

WHEREAS, the Conflict of Interest Bill (National Assembly Bill No.12 of 2023) was published vide Kenya Gazette Supplement No.41 of 3rd April, 2023 as a Bill seeking to provide for the management and regulation of conflict of interest in the discharge of official duties and subsequent repeal of the Public Officer Ethics Act, 2003;

AND WHEREAS on Wednesday, 29th November, 2023 and Thursday, 30th November 2023, the National Assembly considered the Conflict of Interest Bill (National Assembly Bill No.12 of 2023) and passed it with amendments and in the form attached herewith;

NOW THEREFORE, in accordance with the provisions of Article 110 of the Constitution and Standing Orders No.41(1) and 142 of the National Assembly Standing Orders, I hereby refer the Bill to the Senate for consideration”

Hon. Senators, pursuant to Standing Order No.163 which requires that a Bill which originates in the National Assembly be preceded with by the Senate in the same manner as a Bill introduced in the Senate by way of First Reading in accordance with Standing Order No.144; I will at the appropriate time, direct the Clerk to read a First Time the Conflict of Interest Bill (National Assembly Bill No.12 of 2023).

I thank you.

Hon. Senators, I have one more message to deliver.

PASSAGE BY THE NATIONAL ASSEMBLY OF THE GAMBLING
CONTROL BILL (NATIONAL ASSEMBLY BILLS NO.70 OF 2023)

Hon. Senators I wish to report to the Senate that Pursuant to Standing Order No.46(3) and (5), I received the following Message, while the Senate was on recess, from the Speaker of the National Assembly regarding the passage by the National Assembly of the Gambling Control Bill (National Assembly Bills No.7 of 2023).

The Message, which is dated Monday, 18th December, 2023 was received on Monday, 8th January, 2024, in the Office of the Clerk of the Senate, and was transmitted to all Senators on Tuesday, 9th January, 2024.

Pursuant to the said Standing Orders, I now report the Message-

“ PURSUANT to the provisions of Standing Order No.141(1) and 142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly-

WHEREAS the Gambling Control Bill (National Assembly Bills No.70 of 2023) was published vide Kenya Gazette Supplement No.212 of 31st October, 2023 as a Bill to repeal the Lotteries and the Gaming Act (Cap. 131), provide for a legal framework for the regulation of gambling in Kenya and to incorporate gambling principles in the gambling

sector by regulating betting, casinos and other forms of gambling, including authorization of prize competitions, public lotteries and media promotion;

AND WHEREAS, the Gambling Control Bill (National Assembly Bills No.7 of 2023) was passed by the National Assembly on Wednesday, 6th December, 2023 with amendments and in the form attached herewith;

NOW THEREFORE, in accordance with the provisions of Article 110 of the Constitution and Standing Orders No.41(1) and 142 of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly to the Senate.”

Hon. Senators, pursuant to Standing Order No.163 which requires that a Bill which originates in the National Assembly be proceeded with by the Senate in the same manner as a Bill introduced in the Senate by way of First Reading in accordance with Standing Order No.144, I will at the appropriate time, direct the Clerk to read the said Bill a First Time.

I thank you.

Clerk, next Order.

PAPERS LAID

The Speaker (Hon. Kingi): Senate Majority Leader, proceed.

REPORTS OF THE AUDITOR-GENERAL ON VARIOUS GOVERNMENT ENTITIES

Sen. (Dr.) Lelegwe Ltumbesi: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, Wednesday, 14th February, 2024-

Report of the Auditor-General on Level 4 and Level 5 hospitals in Kenya for Financial Year 2021/2022.

Summary Report of the Auditor-General on Level 4 and Level 5 hospitals in Kenya for Financial Year 2021/2022.

Report of the Auditor-General on financial statement of the Parliamentary Service Commission for the year ended 30th June, 2023.

REPORTS OF VARIOUS ENTITIES FOR F/Y 2022/2023 AND 2023/2024

The Annual Report of the Kenya Law Reform Commission for Financial Year 2022/2023.

The National Government Budget Implementation Review Report for Financial Year 2022/2023.

The National Government Budget Implementation Review Report for the First Three Months for the Financial Year 2023/2024.

The County Governments Budget Implementation Review Report for the First Quarter for Financial Year 2023/2024.

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The Eleventh Report on the Status of the Public Service Compliance with the Values and Principles in Articles 10 and 232 of the Constitution for Financial Year 2022/2023.

The 3rd Annual Report of the Office of the Data Protection Commissioner for Financial Year 2022/2023.

Report of the Auditor-General on the financial statement of Mandera Water and Sewerage Company Limited for the year ended 30th June, 2023.

Report of the Auditor-General on the financial statement of Northern Water Works Development Agency for the year ended 30th June, 2023.

Report of the Auditor-General on financial statement of Elwak Water and Sewerage Company Limited for the year ended 30th June, 2023

Report of the Auditor General on financial statement of Garissa Water and Sewerage Company Limited for the year ended 30th June, 2023.

(Sen. (Dr.) Lelegwe Ltumbesi laid the documents on the Table)

The Speaker (Hon. Kingi): The Chairperson of the Select Committee on County Public Investments and Special Funds proceed.

REPORT ON NON-REMITTANCE OF PENSION DEDUCTIONS
TO PENSION SCHEMES BY COUNTY GOVERNMENTS

Sen. Osotsi: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, Wednesday, 14th February, 2024-

Report of the Select Committee on County Public Investments and Special Funds on Non-remittance of Pension Deductions to the Pension Schemes by county government entities.

(Sen. Osotsi laid the document on the Table)

The Speaker (Hon. Kingi): Next Order. Yes, Sen. Omogeni, proceed to lay your Paper.

REPORT OF THE NATIONAL DIALOGUE COMMITTEE

Sen. Omogeni: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, Wednesday, 14th February, 2024-

Report of the National Dialogue Committee.

I thank you.

(Sen. Omogeni laid the document on the Table)

The Speaker (Hon. Kingi): Next Order.

NOTICES OF MOTION

The Speaker (Hon. Kingi): Chairperson of the Standing Committee on County Public Investments and Special Funds.

ADOPTION OF REPORT ON NON-REMITTANCE OF PENSION DEDUCTIONS
TO PENSION SCHEMES BY COUNTY GOVERNMENTS

Sen. Osotsi: Mr. Speaker, Sir, I beg to give the following notice of Motion-
THAT, the Senate adopts the Report of the Select Committee on County Public Investments and Special Funds on non-remittance of pension deductions to the pension schemes by county government entities laid on the Table of the Senate on Wednesday, 14th February, 2024.

The Speaker (Hon. Kingi): Sen. Omogeni, you need to give notice of the Report that you have just laid.

ADOPTION OF REPORT OF THE NATIONAL DIALOGUE COMMITTEE

Sen. Omogeni: Mr. Speaker, Sir, I beg to give notice of the following Motion-
THAT, the Senate adopts the Report of the National Dialogue Committee (NADCO) laid on the Table of the Senate today, Wednesday, 14th February, 2024.

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

Sen. Wambua: Mr. Speaker, Sir, I request that you direct that the Report on the NADCO be circulated to Members. They do not seem to have it.

The Speaker (Hon. Kingi): The Report is being circulated as the proceedings are ongoing. Each and every Senator should be able to get a copy in the shortest time possible, starting from now.

Clerk, next Order.

PROCEDURAL MOTIONS

LIMITATION OF DEBATE ON MOTIONS

The Speaker (Hon. Kingi): Senate Majority Leader, please, proceed.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I beg to move the following Motion-
THAT, pursuant to Standing Order No.111(1), the Senate resolves that debate on a Motion not sponsored by the Majority or Minority Party or a Committee shall be limited in the following manner-

A maximum of three hours with not more than 20 minutes for the Mover, 20 minutes for the majority party official responder, 20 minutes for the minority party official responder and 15 minutes for each other Senator speaking; and further that 15 minutes before the time expires, the Mover shall be called upon to reply.

This is now the Third Session and this is a Procedural Motion that is obvious to all Members in the House today. Therefore, I do not want to belabour in moving this Motion by way of trying to justify. I therefore appeal to colleagues to support this Motion.

I call upon Senator for Narok County to second

Sen. Olekina: Mr. Speaker, Sir, I rise to second the Motion on limitation of debate. It is imperative that we prioritize business, so that we make progress. We have a lot taking into consideration the meeting of all Chairpersons of the Liaison Committees in terms of business of this House. It will be imperative for us to put all those things together so that we make sure that we achieve a lot.

There is a lot that Kenyans expect from us particularly on the issue of accountability. When we limit debate on Motions or Bills that are not sponsored by the Government or the Majority or Minority sides, it allows us to make progress and also give all Senators an opportunity to deliver and do the work that they came to do here.

With those few remarks, I beg to second.

(Question proposed)

The Speaker (Hon. Kingi): You may now make your contributions or you may, through consensus, allow me to proceed to put the question.

Hon. Senators: Put the question.

The Speaker (Hon. Kingi): Having obtained your consensus, I will now proceed to put the question.

(Question put and agreed to)

The Speaker (Hon. Kingi): Next Order.

LIMITATION OF DEBATE ON ADJOURNMENT MOTIONS

The Speaker (Hon. Kingi): Senate Majority Leader, please proceed.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I beg to move the following Motion-

THAT, notwithstanding the provisions of Standing Order No.111(4), the debate on any Motion for adjournment of the Senate to a day other than the next normal sitting day in accordance with the calendar of the Senate shall be limited to a maximum of two hours, with not more than 15 minutes for each Senator speaking after which the Senate shall adjourn without question being put---

Mr. Speaker, Sir, again, this is a Procedural Motion which is clear to all the Senators. I therefore will not belabour it. I wish to move the Motion and request---

The Speaker (Hon. Kingi): Sen. (Dr.) Khalwale, you have not concluded moving the Motion.

Sen. (Dr.) Khalwale: Sorry.

Provided that when the period of recess proposed by any such Motion does not exceed nine calendar days, the debate shall be limited to a maximum of 30 minutes, and shall be confined to the question of adjournment.

Mr. Speaker, Sir, this is a Procedural Motion which is quite clear to the entire House. I do not want to belabour it. I therefore move the Motion and request Sen. Ogola to second.

Sen. Ogola: Mr. Speaker, Sir, I second.

(Laughter)

(Question proposed)

The Speaker (Hon. Kingi): Hon. Senators, with your consensus, I may allow you to contribute to this Motion. Sen. Wambua, you may have the Floor.

Sen. Wambua: Mr. Speaker, Sir, I do not want to belabour the point. The Motion has been moved and seconded. I am in support of this and the first Motion on limitation of debate.

Now that we have limited time to debate Motions, I request colleagues to sparingly use Standing Order No.111. The Senate Business Committee (SBC), in its wisdom, has allocated time that they think is fair for meaningful debate on any matter.

I thank you.

The Speaker (Hon. Kingi): Hon. Senators, I will proceed to put the question. Before I do so, it is my determination that this matter does not affect counties. Therefore, voting shall be by voice.

(Question put and agreed to)

Let us go to the next Order.

LIMITATION OF DEBATE ON MOTION ON
THE ADDRESS BY THE PRESIDENT

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I beg to move the following Procedural Motion-

THAT, pursuant to Standing Order No.27(6), the Senate resolves that the debate on the Motion on the President's Address to Parliament shall be limited to a maximum of three sitting days with not more than fifteen minutes for each Senator speaking, excluding the Mover in moving and replying who shall be limited to 30 minutes in either case and that the Senate Majority Leader and the Senate Minority Leader shall be limited to 30 minutes each.

As I move this Motion, may I remind the House that according to our Standing Orders, specifically Standing Order No.1, the business of Parliament is discharged in

accordance with the Standing Orders while keeping with the tradition and practice of this House.

Since we promulgated the Constitution in 2010, it has been a practice that the President addresses a joint sitting of the two Houses in February or March. There is wisdom to that because that is at the beginning of the Session. Therefore, the President sets his agenda in the Address, which may inform debate and prepare the Houses on how the President wants to guide the development agenda of the country.

Unfortunately, the last Address was done in November, which was towards the tail end of the Session. I hope that will not be repeated and that the President will make time to be here either this or next month to set his agenda.

As you know, the country is hurting because of the hard economic times that Kenyans are going through. Therefore, Kenyans will be eager to hear what the President will tell Parliament so that we help him to unlock the challenges facing our people.

Having said that, Kenyans should spend a bit of time listening to the majority both in and outside Parliament because we are the only ones attempting to tell them the truth. We told them that the price of petrol will start coming down. It is now happening. We told them that the prices of *unga* will start coming down. Now it is selling at Kshs140 and the price will continue to fall. We told them that the exchange rate of the Dollar will start coming down. The exchange rate has dropped from Kshs163 to Kshs158.

Kenyans should listen to us who tell them the truth and not my colleagues who are good at putting on metallic hats referred to as *sufurias*. It is a nice thing for drama. However, let us speak to Kenyans knowing that the pain they are feeling is also being felt by us.

(Sen. Onyonka spoke off record)

The Speaker (Hon. Kingi): Order, Sen. Onyonka. Sen. (Dr.) Khalwale, kindly confine yourself to moving the Motion.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, that is what I am doing.

The Speaker (Hon. Kingi): No, you are not.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I stand guided. I would like to take this opportunity to invite the distinguished Senator for Tana River to second the Motion.

Sen. Mungatana, MGH: Mr. Speaker, Sir, I thank the Majority Whip, Sen. (Dr.) Khalwale, a respected man in the Senate, for allowing me to second this Motion.

I would like to second the Motion having looked at what the South African Parliament did. I observed carefully what they refer to as the State of the Nation Address. That is an annual Address by His Excellency the President of the country to Parliament. They raise many issues and then the Opposition is allowed to respond. The debate continues for three days like we are proposing to do here.

I do not want to take long, but I found it extremely nice that President Cyril Ramaphosa was sitting in Parliament as Members of Parliament (MPs) contributed saying this and that. Some were in support of the Address while others were against it.

Our setup is different because our President is not an MP. However, the Standing Orders of both Houses allow the Speakers to plan for His Excellency the President to come as a visitor.

After the formal Address to the Joint Sitting of Parliament, we should consider be inviting the President who should find time to come and sit in the House to listen to what Members say about his Address. Within three days after his Address, he should also find time to sit in the National Assembly to listen to what Members there say.

Mr. Speaker, Sir, when I was watching President Cyril Ramaphosa taking the blows from this other side and the cheers from the other side, by the time he was coming out, he was straight. He had listened to both sides.

I think it would be a very good practice if this year the President can come one day, sit and listen to the Address on the other side and then go to the National Assembly to do the same, so that we can have a beginning of this nation for this year in a manner that says, we have issues and successes but we are one country and nation. Let us achieve the legislative agenda that I have set before the Senate and the National Assembly.

Mr. Speaker, Sir, I believe this would be a good thing. Otherwise, I rise to second and I thank you for giving me the opportunity.

The Speaker (Hon. Kingi): Now, Hon. Senators, I will proceed to propose the question.

(Question proposed)

Now, you may proceed to make your contribution. However, if I have your consensus, I may proceed to put the question, which way?

Proceed, Sen. Oketch Gicheru.

Sen. Oketch Gicheru: Mr. Speaker, Sir, thank you and actually I rise to support this. It is only that I hold a contrary opinion. I wish that you could limit this to two minutes of debates on one day because the sense of Article 132 has lost meaning in this country.

Mr. Speaker, Sir, you even saw when the Majority Whip was moving this Motion, you see the kind of sense of righteousness and thinking that the President's Address is actually final, that there is nothing to be debated about it and that is a correct position.

In fact, the intention of Article 132 was such that any time the President addresses the nation, it is a reporting mechanism to the nation and to us, as Parliament, such that we can be able to interrogate, scrutinise and input so that some adjustments can be made. However, if we have got a country whereby you feel like what you have said is final and the direction you have taken is the direction, then this is what classical politicians like Clinton used to call *a broken clock is right twice a day*. We should be bold enough. If you can amend that Motion to say that we limit that debate to literally the day of that Address or one day after that Address and let it be and let the President continue.

Furthermore, we have debated a number of times reports and address by the President, but no changes are made from that debate. So, what is the sense of that debate? Is it just a platform for lamentation or for battling each other?

I desire a Senate whereby we can be able to meet in terms of different opinions and share them in a way that builds a nation. However, if it becomes a theatre of opposition versus Government all the time, then there is nowhere the country is going.

Mr. Speaker, Sir, I wish the Majority Whip the courage, on behalf of the Senate Business Committee, to actually just be bold. If not scrap off the entire conversation, then just limit it to comments of two minutes. For instance, the Majority Leader can say I was there, I saw the President, it was very nice and I have missed the President. Let them give just simple comments on this matter and not make it a debate at all. Debates are things that are supposed to input and change some conversations.

Therefore, I support, but wish you the courage to change it, not to 15 minutes or three days. Those three days will be very important for this House to do a lot of work, in passing the amazing Bills that my sister, Sen. Tabitha Mutinda, has brought in this House on agriculture and the amazing Bills that my sister, Sen. Veronica Maina, is bringing to this House.

Additionally, Sen. Mungatana brings very wonderful Bills here to be passed. We will make a big impact by passing those Bills than discussing the President's address here that does not go anywhere or bring any input; a speech that makes you feel self-righteous and does not make any correlation to the President. It does not change his mind or the mind of the Cabinet. Let us not debate it.

Therefore, I will support with amendments, if possible, to limit it to two minutes and one day.

I thank you.

The Speaker (Hon. Kingi): Proceed, Sen. Wamatinga.

Sen. Wamatinga: Thank you very much, Mr. Speaker, Sir. I also rise to support. Indeed, when the President comes to the House and gives the roadmap that the Government wants to take, it is an important opportunity for us, as legislators, to look at the gaps, the framework that is supposed to be put in place and importantly, to explain to our constituents that we represent what the Government intends to do, how it intends to do it and maybe put the legislative framework that is needed.

Mr. Speaker, Sir, it is also a high time that we changed our mentality. Instead of looking at it as them versus us, we must look at it as a nation and as a people who are constructively engaging, so that we can improve their livelihoods and the economy. In addition, we need to improve and enrich the democratic space provided for in our Constitution. When the President comes to the House and gives a roadmap, it is something that gives us an opportunity to discuss, enrich it and even maybe criticise what we feel could be done differently.

Mr. Speaker, Sir, discussing what the President intends to do is indeed one of the ways that ensures that public participation and the Constitution of Kenya is safeguarded because we are given the opportunity to do that.

I therefore think that it is paramount that we, as legislators, come and put our heads together. Moving forward, maybe we should come up with suggestions because this country belongs to us all.

Thank you, Mr. Speaker, Sir, I support.

The Speaker (Hon. Kingi): Proceed, Sen. Wambua.

Sen. Wambua: Thank you, Mr. Speaker, Sir. From the onset, I am in support of the Motion but I just want to advance the argument put forward by Sen. Mungatana, my neighbour from Tana River.

Mr. Speaker, Sir, on the matter of this President's Address to Parliament, it is not a matter of just ticking boxes. I want to educate the Senator for Kakamega who is the Majority Whip, so that he may stop thinking about *sufuria's* and put his mind on more important things like the Address of the President.

The President's Address is a very important thing. Sen. (Dr.) Khalwale and the House, when you look at Article 132 that Sen. Oketch Gicheru is referring to on the functions of the President, you will realise that, in fact, the first function of the President is to address Parliament. It is a serious thing. It is not a small matter. I think that draws from Chapter One of the Constitution on Sovereignty of the People which says-

"The sovereign power under this Constitution is delegated to the following State organs which shall perform their functions in accordance with this Constitution" - The first State organ there is Parliament.

Mr. Speaker, Sir, the President's Address to Parliament is not a matter that we are just going to limit to 15 or 30 minutes, or three days. We need to take it a little bit more seriously.

How do we do this? Since the President will address Parliament in this Session, we must find a way of getting the President to sit in Parliament at the time of giving the speech and during the time of debate on his speech.

Since we are a bicameral Parliament, we do not want the President to be shuttling between the Senate and the National Assembly. Since the address itself is being done jointly, then I will propose and then the technical team should advise us.

Why can we not have a situation where, as the President addresses the joint sitting of Parliament, he sits in that joint sitting for the three consecutive days to follow debate by both houses of Parliament?

(Applause)

Mr. Speaker, Sir, we will then begin to add value to governance. The President will be getting information and advice from Members of the National Assembly and the Senate one on one, without having to follow through newspapers or media reports.

Let us take Article 132 of the Constitution a lot more seriously on the functions of the President. Let us take the sovereignty of the people of Kenya a lot more seriously because we are the leaders that the people of Kenya have delegated the power and their sovereignty to on matters legislation.

Mr. Speaker, Sir, I support.

The Speaker (Hon. Kingi): Sen. Wakili Sigei, proceed.

Sen. Wakili Sigei: I thank you, Mr. Speaker, Sir, for giving me the opportunity to support the Motion that has been laid down by the Majority Whip. From the very onset, what the hon. Senator for Kitui County has told this House with regards to the provision of Article One and 132 of the Constitution, is very important.

To the extent that this power is donated to the organ of the presidency, and that is the main reason why the address to Parliament by the President is important at the beginning of every elected Parliament, and once every year. That underscores the importance of that particular address. That address is so sacrosanct to this House and to the people of Kenya who donated the power to the Government of the day.

When my friend, Sen. Oketch Gicheru, talks about two minutes, he is trivialising that Address and the importance of that debate because it is not about those who will support or those who will oppose it. It is an opportunity that this House gets to debate that Address, because it talks about the promises made, what has been done, what has been achieved and what has not been achieved, including the plans which are ahead for purposes of delivering to the people of Kenya.

Therefore, when the House decides to debate, it is about supporting and criticizing the Address that the President, at any given time when he is supposed to address the House is made. Therefore, the duration which is given is also objective. It does not make sense, therefore, to say we just spare two minutes of that time.

In fact, once Sen. Oketch Gicheru is given an opportunity, the two minutes is not sufficient for him to do the preliminaries before he criticises, if at all, such a speech whenever the President addresses. Therefore, when we debate, let us debate so that we achieve the mandate of the House by criticising, where necessary, and enhancing very objective debate on the speech of the President at any given time that he addresses the House.

I equally support the proposition that, where possible, and if it means amending the relevant provisions of the law, it would be very key and important where the President sits through the sittings when that Address is being debated by the Houses of Parliament. It will not only give Parliament an opportunity to have a conversation, it will give us, as Members of this House, an opportunity to look to whatever debate that we are going to do.

I support.

Sen. Maanzo: Thank you, Mr. Speaker, Sir, for giving me an opportunity to support this Motion. Article 132(1)(c)(i) of the Constitution, which gives the President an opportunity to appear in the House and give a national address, goes on to say that-

“The President shall, once every year, report, in address in the nation, on all the measures taken and the progress achieved in realization of the national values referred to in Article 10.”

Therefore, Article 10 is key in this address. It gives direction on very many things on governance. It talks about part of the things such as public participation, whereby even the Government itself can do direct public participation to the people before it brings a legislative proposal here.

Again, when we make regulations as to how long each one of us will contribute, this Address is supposed to be so key and important as it also goes into the policy and what the country and the nation intends to do in the following one year.

This is such a serious matter that once the President addresses Parliament, I agree with the Hon. Mungatana, it is very prudent that the President also finds time to get direct

feedback from the legislators, because that sets the country in motion. Probably that is where we have been going wrong.

The President will get an opportunity to personally hear both the Majority and Minority sides, follow the proceedings, and not get briefed by others. The fact that he appears personally, it is important for him to also get a response personally.

That is a practice we need to adopt so that this Address and Motion becomes meaningful and sets the country into the right track at the right time.

There are many legislators in this House who are very specific to certain areas. There are engineers here who would help in roads, water reservation and things like that. There are financial experts here who will probably advise the country better and we would not have gone into very high cost of living that is making Kenyans feel very aggrieved.

If such had been shared, probably the President and the Government would be in the right mood and motion as it is required under Article 10. This is because the moment we address the President, we also are addressing his Cabinet Secretary for National Treasury and Economic Planning and others in the Government.

Finally, the national values are so important that we should all follow them especially on the fight against corruption. I am sure you get very good proposals, follow the budgeting process on what needs to be allocated where. Worst of it is that corruption is what completely messes up the economy of this country.

We budget for corruption. We budget and then a few people take that money into their pockets while the rest suffer. Worst of it, if you overtax the middle class, then you have killed the “hustlers”, because the middle class is the one which supports the them. The moment you mistreat the middle class, it is a sure way of exiting from Government.

I thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Sen. Tabitha Mutinda, proceed.

Sen. Tabitha Mutinda: Thank you, Mr. Speaker, Sir. I rise to support this Motion by the Majority Whip. Article 1(2) of the Constitution which talks about representation of the people by their elected leaders is very clear.

As leaders, the presidential address feedback gives us an opportunity to have the reality feel of the discussions in terms of what the President has been able to share and put across, according to the manifesto that was done during the election time.

Mr. Speaker, Sir, it is very important because it gives leaders in both Houses an opportunity to address facts in a more diplomatic style, unlike what we have seen happening previously. This is the best platform that Kenyans should know about that there is room for a national level executive discussion that comes from a presidential level to the elected Members. This is so that there is mutual understanding in getting to the bottom of the facts.

I heard my brother, Senator for Makueni County, Sen. Maanzo talk about budgets. What makes it funny is when he talks about budgeting for corruption. From the side that we come from, of course, the side representing the Government, I then wonder; does opposition think that we are working through budgeting for corruption? When an elected Senator talks about budgets for corruption, it leaves a lot to be desired because then you

wonder, from which perspective is he looking at things. He is entitled to his opinion, but as an elected leader, a lot is left questionable.

Mr. Speaker, Sir, we have had different executives representing the Government, especially from the ministries, appear in this Parliament. However, they also answer to the President. It is in that platform during these addresses that Members can also escalate issues further and have proper discussions.

In my opinion, the best formula would be; within those three days of the presidential discussion, a day should be set for the President to appear in the National Assembly with the Members of the National Assembly and another day, for the President to also appear in Senate with all the Senators. This is because all the 67 Senators represent the Republic of Kenya despite the political sides that we come from. The Constitution that we uphold is a Constitution for this country; it is not a Constitution for Dr. William Ruto. The best results that we can give to the generations to come are facts that can be addressed.

Most of the time when we have this input, you realize that yes, there is a bit of repetitive discussions. However, when the debate is narrowed down to fewer minutes, then it gives Members a platform to just tackle the issues that have not been tackled.

I agree with one of the good Senators in the House, Sen. Oketch Gicheru, that at times, the platform is used for lamentations. Kenyans did not give us this opportunity to lament. They gave us this opportunity because we are the change makers. We are the ones to shape the generations to be. In a nutshell, I support this Motion and look forward to us not using it to lament.

Mr. Speaker, Sir, on the timelines that Sen. (Dr.) Khalwale talked about that the President should appear within the timeline that is within the month the of April, then that should be so that we pride in upholding our Constitution as leaders.

Thank you, Mr. Speaker. Sir.

The Speaker (Hon. Kingi): Sen. Onyonka, you may have the Floor.

Sen. Onyonka: Thank you, Mr. Speaker, Sir. It is a great pleasure to have an opportunity to contribute to such an insightful and, indeed, good Motion.

One of the things I recommend and request my colleagues in this House is that any time we have something good, whether it is brought by Government or our side, please, let us listen to each other and try and look for a middle ground. In the west, they call it the bi-partisanship. It is the ability for us to look at what is good between us and as leaders, agree on the things that would benefit Kenyans most. If we find that there are things that we disagree on, they can then be put to the side and we kind of move along. This is because, sometimes, democracy is back and forth.

The other issue is that I encourage my colleagues that, this thing we call democracy is not that the winner must take it all. Sometimes, it is a give and take. For an idea like this, it is necessary for us to initially start listening to the President when he makes his annual address to the Nation even if it means we listen to him for two days. I do not think there is a problem with that and neither would it worry many of us if we did it for two days.

The other issue that I am looking forward to as a Senator in this House and a leader is that, for us, Members of the opposition, be given an opportunity to reconstitute

shadow cabinetry. In other words, you find that, the way the current Government and system is set up, we need our side to also have people who can take many of the Government Cabinet Secretaries to task on issues. Even when they come to this House to answer questions, it is important that we have a shadow cabinet. You will find that many of our Members have the capacity to challenge or even raise critical questions about our country and the issues coming out.

Mr. Speaker, Sir, finally, the point that I feel I need to emphasize is that; I have seen the comments and the contributions that my colleagues have made. There is a likelihood that those in Government are going to feel that, such an opportunity will make us, in the opposition, come here to rant and ridicule the President in bad light. I do think that is really the purpose of this exercise.

Kenya as a country is highly respected regionally for one simple reason. People know that I will take an opportunity, criticise the Government and the President and basically, they will understand. So long as it is not personal. However, in other countries, that never happens.

Therefore, the opportunity of us to sit in the House, with the President sitting somewhere listening to the contributions of the issues affecting our country, makes Kenya a better place to live and work. For us leaders, it gives us an opportunity to make Kenyans feel that we are actually a united front in trying to solve the problems.

Mr. Speaker, Sir, we should try our level best and make sure that we do not permanently sub divide our country on the basis of those who are for and those against it. Sometimes, it is in between. Sometimes, we carry each other and encourage each other and sometimes, we go our separate ways. However, we are better off when we are Kenyans. Look at this country that we love dearly and want it to succeed so that, we leave it for our children's posterity.

I support this Motion passionately. Thank you.

The Speaker (Hon. Kingi): Sen. Wafula, you may have the Floor.

Sen. Wafula: Asante Bw. Spika kwa nafasi hii. Vile vile, ningependa kuongenza sauti na mchango wangu kwa mchakato wa muda utakao chukua Rais kuhutubia jamii ya Kenya na vile vile sisi kama viongozi wajumbe katika Seneti, kutoa michango yetu.

Isiwe ni kwamba, Rais anapohutubia nchi katika jumba la Kitaifa, kuwe na sherehe za kitaifa, pale ambapo anazungumza, tunapiga makofi, watu wanakunya na kula na kuhesabu siku baada ya siku. Tunataraji kwamba, yale ambayo viongozi katika jumba hili watatamka, mikakati ama vile mdahalo utakvyo kuwa unachukuwa mikondo tofauti, lazima mawaziri ambao watakuwa wameambatana na Rais wahakikishe kwamba mabadiliko haya yanashuhudiwa katika wakati unaostahili.

Bw. Spika, sisi ambao tuko katika Serikali, tunajukumu kubwa kwamba, ijapokuwa tunawapa watu matumaini lazima washuhudie na wajihusishe katika kutekeleza yale tunazungumza. Najiunga na wale katika mrengo wa upinzani kwamba, isiwe Rais akizungumza, ni kana kwamba ametamatisha yale yote atakayo sema ama atakayo fanya, lakini ni kuhakikisha ya kwamba, anapozungumza, atende. Kutenda kwake ni sisi katika Serikali kuhakikisha kwamba tunasukuma mawaziri kutekeleza yale ambayo tunataka.

Bw. Spika, mwaka wa 2027, tutakuwa katika mchakato wa kura na wapiga kura watatuuliza mlizungumza, mkatupa matumaini lakini hamkutenda chochote. Mimi kama mkereketo wa Serikali ningetaka Rais aje na ikiwezekana, aje katika Jumba la Seneti, sababu Seneti huzungumza mambo ya kaunti.

Kuna pesa ambazo wanabiashara hawajalipwa na kuna mikakati au ajenda za kaunti ambazo sisi hujadili. Ni lazima Rais ajue kwamba yale tunayotarajiwa kufanya kama Seneti ni tofauti sana na yale ambayo wale walio katika Jumba la Kitaifa hufanya. Anapopeana mwelekeo kuhusiana ugatuzi, ni lazima Wakenya wajue Jumba la Seneti ndilo ulinzi, matumaini au ngao ya ugatuzi katika nchi ya Kenya.

Bw. Spika, mimi naunga mkono tupewe nafasi mwafaka tujieleze na Rais pia atusikize ndio baadae yeye au Mawaziri wake watekeleze yale ambayo tunazungumza hapa.

Siamini kwamba Seneta yeyote katika nchi ya Kenya anaweza amka hapa akapeana mwelekeo hafifu ama akapotosha Rais kuhusiana na utekelezaji wa miradi ya maendeleo na falsafa ya nchi. Ni lazima atusikize sisi wote na atende kwa mujibu wa Katiba.

Asante sana.

The Speaker (Hon. Kingi): Sen. Ogola.

Sen. Ogola: Thank you, Mr. Speaker, Sir. I rise to support the Motion that was brought by the Senate Majority Whip, Sen. (Dr.) Khalwale.

I support that is what should happen in the President's address to Parliament. It should not only be a formality that the President comes to Parliament and addresses parliamentarians on a number of issues whilst there are many concerns for Kenyans that remain unresolved. I look forward to the coming Presidential address to Parliament addressing a number of issues that are of concern to Kenyans.

The issue of the Junior Secondary Schools (JSS) remains unresolved. It is not a secret that a number of our students and schools in major regions were not taught. The nature of secondary schools is that teachers are trained to teach two subjects. However, when you look at many of those schools, only two teachers are posted there to teach. That shows that in most of the schools, a number of subjects were not taught the whole year. This should not be taken for granted because it means that most of the subjects were not taught and so that generation will have an education system that is wanting.

Mr. Speaker, Sir, if that is repeated this year, and the years to come, it will mean that our products will not compete with the products from other regions. As the President comes, I look forward to that being addressed amongst other challenges that our people have, including the issue of the housing levy that concerns this country.

Mr. Speaker, Sir, we also look forward to a very robust debate in Parliament after his address. I pray that our debates and sentiments will be taken care of.

The Speaker (Hon. Kingi): Sen. Okenyuri.

Sen. Okenyuri: Thank you, Mr. Speaker, Sir. I support this Motion. The President is a representative of the people and is also an integral symbol for Parliament.

In as much as this is a platform for the President to articulate his agenda and communicate what his intentions to the country are, it should not be more about the debating. I want to slightly deviate from that.

In as much as we debate well on some of these issues, if action is not taken thereafter, then it becomes more of a praise and worship agenda which will not steer this country forward.

This is an opportunity for the Government to articulate what their agenda is. That is why I do not understand why some of our Cabinet Secretaries have been shying off from coming here and articulating their agenda or how they are sorting some of the issues we talk about.

Mr. Speaker, Sir, just like Sen. Ogola has mentioned, there is the issue of JSS teachers. The other time before we went for recess, I raised a Statement enquiring from the Teachers Service Commission (TSC) on the career progression of those teachers. The response given back to me focused on retired teachers. I saw this as an attempt to dodge the question I raised. Thousands of young people watching this engagement this morning are looking forward to this House to address some of those issues facing them.

The President will come and guide us here very well. We are ambassadors of what our administration is doing but we have a burden of responsibility to also ensure we actualize the promises we gave to our people.

I weep for our young people because if education is the key, then why do we make it difficult for people who have gone to school?

The other time I saw a report by the Ethics and Anti-Corruption Commission (EACC) mentioning people that have forged their academic papers. We have many young people out there with very good qualifications and some of them are going to their graves with unfulfilled dreams.

Mr. Speaker, Sir, we are going to support the President in articulating his agenda here. Our President, Dr. William Ruto has been on at the forefront defending his agenda. I take note that we have our own share of challenges but for us legislators, it should not be a platform for competing to see who is doing what best. It should be an opportunity for us to bring our brains together regardless of the political side we are in so that we tackle the challenges facing this country jointly.

With those few remarks, I support the Motion.

I thank you.

The Speaker (Hon. Kingi): Sen. Crystal Asige.

Sen. Crystal Asige: Thank you, Mr. Speaker, Sir. I take this opportunity to wish you and our hon. Members a very Happy New Year.

I rise to make one point on this topic. The President has made his address to parliamentarians twice so far. Parliament grounds are always alight with activities, buzzing with preparations to receive the President and his delegations. Parliamentarians are always keen to hear the agenda he will set forth.

Unfortunately, so far, there has been no agenda that I have heard of addressing the constituents that I stand here to represent every single day. Twice, we have heard the voice of the President and twice we have not heard the voice of the President speaking on matters of disability, inclusion of equity and of diversity in this country.

In the campaign trail, Dr. William Sammy Ruto walked---

An hon. Senator: Samoei!

Sen. Crystal Asige: Mr. Speaker, Sir, that is what I said. Maybe, my accent is passing the heads of others.

When President Ruto was in his campaign trail in 2022, he called many of us with disabilities. He sat with us in many forums and picked our brains in terms of what we wish to see in this country when it comes to inclusion, and we gave him ideas.

We had conversations across the country hoping that this agenda will one day come to fruition. Unfortunately, during the opening of Parliament in 2022 and in his State of the Nation Address last year, we did not hear our voices or ideas articulated. Still, we do not hear of the same. We are wondering if it is just lip service.

In my view as a person representing PWDs, the president's address is somewhat an open feedback loop where he comes to address parliamentarians and give his ideas and direction and we in turn respond with our reactions and contributions on how to make those ideas better. Unfortunately, so far it feels to our community of PWDs that he addresses us but does not listen when we try to address our issues to him.

If ever the President hears my voice, which I hope he will today, the representatives of PWDs in this Senate request him to kindly puts forth our agenda; to prioritize the largest minority in this country with almost 6 million voters. The PWDs is a group that should no longer be ignored because we have votes and money to spend in this economy. We can also make a big change and move the needle in all plans regarding Kenya.

Mr. Speaker, Sir, I hope that in future, the President's addresses will also address us because we are waiting to be publicly seen and heard by the Executive.

I thank you.

Sen. Veronica Maina: Thank you, Mr. Speaker, Sir, for the opportunity to address this House on the Motion that has been moved by the Majority Whip. As you will notice, it is referred to as a Procedural Motion and that is what it is. It is a tool designed by the Constitution to give the President an opportunity to come back and account to this House on the mandate that has been placed on him by the Constitution and ultimately by the people of Kenya.

When the President comes to address the House, the symbolic address is not just the House, but an address to the representatives of the people elected by Kenyans to represent them in the House. If you will notice, that comes as a top function of the President. That shows how important that tool is, not just to the House, but also to the Constitution and the people of Kenya.

Having noted that, it shows how important this Procedural Motion is and why it cannot be trivialized by politics. It is because when the President comes to the House, he comes to address Kenyans through the Legislative Arm. He comes to give an account of what he has done with the mandate and the implementation of the promise given to Kenyans especially during the election period.

It is an address that deals with day-to-day issues that Kenyans go through: Health, education, security, food security, issues that deal with the general security or insecurity of the nation, and budgetary constraints or the budget and so on and so forth.

It deals with the whole mandate that the Executive is working on. As such, it becomes an important tool through which this House can also use to address the constituents because these leaders are also called to account by the people.

It is easy for MPs to put a lot of focus on the President and their address without remembering that as you cascade downwards, Members of Senate and the National Assembly are required by Kenyans to equally give an account of what they have done based on their mandate.

When I listened to one of our colleagues saying that Members should address these issues in two minutes, I knew we are misunderstanding the Procedural Motion that is before this House. One of the things we should not use is to politicize the presidential address.

I am in total agreement with the proposal that the President should sit in and listen to Members giving feedback because that feedback is performance appraisal. It should be objective because if the presidency succeeds, the nation succeeds and if the presidency fails, the nation fails.

The minute we recognize that, we will be keener to come and give objective criticism when the debate is being done. We should give commendation where it is due and objective criticism where it is needed in order to improve the process along the way. The minute we understand how such a tool is supposed to help governance issues, it will come to yield for Kenyans.

Mr. Speaker, Sir, as I support this Motion, I would like to say that it should not be trivialized. The tool should be dealt with as an important tool and given sufficient time.

One other thing I wish to note *ni kwamba Seneta mmoja kati yetu, Sen. Wafula---*

The Speaker (Hon. Kingi): Sen. Veronica Maina, you are totally out of order. You need to stick to the language that you first chose.

Sen. Veronica Maina: Mr. Speaker, Sir, I stand advised. The reason I switched to that language was to commend Sen. Wafula for being good in Kiswahili. I wanted to state it in Kiswahili that when he takes tea with other Senators, he should take a minute to instruct them on how to address the nation sometimes using Kiswahili to promote the language in Kenya.

The Speaker (Hon. Kingi): Proceed, Sen. Kavindu Muthama.

Sen. Kavindu Muthama: Thank you, Mr. Speaker, Sir, for giving me this opportunity to support this Procedural Motion that has been moved by the Majority Whip. It is important for the President to address both Houses. That way, we get to know his manifesto and what he plans for the country.

I also support that after the address, he should sit in the Houses and listen to the debates on his address. That will make him know about what he has done and what he has not. It is because many a time, leaders are surrounded by people who only tell them what they want to hear and praise them even when they have not done some things because they do not have the courage to tell them the truth. Doing that will enable him know the truth. It will not be bad for him or the country. It will help him fulfil all he promised the citizens.

All of us, whether in the opposition or the ruling party, are here to build Kenya. We should come together and make sure that our people get what they need at the right time.

The economy right now is down. I do not know if other MPs are getting calls like the ones I get every day from people asking for school fees, food, medication and so on and so forth. So, we need to come together and have a way forward for our country.

I support.

The Speaker (Hon. Kingi): Proceed, Sen. Munyi Mundigi.

Sen. Munyi Mundigi: Bw. Spika naunga mkono yale mambo tunayo yazungumzia hapa. Tumekubaliana muda upunguzwe ili kila Seneta kati yetu sote 67 apate nafasi ya kuchangia. Tunatoka mashinani na tunajua vile kulivyo. Naunga mkono kwa sababu nakumbuka mwaka jana Rais alipolihutubia Bunge, alizungumza mambo mengi kuhusu uchumi, afya mashinani na hilo tumeona ametimiza. Vile vile, aliongea kuhusu kilimo na tunaona vile mambo yanaendelea.

Tulichangia na kumuunga mkono kwamba tutakuwa tunachangia tuone kama kuna mambo yanaweza kubadilika. Wakati huo, *macadamia* yalikuwa yanauzwa kwa shilingi 30 na kwa sasa ni shilingi zaidi ya 100. Kwa hivyo, kuchangia hotuba ya Rais ni jambo muhimu sana.

Rais pia alizungumzia swala la kilimo na mbolea - ikashuka kutoka shilingi 5,500 hadi shilingi 2,500. Hivyo basi tumeona vile kilimo kinaendelea na mambo mengine mengi. Hivyo basi, ni vyema muda upunguzwe ili tuwe tunachangia mambo mengi.

Ningependekeza pia tuwe tunachangia vile tutatilia maanani mambo ya kilimo ili kila kaunti iwe inapata maji ya kulima na vinginevyo ndio tuimarisha mazao mazuri. Tukichangia haya yote, mambo ya pesa mkononi itarudi. Vilevile Rais aliangazia hali ya uchumi. Ni kweli tumeona kumekuwa na shida. Alieleza vile madeni yamekuwa mengi na vile amekuwa akiyalipa na kusaidia kaunti. Hivyo basi, tumeona kaunti nyingi zikipokea pesa kila mwezi kuanzia mwezi wa saba mwaka uliopita kinyume na miaka ya hapo awali.

Tungetaka pia kuchangia kuhusu vijana wetu ambao wametelekezwa. Hivyo basi, kwa sababu ya uraibu wa pombe na madawa ya kulevya, itafika wakati ambapo Kenya itakuwa haina vijana na familia. Kuna haja basi tuone kama kila kaunti inaweza kupewa pesa ili ipeleke kwa hawa vijana kwa mafunzo. Hii itawaepusha na vileo na wataweza kukaa vizuri na familia zao.

Asante Bw. Spika, na naunga mkono.

The Speaker (Hon. Kingi): Sen. Miraj?

Sen. Miraj: Asante Bw. Spika kwa kunipa fursa hii adhimu ili niunge mkono mswada uliopendekezwa na Kiranja wa Walio Wengi hapa Bungeni, Sen. (Dr) Khalwale. Nakubaliana na pendekezo la kupunguzwe muda ili kila Mjumbe aweze kuchangia katika hotuba ya Rais anapozungumza na sisi Wabunge wa Taifa hili.

Nimesikia wenzangu wakichangia na nimenukuu mengi nikiwa pale sebuleni na nikasema na mimi nije nipeane mchango wangu. Nataka kuwakumbusha Wajumbe wenzangu ya kwamba tuko hapa kama mhimili mmoja miongoni mwa mihimili mitatu ya Serikali yetu ya Kenya. Hatuko hapa kuwa wapinzani na wenye Serikali. Tuko hapa na

majukumu matatu ya kuwawakilisha wananchi wa Kenya, kusimamia rasilimali zao na pia kuwatungia sheria za kulinda na kusongesha taifa letu mbele.

Sisi kama Wajumbe wa Seneti, tuko na jukumu moja kubwa la kusimamia gatu zetu 47 katika taifa la Kenya. Lakini ni jambo la kusikitisha sana kuona kwamba Rais anapokuja kutuzungumzia yale aliyoyafanya kama mhimili mmoja wa Serikali the *Executive*, sisi tunaanza kukejeli yale aliyokuja kutueleza.

Yangu ni kuwapa ushauri nasaha ndugu zangu sote tulioko hapa; tuko na jukumu katika taifa hili kama viongozi kuweza kupeana mwelekeo na kutoa suluhu ya matatizo yanayotukabili sisi kama taifa. Ni vizuri sana Wakenya wanapo tuangalia kule nje katika mirengo tofauti, tujue lile jukumu kubwa lililotuleta katika Bunge hili. Jukumu letu ni kuwezesha kuwa wasimamizi wa rasilimali za Wakenya na kuwa viongozi wanaona tatizo liko wapi.

Yupo kiongozi mmoja hapa aliye zungumzia maswala ya *Competency Based Curriculum* (CBC). Sisi kama viongozi wachanga, ambao ndio sasa tunaanza ulezi, tuko na watoto wetu katika taasisi hii. Watoto wetu wameanza kusoma na mpaka sasa hakuna mwelekeo wa kuonyesha watoto hawa watakwenda vipi. Japo wengine wetu tunasemekana kwamba ni vibaraka wa Serikali, nawakumbusha Wajumbe wenzangu hapa mimi ni Mjumbe wa kike niliyepewa fursa kuja katika Bunge hili kuongelea maswala ya kijinsia na kuwasaidia kuongeza na kutilia pondo pale ninapoona kuna sheria zinatungwa na zinatumiza sisi kama kina mama, ama nichangie kuonyesha njia mwafaka ya kufuata itakayosaidia kina mama na vijana katika taifa hili la Kenya.

Nataka kuwaambia ndugu zangu ambao wakienda mashinani wanasema kwamba Wajumbe wa upinzani hawapewi fursa sawa na Wajumbe walioko upande wa Serikali kutunga sheria; huo ni uwongo wa mchana. Hapa kila mtu ako na fursa ya kutunga sheria na kuchangia hisia zake ili kuleta suluhu katika taifa la Kenya. Tuko hapa ili kuwasaidia Wakenya ---

Sen. Oketch Gicheru: On a point of order Mr. Speaker, Sir.

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

Sen. Oketch Gicheru: Mr. Speaker, Sir, I rise on a point of order No.101 (4). I am not sanctioning limiting debates. I think it is not in order. I also never wanted to interrupt my sister Sen. Miraj because I enjoy the tantalizing Swahili that she brings into this House.

I however think that the topic and discussion that we have here is whether we limit the debate on the Presidential speech. It is therefore not in order for the wonderful Nominated Senator from Mombasa to suggest that there are Members from the Opposition side who are making some claims that she knows best and which have no relevance to this conversation. So, could she just limit her debate to the matter at hand and not see us as *watu wa huko*.

Asante sana.

The Speaker (Hon. Kingi): Again, Sen. Eddy, what is the Standing Order that you are relying on?

Sen. Oketch Gicheru: Standing Order No.101(4) Mr. Speaker, Sir. Imputing an improper motive on our side for what we have not claimed in this conversation at all.

The Speaker (Hon. Kingi): Very well. Sen. Miraj, according to your statement, you are suggesting that Members of the Opposition are out there lamenting that they are not given opportunity to present Bills and that favouritism is towards the Majority side. Is that a statement of fact? If not, you may have to proceed and withdraw it.

Sen. Miraj: Asante Bw. Spika. Ni kweli ni *statement* ambayo nimeizungumza nikiwa na ushahidi nayo na nitaiteta katika Bunge hili. Asante Sen. Eddie Oketch. Nitakuletea ushahidi, Bw. Spika.

The Speaker (Hon. Kingi): Sen. Miraj, if you are unable to substantiate that, I will give you an opportunity to do so tomorrow.

Sen. Miraj: Inshallah. Asante Bw. Spika. Yangu ninapo zungumza na nikimalizia, sisi hapa tumekuja kama Wakenya ili kuleta suluhu na kutatua matatizo ambayo yanatukabili kama Wakenya. Ni vibaya sana kuona viongozi wa upinzani ndugu zetu ambao tunakunywa nao chai na tupiga tu *story* kama kawaida, tunapofika katika Bunge hili, wanaleta siasa nyingi.

Hawa ni ndugu zetu ambao tunakunywa nao chai na kupiga stori kama kawaida. Tunapofika katika Jumba hili, wanaleta siasa nyingi. Mimi niko tayari na Rais aambiwe pale amefanya makosa ili huduma kwa wananchi ziafikiwe kwa malengo.

Asante, Bw. Spika.

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

Sen. Mariam Omar: Thank you, Mr. Speaker, Sir, for giving me this opportunity. First of all, Happy New Year to you and other colleagues of mine, the Senators who are around.

This Motion about the Presidential address is more of the President addressing the implementation of his plan. In the last President's address, the President omitted Arid and Semi-Arid Land (ASAL) counties specifically pastoralists. This time, I urge the President to cater to the ASAL counties on the implementations.

On that same issue, there is a road, El Wak to Ramo, in Mandera which is financed by---

The Speaker (Hon. Kingi): Sen. Omar, if you look at your Order Paper, you will see the Motion that is being discussed now. We are not debating the address by the President that was done last year. We are debating the Motion as read to you and as moved by the Senate Majority Leader. So, just speak to that Motion.

Sen. Mariam Omar: Thank you, Mr. Speaker, Sir. Yes, I know it is a Motion on the limitation of time on the Presidential Address, but the Presidential address is more of an implementation of his plan. So now when he is doing his plan address, I am just reminding him that last time there was an omission of ASAL counties. I predict there will be implementation of some activities in the ASAL.

I know the Motion is about the limitation of the President's address.

I thank you.

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

Sen. Orwoba: Thank you, Mr. Speaker, Sir. I rise to support this Motion on the Limitation of Debate on the Presidential address.

I want to echo one of the statements from Sen. Kavindu Muthama, who has suggested that perhaps also the President should sit in to listen to some of the criticism, the objective criticism from this House.

I believe that in his presence, most of our fellow Senators, who sometimes just criticize for purposes of criticizing without any objective wisdom, will then speak truthfully in front of the electorate on matters that truly count. So that is a very good suggestion from Sen. Kavindu Muthama.

Mr. Speaker, we tend to underestimate the communication from the President. I remember way back, I must have been very young, when, Kenyans were complaining that they had a President who never used to talk, who never used to communicate, and so people were in the dark.

I want to congratulate His Excellency William Samoei Ruto for keeping the communications lines open and it is not only through the Presidential Address but through the daily communication that he has with the electorate, both from the Executive and on the ground as he goes to speak to the people.

Therefore, I just want to add that in this particular address that is upcoming, he may also communicate in terms of the gender agenda. It is far too long that the two-thirds gender rule has not been spoken of; not in the Presidential Address, not in the constant communication that we get from the Executive.

It is very unfortunate because I do know that a lot of work is being done by the Executive, by the President, to ensure that the Kenya Kwanza Women's Charter is implemented but there has been very limited communication on the same in terms of the gender agenda.

I also hope to hear that the policies and some of the work that are being done in that space of women empowerment is going to be communicated this time because some of us who are nominated to represent women in this House, are asked to say what is happening. We are told that we went there to represent women, to push for the agenda of women, but the government is quiet”.

The Government is not quiet. It is just that no communication being put out that is clear, that is intentional, to inform Kenyans on what the President and the Cabinet are doing in terms of empowering women and having women being represented in these spaces.

In the upcoming Presidential Address, I hope that this particular message is going to be communicated, and even as we look forward to the Conference on the Status of Women that is happening in New York, we want to hear the President echoing issues that are affecting women.

Not only issues that come up, for instance, now there is a lot of talk; we are mourning the lives of our women who lost their lives through femicide. We want to hear what those offices that have been mandated to represent women and to protect women through the Cabinet, through the Executive, are doing.

I support this Motion, because we believe that all the 16 nominated women in the House will then get time to speak and air their views in terms of the gender agenda, and also be able to question or objectively criticise the work that is being done in that space

of the representation of women and the policies and the projects that the Kenya Kwanza Government has for the women of Kenya.

I thank you.

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

Sen. Faki: Asante Bw. Spika kwa kunipatia fursa hii kuchangia Hoja ya kuweka muda katika kujadili Hotuba ya Rais ambayo inatarajiwa mwezi wa nne.

Kwanza, ninachukua fursa hii kukutakia wewe binafsi na masenata wote mwaka mpya wa elfu mbili na ishirini na nne wenye manufaa na afya njema.

Pili, tunamshukuru Mwenyezi Mungu kwamba ametufikisha mwaka mpya na tuko tayari kufanya kazi katika kujenga taifa na kuhakikisha ya kwamba maisha ya wakenya yamebadilika.

Hoja hii ni muhimu sana kwa sababu, tumeona kwamba mwaka uliyokwisha, watu wengi hawakupata fursa ya kuchangia Hotuba ya Rais na Hotuba ile ilikuwa na mambo mengi ambayo ni kinyume na hali halisi ilivyo katika inchi yetu ya Kenya.

Ni kweli kwamba wengi wetu huwa tunaikosoa Hotuba hii na kwa kweli hiyo ndiyo kazi yetu kwa sababu, sisi tumechaguliwa kama wawakilishi wa wanainchi.

Sisi ndio macho ya wananchi, na ikiwa kuna jambo ambalo limezungumzwa ama limefanywa ambalo halilingani na sheria, ama halilingani na hali halisi ilivyo, ni wajibu wetu kulikozoa na kueleza ukweli halisi ulivyo tukipata fursa ya kukoza Hotuba hii. wengi wetu ambao wako katika upande wa serikali wanajiona kuwa wao ni serikali zaidi ya wale ambao wako katika Mkono wa Serikali, *the Executive*.

Lakini, tukiangalia majukumu yetu katika Katiba, kifungu cha tisini na sita ni kwamba, sisi ni macho ya wanainchi katika Serikal na mbali na ya kwamba tunatunga sharia na kukoza serikali, pia sisi ndio waangalizi wa mali ya uma katika mikono ya serikal ambayo wananchi hawawezi kufanya hivyo.

Kwa hivyo, mimi nina unga mkono Hoja hii na ningependa kukomea hapo.

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

Sen Chute: Thank you, Mr. Speaker, Sir. Let me, first of all take this opportunity to send my condolences to the family and friends of Mr. Kelvin Kiptum and also send my condolences to Sen. (Dr.) Khalwale and the family of Mr. Kizito Moi. Our Senate Majority Leader, *poleni sana*.

Mr. Speaker, Sir, I rise to support this Motion on Limitation of Debate on the Presidential Address. In support of Sen. (Dr.) Khalwale's Motion, the Presidential Speech is of symbolic importance for this country. It is an occasion of utmost pomp and tradition. It is a time the President puts the agenda before the country. It is not only for Parliament, but the whole country to listen and hear what the President says. It is also the time he puts his agenda to influence public opinion.

Mr. Speaker, Sir, first of all, the responsibility of this Senate is to represent, legislate and oversight. When the President gives his speech, it is the responsibility of each person in this House to question his agenda. It is not only the responsibility of the other side of the aisle to ask questions. Every person has the right to ask any question that he or she thinks regarding this country going the opposite of how it should.

It is always good to listen to the debate when the President is giving the speech, so that we can debate wisely. As my fellow Senators have been trying to say, when we

talk about the Presidential speech, it is not the responsibility of one side only. I have seen a tradition where people critique what the President says. Of late, the President mentioned the issue of the Judiciary. I have seen many Senators and Members of Parliament (MPs) in this country going around in weddings, *harambees* and funerals, talking about the Judiciary. If the President says something whether right or wrong, there is no reason one side of the Government should attack the other. When the President gives a speech and you have anything to say, say it.

I support the Motion. *Asante sana.*

The Speaker (Hon. Kingi): Sen. (Dr.) Khalwale, you may proceed to reply.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. I rise to reply and thank all colleagues for the issues they have raised. Of greatest interest is what was brought up by the Senator for Tana River County, who first proposed the need for us to make this debate on the Presidential speech inclusive, to the extent that the President should be requested to sit in during the debate.

Mr. Speaker, Sir, this quickly invites you and the House to think about changing the Standing Orders. If we changed the Standing Orders to allow the Cabinet Secretaries to come to the House, then we can also change them to ask the President to sit in during debate.

This is a very innovative sort of thinking. We should not just be talking to the air. We want the President to listen to us because there are many Presidents in waiting in this House. It is good for him to hear what the future Presidents who shall succeed him will be commenting on his thoughts and programmes.

With those many remarks, I reply.

The Speaker (Hon. Kingi): Hon. Senators, pursuant to Standing Order No.84(2), it is my determination that this matter does not affect counties and, therefore, voting shall be by voice.

(Question put and agreed to)

The Speaker (Hon. Kingi): Clerk, next Order.

BILLS

First Reading

THE WILDLIFE CONSERVATION AND MANAGEMENT
(AMENDMENT) BILL (SENATE BILLS NO.46 OF 2023)

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

*First Reading*THE NUTS AND OIL CROPS DEVELOPMENT BILL
(SENATE BILLS NO.47 OF 2023)

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

*First Reading*THE CONSTITUTION OF KENYA (AMENDMENT) (NO. 2) BILL
(SENATE BILLS NO.52 OF 2023)

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

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

[The Deputy Speaker (Sen. Kathuri) in the Chair]

The Deputy Speaker (Sen. Kathuri): Next Order.

BILL*Second Reading*THE WATER (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILLS NO.33 OF 2023)

(Sen. Cheruiyot on 30.11.2023)

(Resumption of debate interrupted on 30.11.2023 - Morning Sitting)

The Deputy Speaker (Sen. Kathuri): Thank you. Hon. Senators, on this Bill which is a resumption of debate interrupted on Thursday, 30th November, 2023, from my records, Sen. Oketch Gicheru had a balance of two minutes. If you are ready to proceed with your two minutes, please, do so Senator.

Sen. Oketch Gicheru: Thank you, Mr. Deputy Speaker, Sir, I am happy to see you. Happy New Year. I hope that you can be a little generous and make it four minutes, just because people did not perhaps understand what I said the other time. Just to recalibrate.

The Deputy Speaker (Sen. Kathuri): Kindly start driving, I will see whether you are engaging the gears.

Sen. Oketch Gicheru: Thank you, Mr. Speaker, Sir. This Bill seeks to make several amendments to the Water Act, 2016. I had raised this before that I had serious concerns with this Bill. If you look at Part Two of Schedule Four, Index 10, the counties have been given the power to look at policy angles on water matters by the national Government.

Index (xi) on water and sanitation services are purely devolved as functions of the county. This is one the Bills that I wish all Senators were in the House to look at. The entire part of last year, we spent a lot of time as the Standing Committee on County Public Investments dealing with issues of water in counties.

One of the things we knew was that a lot of structures put in place that tend to be national bodies have completely hampered the idea of making sure that water services are effective and efficient in county bodies.

This is one of those Bills that seek to claw back on devolution. If you look at Section--- I might not mention all of them because I have no time. I have talked passionately about this Bill before. However, Section 30 introduces water regulatory authority, which is a national body with so much power and takes power out of the counties.

Section 31 also introduces another water regulatory board, whose membership and composition are purely negating the idea of devolution and water.

In Section 65, Water Work Agencies are given more power when dealing with bulk water.

The Water Work Agencies have been at the core of making Water Service Providers (WSPs) ineffective. If you look at how they take big loans in the name of these WSPs and how they seat on a lot of assets of these WSPs in their own balance sheets, it is chaos. I believe our Committee on County Public Investments and Special Funds has been working tirelessly to deal with and remove.

Lastly, in Section 119, there is introduction of the water tribunal. The membership does not in any way empower counties in a sense. It does not make any meaning.

I invite Senators to pay a lot---

(Sen. Oketch Gicheru's microphone went off)

The Deputy Speaker (Sen. Kathuri): Give him one minute only.

Sen. Oketch Gicheru: Even 30 seconds. I invite the entire House to keenly read this Bill and do not allow it to go through because water is life and is one of the functions that devolved units have that we must give them full power to be able to control.

Every suggestion I am seeing here is reversing those powers to the national Government and making it impossible for devolved units and county governments to take control of water service provision.

Mr. Speaker, Sir, I oppose this Bill in its entirety. I hope that Senators will take time to read, discern, understand and make a meaningful decision when it comes to this Bill.

The Deputy Speaker (Sen. Kathuri): Sen. Oketch Gicheru, as a legislator, you have all the powers to come up with the possible amendments that you might like this Senate to consider. You have that benefit. You have keenly gone through the report. So, come up with those amendments or issues that you need to be revisited then, as a House, we can consider.

Sen. Maanzo, please, proceed.

Sen. Maanzo: Mr. Deputy Speaker, Sir, water is a devolved function. The Ministry of Water, Sanitation and Irrigation directs that the policy and the current Water Act of 2016 was due for amendment.

The department of water has been struck by a lot of confrontations with the stakeholders. That is why their regulations never went through. In fact, they ended up in court, and right now, there is a lot of confusion.

Regulations come from the Act. Now that the Act is going through amendments and we have just received this Act from National Assembly, which is a devolved function that has come to us. It would have originated from us or every House.

It is very important we make sure that devolution is taken care of in this Act. Unfortunately, most of the amendments are mangled up and a professional job was most probably not done. It is important to look at each Section with a lot of keen interest.

When you go to the practicality of its implementation, there are a lot of issues. In my county, there is Thwake Dam, which should have been completed years ago. However, out of mismanagement by Ministries of Water, Sanitation and Irrigation and that of National Treasury and Economic Planning, there has been postponement year after year of the completion date of this particular dam.

The contractor is very frustrated not being able to work alone. He has to work with the Ministry, especially on money delays. As soon as there was a new government and on re-arrangement of budget, Kshs5 billion was removed from this project, which was internationally funded.

By the time we got that money back to Thwake Dam Project, another Kshs1 billion was again removed by National Assembly Budgeting Committee. This keeps creating confusion.

First of all, when there is change of administration ministers, the Government enjoys perpetual continuity. There is no way such a serious project would be by a new government. This goes into many other things that have happened with the Ministry of Water, Sanitation and Irrigation, hence the regulations, which should have come to this House, but never did.

They only went to National Assembly purported to have been implemented. Seconders went to court for lack of proper public participation. The court is seized of the matter.

There has been a proposal that so that the sector stops suffering, Parties come together and register a consent, so that there may be continuity in the country. This is because this House has also been sued. That is avoided when you make proper law to begin with.

Just as Sen. Oketch Gicheru has said, there are so many introductions into this law, which reverse the gains of devolution to the national Government.

In fact, the Constitution has already directed that water services are devolved and the national Government can only give basic principles of the policy on which of these will be implemented.

So, when you look at many other failed water projects like the Nol-Turesh water going to Emali, there has been a dispute between Kajiado and Makueni Counties, simply because there are neither proper legal frameworks nor regulations.

This results when you make a law like this without stakeholder consultation or public participation. Public participation has become what is in the mind of certain individuals. Public participation should be standard.

In fact, I remember in the last House - in the National Assembly - we had a Public Participation Bill which never saw the light of day, as the House expired. It has never been re-introduced. The Bill was dealing with a very important area of legislation. Making laws on public participation is very critical.

In this Water Act, we have cosmetic public participation, just for the records, so that it can come to the House, receive a rubberstamp and then proceed to the Executive for another signature. We have to take these regulations seriously. On this particular one, a proper job has not been done.

I agree with Sen. Oketch Gicheru that this Act should be thoroughly amended, failure of which, they should be sent back to be redone. It does not seek to achieve the purpose of making sure water is supplied to every household in this country.

The original plan was to have water taps in every house in the rural areas and in Nairobi City County. Does that happen in Nairobi City County? No. Despite the big dam, there are so many cartels, some who break the water pipes then supply water illegally. That has not been sufficiently catered. Why is there insufficient water supply in Nairobi City County when there is a big dam? Why do we have more water trucks selling water instead of having the County Government of Nairobi supply water and get paid reasonably in every household? It is the failure of the law.

These amendments have not addressed that problem and have not devolved this function to Nairobi City County and any other county. Therefore, we have a problem that there are more water vendors and water trucks selling water whose quality is not even certified to Kenyans.

Supply of water is what reduces diseases by more than half. Sen. (Dr.) Khalwale will agree with me that if we had clean water supply, half the people who visit the hospitals would not do so. Half of the children dying out of dirty situations or water would not die. We would cut our budgets far since prevention is better than cure. Instead of going to cure people, we would have prevented it by supply of water.

This is a very important law and cannot be taken as a joke in this House, the way it has been handled in the National Assembly. It has to be thoroughly amended, take care of the people and go through public participation. Otherwise, we will end up with another law, where Sen. Okiya Omtatah or any other water stakeholder, goes to court as they are now. They are already in court fighting many things.

They have been to our committees and have made Petitions here, but have not been listened to. These Petitions would no longer exist if there was proper public

participation by the Ministry of Water, Sanitation and Irrigation and Council of Governors (CoG).

A lot of time the Council of Governors is ignored when a law relating to the counties is being made. This defeats the purpose of why the Senate exists. I have given an example of the Thwake Dam, which has stalled because of mismanagement by people in the National Treasury and Ministry of Water, Irrigation and Sanitation. When you go to the National Treasury, they take you back to the Ministry of Water, Irrigation and Sanitation. When you file the documentation, you will find a civil servant holding onto the document as they solicit bribes, so that payment is made to the contractor who has done a water project. The water project is delayed or is never achieved.

Members should look at this legislation carefully. There are new interpretations introduced, seeking to define things differently. These amendments seek to reinvent the wheel that is already round and can never be square. We must be serious as a Senate. Where the National Assembly or the Government in its legislative proposal has made an error, we should be bold enough to correct that error in this House. I do not want to repeat the clauses in this Bill, as they have been elaborated very well by Sen. Oketch Gicheru, who I support.

This Bill should not be allowed to proceed in this House. There is a new Cabinet Secretary and Principal Secretary in the Ministry of Water. Let them get serious, come back to this House, and give the country legislation that works. It is ridiculous to propose a law like this and make a joke of devolution by introducing boards to manage nothing, but rip money and not give back to the people.

Thank you, Mr. Deputy Speaker, Sir.

I oppose.

Sen. Wambua: Thank you, Mr. Deputy Speaker, Sir, for this opportunity to also contribute to The Water (Amendment) Bill (National Assembly Bills No.33 of 2023). From the onset, let it go on record that I oppose this Bill. I have agreed with Sen. (Dr.) Khalwale that in this Session, we will debate seriously the matters that come to the Floor of this House.

Let us be reminded, all of us, that one of the key responsibilities of the Senate especially sitting in Plenary is to defend the interests of counties and their governments. A casual reading of Section II, the Fourth Schedule of the Constitution, lists water services as a fully devolved function, which means that all matters of water fall under the jurisdiction of county governments.

One of the things this Bill is proposing to do is a blatant attempt to claw back on devolution. If you interfere with one function that is devolved, then you are essentially clawing back on devolution. I will narrow my argument to only two issues.

First, let us look at the constitution of the water regulatory board as proposed in this amendment Bill, in Clause 5. The entire tribunal consists of national Government actors; people seated at the national level. Why did the proposer of this amendment not think of including a member of the Council of Governors' sub-committee on water to sit in that tribunal? The purpose of any tribunal is to resolve disputes. For instance, if there is a dispute between Kitui water and Nyeri water providers, how does the tribunal

composed of national Government actors resolve a matter that involves two counties without the involvement of those counties? Some of these things do not make sense.

The Constitution is clear that any legislation that goes against the provisions of any section of the Constitution is null and void, to the extent of the conflict. Water is a devolved function and people are supposed to be arbitrating and resolving disputes on matters of water in counties. If those people do not consist of players from different counties, then this law falls flat on its face.

The second matter is on bulk water supply. The provisions here are ridiculous. The Water Act of 2016 is clear that bulk water supply is a function of water service providers. This amendment seeks to remove that function from water service providers, including the Laikipia water service provider from Laikipia and bring it to Nairobi under what they are calling Water Works Development agencies. How will national Government agencies regulate, manage and do reticulation of bulk water in the 47 counties in this country? This provision violates the Constitution and, therefore, this law must fall flat on its face.

As I conclude my submission, I would like to remind my colleagues that it should concern us that an amendment to the Water Act comes from the National Executive, to the extent that the amendment is coming from the Ministry. This should concern us, as a Senate.

We must also challenge the Council of Governors. Our colleagues from the other side - who are colleagues because we are elected from the same counties with them. I know of Senators here who garnered more votes than their governors, but when elected, they behave funnily. They should wake up from their slumber and help push legislation that ring-fences devolved functions.

If there are issues with water service providers, I expect the Council of Governors to be at the forefront in pushing for legislation to ring-fence the operations of water service providers. It should not be the function of the National Executive to try and cure mischief found in the water service providers. I do not know how the national Government agencies will resolve disputes within and amongst water providers in counties without involving the service providers in those counties.

Mr. Deputy Speaker, Sir, with those remarks I oppose.

The Deputy Speaker (Sen. Kathuri): Thank you.

Sen. Oketch Gicheru, I can see you are on the queue and you have already spoken to this Bill.

Proceed, Sen. Wamatinga.

Sen. Wamatinga: Thank you very much, Mr. Deputy Speaker, Sir. I stand to support this Bill with amendments.

Mr. Deputy Speaker, Sir, I sit in the Committee on Lands, Environment and Natural Resources where this Bill has been discussed. We have held various public participation with various stakeholders who have expressed their reservations. Some support while others support with amendments that need to be done.

Mr. Deputy Speaker, Sir, we know the Kenya Kwanza Government intends to make water a tradable commodity. Therefore, it is important to come up with a framework that makes water a bankable business. As good as that may be, it is also

important to note that water supply being a devolved function, the county governments which have been starved of the budget from the like Ministry are left to do the reticulation. Some of them rely on very old infrastructure. I have seen some counties lose as much as 70 per cent in terms of non-revenue water.

Mr. Deputy Speaker, Sir, to be able to address this, we must come up with a comprehensive solution. Since, some of the water infrastructure goes cross-counties, we need to have water development agencies as envisaged in the Water Act of 2016, so that the issues of water bodies that are crossing counties can be addressed.

It is also not lost to us that development of water infrastructure is quite a costly affair. Some of the mega dams that are proposed by the Kenya Kwanza Government cannot be realized within our budgetary allocation.

Looking at the balance sheet of this country, it is important that we come with options that will make this realizable. This is one of the ways to make water a credible commodity, just like electricity and roads.

Mr. Deputy Speaker, Sir, having said that, it is also important to note that water being a devolved function, we need to reinforce the operationalization of the Water Act of 2016 by empowering the water service providers.

Mr. Deputy Speaker, Sir, this cannot be done with the kind of small budgetary allocation that they get. Therefore, it is important for us to change the approach we have been using. We must be deliberate on having a paradigm shift in the way that we approach the financing of this infrastructure.

Consequently, if left to the counties, some counties will never be able to provide their citizens with water because of the budgetary allocation and the infrastructure. For some of the counties, the technology required is not available at that level.

Therefore, it is important that we come up with a law that will ensure that the national Government is able to provide the bulk water. This can then be transferred to the service providers, who can then reticulate it for consumption.

Additionally, the same applies for irrigation. We know of the High Grand Falls Dam that is proposed in Tharaka-Nithi County, which costs about Kshs500 billion. However, there is no way that county which receives just a couple of billions, will be able to ever realize that.

Looking at the long-term benefit of water as a tradable commodity and of such dams, it is important that we put a legal framework in place that will encourage investors to come into the country or even local business people to team-up and put up mega dams that will have several advantages.

Mr. Deputy Speaker, Sir, for example, the High Grand Falls, will be producing about 1,000 megawatts. That alone would be enough revenue to pay for the cost of the construction of the dam, not to mention about thousands of acres that will be brought under irrigation.

Therefore, as much as we are here in the Senate to protect, promote and see devolution work, we must also be pragmatic enough to realize that some of the functions that are supposed to be devolved cannot be achieved with the kind of small budgets that are located.

We must also be alive to the fact that some of the functions, especially in the water development infrastructure, have crosscutting issues that lie in multiple counties. The mega dams like the High Grand Falls will serve several counties. Therefore, putting a legal framework in place that will be able to govern the construction and later the repayment of the cost of the dam needs to be anchored in a law.

Mr. Deputy Speaker, Sir, this can only be done if we amend the Act, as is currently constituted, to introduce other factors. However, we must also hold at the back of our mind that the function of water being devolved and the role of the county government is well enhanced and anchored, while also ensuring that the county governments will reap from the tradable water commodity.

Mr. Deputy Speaker, Sir, I support with amendments.

The Deputy Speaker (Sen. Kathuri): Thank you. Next is Sen. Olekina, the Minority Whip.

Sen. Olekina: Thank you, Mr. Deputy Speaker, Sir. I rise to make some comments, which I hope will lead me towards drafting some amendments to this Bill, which, in my view, has been crafted to be able to commercialize a commodity that is given to us by God for free.

I sit in the County Public Investment and Special Funds Committee where we interrogate water works and service providers. So, I will be speaking with experience when I comment on this Bill.

If you read the objects and the memorandum of this Bill---

(Sen. Maanzo and Sen. M. Kajwang' consulted loudly)

The Deputy Speaker (Sen. Kathuri): Sorry, Sen. Olekina. Sen. Maanzo and Sen. M. Kajwang', kindly consult in low tones. You are interrupting the host contributing to this important Bill.

Proceed, Sen. Olekina.

Sen. Olekina: Thank you, Mr. Deputy Speaker, Sir, for your protection.

Mr. Deputy Speaker, Sir, as I was saying, I sit in the County Public Investment Committee where I get an opportunity to interrogate water service providers and water works bodies, in line with the Water Act of 2016.

When you read these amendments, which are brought about by the Majority Leader of the National Assembly, there is a lot that needs to be desired. Why am I saying that? If you read the objects and memorandum of this Bill, it is purely to operationalize the public private partnership of our water resource.

When you read the Constitution, water is devolved. There is nowhere in the Constitution that says that water should be a matter that is dealt centrally. The framers of the Constitution were very right because only local people will be able to understand the specific needs of water of their own people.

If you take the powers from the county governments and bring them to Nairobi, one, there will be a lot of bureaucracies, and people will not be able to make decisions in terms of the needs of the water.

Two, I have heard my good friend, the Chairperson of the Committee on Energy, saying that county governments will not have budgets to be able to deal with these issues. When you talk about the issue of bulk water management, if there is water in Murang'a County and the people of Nairobi are benefiting from that water, the best thing we can do is to empower the County Government of Murang'a to ensure that they sell that water to the people of Nairobi. We are the House that defends devolution. Unless my good Chair wants to amend the Constitution, the framers of the Constitution devolved water.

Mr. Deputy Speaker, Sir, it is not quantum physics. It is very simple. If you have bulk water and dilapidated infrastructure, you fix your infrastructure up to the borderline. You want to collect my water, collect it from the borderline and go and distribute it to your people. This business of creating authorities, which are bankrupting this nation---

If you go to all State departments right now, it is not that the national budget gives them a lot of money. Most of them are given loans by the World Bank, International Monetary Fund (IMF) and other development agencies for them to go and sit somewhere in Naivasha and make decisions about how much water the people in Narok should get.

We are missing the point here. This is not only unconstitutional; it is also creating bureaucracies on managing everything. This Kenya Kwanza Government really shocks me. Every time I sit here and read, even if this Act was due for amendment---

The Deputy Speaker (Sen. Kathuri): Sen. Olekina, there is a point of order from Sen. Kinyua. What is your point of order, Sen. Kinyua?

Sen. Kinyua: Mr. Deputy Speaker, Sir, I have listened to Sen. Olekina whom I respect so much. I do not know why he is casting---

The Deputy Speaker (Sen. Kathuri): Which Standing Order are you using to prosecute your point of order?

Sen. Kinyua: Mr. Deputy Speaker, Sir, when Sen. Wamatinga finished his statement, he said 'with amendment.' I do not know whether he is not agreeing.

The Deputy Speaker (Sen. Kathuri): Which Standing Order are you using to prosecute your point?

Sen. Kinyua: Standing Order No.110. He agrees with what Sen. Wamatangi said.

The Deputy Speaker (Sen. Kathuri): It should be Sen. Wamatinga. Hon. Wamatangi is now the Governor of Kiambu.

Sen. Kinyua: I am sorry, Mr. Deputy Speaker.

Sen. Wamatinga was clear and said he supports with amendment concerning the issue of what is devolved. He was clear about water is being devolved.

The Deputy Speaker (Sen. Kathuri): What is your point of order?

Sen. Kinyua: I just wanted clarification, so that he does not assume that Sen. Wamatinga does not respect that water is a devolved function.

The Deputy Speaker (Sen. Kathuri): Sen. Olekina, you may proceed to clarify, if you have to.

Sen. Olekina: Mr. Deputy Speaker, Sir, my point is clear. We are debating. So, it is for me to either agree or reject.

In my debate, I pointed out clearly that what my good friend, the Chairman of the Committee on Energy has said, does not hold any water. He said that county governments

do not have budgets to control their resources. I said even the national Government is relying on the IMF and the World Bank to borrow loans.

The object and memorandum of this Bill is clear. I hope my good friend, the Commissioner, can read it. It says that the principal object of the Bill is to amend the Water Act, 2016, for the purpose of operationalizing public private partnership in the water sector.

I said that I have a serious problem with policies of the Kenya Kwanza Government because everything has become commercial. Powers are being given to the Cabinet Secretary, who does not care about the County Government of Meru---

The Deputy Speaker (Sen. Kathuri): Sen. Olekina, there is another point of order from Sen. Wamatinga.

Sen. Wamatinga: Mr. Deputy Speaker, Sir, I just wanted to inform my colleague that I did not say that county governments do not have the budget. I said that with the kind of allocation that county governments get---

The Deputy Speaker (Sen. Kathuri): Sen. Wamatinga, you must seek his consent. Has he accepted to be informed?

Sen. Wamatinga: He has accepted. That is the point of information.

Sen. Olekina: Mr. Deputy Speaker, Sir, him and I just came from another committee, where we had concerns about the Cabinet Secretaries' decisions and the powers that they have. However, that is for another day. Let me try and summarize my points as follows.

I firmly believe that it is about time, with the help of the secretariat, that we set up a committee that scrutinises Bills that are seconded to this House from the National Assembly. I say that because of the experience of Bills that we sent from this House to the National Assembly.

Most of the Bills that we sent to the National Assembly do not get the concurrence. Those that get concurrence are not prioritized. In fact, most of the time, they are sent to the Parliamentary Budget Office (PBO) for them to look at the implication.

In the same spirit, we should also be looking at the constitutionality of legislative proposals that are brought from the National Assembly. We should not be quick to debate and pass them. The first thing we should have seen is that the Constitution states that county public works and services, including water and sanitation services, are devolved.

Unless you are telling us that you are going to amend or throw this Constitution out of the way, there is absolutely no way these amendments will hold. If we are pushed to pass these amendments, someone will go to court and ask the same question that I am asking here today; why can we not empower Murang'a County, which provides water to Nairobi City County, to sell water and make money for the people of Murang'a? Why should we create another body that has the powers to borrow money, so that it continues dipping us deeper into the hole of debt?

Mr. Deputy Speaker, Sir, the advantage of leaving water services to the county governments is clear. It allows for proper public participation. It allows for the people in the counties to get water because they are the only ones who understand their water needs.

If you tell me that decisions will be made in Nairobi, with all these bureaucracies, by the time water is distributed to Narok, a child would have finished primary school and gone to high school. Therefore, this Bill is ill-advised. We need to start thinking about the future of this nation.

One thing I want us to remember is that governments and politicians come and go, but this country called Kenya must remain and will always remain. Since we have agreed to be debating issues and pass legislation that will support this nation, we must come up with amendments to the law that are future-centric. They should not be laws that enrich a few individuals. The moment you say you are going to empower---

It states that the Bill seeks to amend the Act to provide for clarity of roles between development agencies and water service provider. What clarity are you seeking there? Water service providers are based in counties. What do water agencies that you want to give so much power do? They are just busybodies. It is just people sitting down somewhere and making decisions about water in Mandera, yet they are not even in Mandera.

I beseech my colleagues that we stop the debate and look at the constitutionality of this Bill because it affects our counties. We are here to protect and defend the counties. We need to start thinking about how to promote innovations and flexibility.

If we take away a resource from the counties and give it to the national Government to make decisions, how then are we going to become innovative? How are we going to promote flexibility in terms of managing water resources, which are locally based? It will be difficult.

People have been getting water. Instead of someone sharing water with the local community, since they may be afraid of these waterworks, they will just use that water for themselves. They will never say it, yet these waterworks do not have the powers. This issue of Private Public Partnership (PPP) must stop. It is not always the right thing.

If you tell me that you are building a super highway from Nairobi to Kakamega and you are inviting PPP on a Build Operate Transfer (BOT), I will support it. However, when you tell me that you want to commercialise water, that you are bringing in a private party to invest and distribute water - a resource that the county is supposed to be benefiting - I will oppose it. This is because you are actually just throwing away innovation.

We keep on talking about not having jobs in this country. While these 47 heads of counties are sitting down together to discuss how do we manage this resource, we in Parliament, are now promoting clawing back on devolution.

Mr. Deputy Speaker, Sir, I end by saying that local communities have a better understanding of their specific water needs. By leaving these water services as intended by the framers of the Constitution in the county governments, it will help them tailor the management of this resource to fit their needs.

Mr. Deputy Speaker, Sir, I oppose this Bill entirely.

Thank you.

The Deputy Speaker (Sen. Kathuri): Next is Sen. Faki.

Sen. Faki: Asante, Bw. Naibu Spika kwa kunipa fursa hii kuchangia Mswada wa Marekebisho ya Sheria ya Maji ya 2016.

Kwanza, najiunga na wenzangu ambao wametangulia na kupinga marekebisho haya. Hii ni kwa sababu maji ni haki ya kimsingi ya kila mwanadamu. Sisi kama Wakenya, hii ni kati ya haki zetu za kimsingi. Mswada huu unajaribu kufanya maji iwe kama biashara. Hii itasababisha wananchi wa Kenya kukosa maji na kupata taabu ya kupata maji.

Tukiangalia mfumo wa sasa, kule pwani, kuna *Coast Water Services* inayomilikiwa na Serikali Kuu. Kuna shirika ambalo linauza maji katika kila kaunti. Kwa mfano, la Mombasa ni *Mombasa Water and Sewerage Services*. Linanunua maji kutoka kwa *Coast Water Services* halafu linawauzia watu wa Mombasa.

Iwapo huu Mswada utapita, ina maana kwamba, *Coast Water Services Board* itakuwa na uhuru wa kuuza maji kwa mtu binafsi ama shirika la kibinafsi, halafu wale watakuja kuwauzia watu kwa bei ya juu.

Bw. Naibu Spika, asilimia kubwa ya wakaazi wa Mombasa hawapati maji. Hii ni kwa sababu, maji yenyewe yanayotoka kwa Chemi Chemi ya Tsavo ni yatoshi na pia yale yanayotoka Malindi hayatoshi. Haikimu mahitaji ya watu wa Mombasa. Iwapo Mswada huu utapita, utatoa nafasi kubwa kwa wawekezaji wa kibinafsi kuuza maji kwa bei ya juu. Kwa vile maji ni kitu cha muhimu kwa maisha ya binadamu, hiyo itakuwa na kinyume na usalama wa nchi. Wananchi wakikosa maji, yataathiri usalama wao na wa nchi kwa jumla.

Jambo la pili ni kuna shirika ambalo linaitwa *Water Storage Authority*. Kwa sasa, hakuna sehemu ambayo hupata maji kwa masaa 24, siku saba kwa wiki katika kaunti zote. Hata Murang'a Kaunti pia wanachangamoto za kutekeleza hilo. Kwa hivyo, tunaunda shirika la kuhifadhi maji. Litakuwa na kazi gani? Kwa mfano, kule pwani, Chemi Chemi ya Tsavo imekuwa na *pipe* moja kutoka 1945 ilipoanzishwa, hadi sasa 2024. Serikali imeshindwa kuweka hata pipe moja kutoka Tsavo kuja hadi Voi, Mombasa ama Kilifi.

Bw. Naibu Spika, ukiangalia makazi yalivyokuwa kule 1945 siyo kama yalivyo leo. Hii ni kwa sababu kuna miji kadhaa imekuwa kuanzia pale Mtindo Andei. Hii ni kwa sababu Chemi Chemi ya Mzima Springs iko nyuma ya Mtito Andei. Kwa hivyo, kutoka hapo kwa hiyo barabara mpaka Mombasa, kuna miji mingi ambayo imekuwa kutoka 1945 hadi wa leo. Wote hawa, wanategemea *pipe* moja ya Mzima Springs.

[The Deputy Speaker (Sen. Kathuri) left the Chair]

[The Temporary Speaker (Sen. Wakili Sigei) in the Chair]

Bw. Spika wa Muda, hakuna haja ya kuwa na shirika la kuhifadhi maji kwa sababu hakuna maji ya kuwatosha binadamu na pia wanyama pori katika mbuga zetu kwa matumizi yao.

Napinga Mswada huu. Nitakomea hapo. Asante kwa kunipa fursa hii.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Sifuna, you may have the Floor.

Sen. Sifuna: Thank you, Mr. Temporary Speaker, Sir. Allow me to begin by stating that I stand to oppose the Bill in its entirety.

I will start with the principle object of the Bill. I have a problem with the principle object of the Bill because it is stated to be perationalisation of PPP in the water sector.

Mr. Temporary Speaker, us in Nairobi, have had the taste of perhaps the most famous PPP in the country today. That is the Expressway between Mlolongo and Westlands. Many people who can afford to use a toll road will tell you that it has improved their lives. However, for the many people in Nairobi who cannot afford to pay toll, I can tell you that, the feedback is that the Expressway has actually made commuting between Mlolongo and Westland on the old road, extremely difficult than it was before it was built.

This is in addition to a debate we had last year where the public had to fork out extra money - I think it was about Kshs19 billion, for the rehabilitation of the old Mombasa Road. This is after the PPP was already in operational and the people with money, were enjoying the services of the Expressway because they could afford it.

I am not against privatisation *per se* and privatisation is not bad in every instance. However, I honestly believe that there are some sectors and things that we should not privatize because of the negative effect it has on the public sector service delivery of those same services.

I remember when privatisation of education began, many will argue for and against privatisation in the education sector. However, the general consensus, at least from my perspective is that, it has had a negative effect on service delivery in the public sector.

Mr. Temporary Speaker, Sir, it is also arguable whether privatisation of healthcare has resulted in better services, especially in the public sector. Anytime you introduce commercial interests in essential services, the free public service always suffers. Here we are discussing privatisation in the water sector. According to me, privatisation in the water sector is undesirable for many reasons.

Those who said water is life knew what they were talking about. If you cannot afford water, you basically cannot afford life. If we are going to be made to pay for life, which is essentially, what we are being told is going to happen with the privatisation of water, then we are making life itself more expensive and unbearable.

I will give you the example of the water demand in Nairobi. As of March, 2022, our daily demand in Nairobi is 810 million litres per day. This is against the installed supply capacity of 550 million litres a day. We have a deficit of 260 million litres for the residents of Nairobi. Now, imagine a situation where at least these 550 million litres of water is there on paper for the people of Nairobi.

Mr. Temporary Speaker, Sir, now with the passage of the Bill, it is assured because it is in the hands of the public sector and the Nairobi City Water Sewerage Company (NCWSC), an entity owned by the County Government of Nairobi and which belongs to the people of the County of Nairobi.

This Bill passes and it says that a private entity; people with capacity and money or muscle, can come and say that out of the 550 million litres of water that Nairobi gets in a day, we have the capacity to buy half of that amount of water like 200 million litres per day. It will go with a private entity because that is what we have empowered them to do

through the bulk purchases being proposed in this amendment. What that does is that the public can only rely on Nairobi Water to supply 300 million litres of water per day because 200 million litres are now in the hands of a private company. What happens to that private company? Those private companies will not prioritise the majority of the people of Nairobi who cannot afford to buy water, even at the current rates imposed by the NCWSC.

Mr. Temporary Speaker, Sir, you will be commercialising life itself in this City so that those with the capacity to buy water, just like those who can afford to fly over the poor on the Expressway in Nairobi are doing right now. They will be able to purchase all the water available in Nairobi and the ordinary people who are the majority in this county will suffer. This is one of those areas that should not be commercialised. This is an essential service and you must distinguish between essential services and other services. The people of Nairobi can survive in traffic but you cannot survive without water.

Secondly, having painted that picture, there is no provision that will then determine or put in place a mechanism for equity. Yes, you have the financial muscle to buy all the water in Nairobi, but should we allow you to do so? What happens to all those other people who cannot be loaded to this private entity that will be supplying water?

Mr. Temporary Speaker, Sir, I do not see the equity mechanism in the Bill. It would have been nice if they were told that for you to get that commercial enterprise, you must develop extra capacity first before we give you a contract to supply water commercially. However, if they are coming to eat into the currently installed capacity, which I have demonstrated to you has a deficit, then we are going to have problems.

Thirdly, I had an opportunity to have a conversation at some point with the Director General (DG) of the NCWSC, Eng. Muguna. He tried to explain to me that water is already a scarce commodity and how they determine who gets water or not. There is a very complex matrix they use for that. You will see that they prioritise important security installations and the Central Business District (CBD) because they want to encourage business to happen. You do not want international conferences happening at the Kenya International Convention Centre (KICC) and there is no water in the CBD.

You do not want to have a situation where you have no water at your international airport, for instance. You have seen the outrage that follows when there is a blackout at the Jomo Kenyatta International Airport (JKIA). It is the same for water because it is an essential commodity. Then you come to the regions in Nairobi – who gets water on which day and who does not. This is because we are already facing a deficit.

Mr. Temporary Speaker, Sir, this commercialisation will make Eng. Muguna's work even worse. If you take away even a single drop of water from the capacity that is installed right now, the people at NCWSC are going to have a problem on who gets water on particular days and who does not get it. There are people who will not get water at all simply because the commercial entities running that water supply will be determining who gets that water and it is will be a commercial relationship. If you have the money, you will get the water every time in the quantities that you want. However, if you are not able to afford it, you are on your own.

Fourthly, there is a concern about the loss of revenue by the entities owned by the County Government. Loss of revenue also translates to loss of jobs. Many workers at the county-owned water services companies are concerned that once you shift the bulk of the supply of water to private hands, there is no guarantee that their jobs will continue to be tenable. It is possible that we are staring at job losses and there is no mechanism in the Bill as currently drafted to ringfence or protect the people currently working at the NCWSC, so then after these commercial contracts have been signed and the water is now in private hands and these private companies are now running the water business. Is there any guarantee that the people working for the NCWSC will continue to be in employment? I have not seen that assurance in the Bill.

Mr. Temporary Speaker, Sir, lastly on the question of infrastructure that has been touched on by some of my colleagues, the county has already worked and invested a lot of money to put in place the infrastructure, not just for the collection of water, but for the distribution of water as well. Is there any provision in the Bill that assures us that once the commercial companies take over the bulk water they will develop their own distribution infrastructure? Will that infrastructure be flying on top of our existing infrastructure the way the Expressway does? What is it going to do to the infrastructure that already exists?

If there are disruptions in service because of the ongoing construction of parallel infrastructure who will bear the cost of repairs? Are we going to be told again as taxpayers in Nairobi to bear the cost of repairs to our existing infrastructure because of construction of new infrastructure just like we were told to bear the cost of repairing the old Mombasa Road? I have not been assured in the current Bill that any of those things have been thought out.

Mr. Temporary Speaker, Sir, I heard my Governor, Hon. Sakaja, recently in a church service saying that as the City had secured Kshs15 billion for new water projects to increase the capacity of the City County in order to provide this precious commodity. I do not know where that leaves us. Is this Kshs15 billion supposed to be for the people of Nairobi, for the development of the capacity of the NCWSC, or we are doing this to enable private entities to come in as suppliers of water?

There is an ongoing project called the Northern Collector Tunnel. At the completion of the first phase, we will be expecting an additional 140 million litres of water per day. That is going to dent the deficit of 220 million litres a day by half. There is still a need for the development of further capacity for the people of Nairobi to enjoy water daily in the quantities they desire. What is going to happen if this Bill becomes law?

Mr. Temporary Speaker, Sir, I am going to stop there because I am not convinced. In addition to the questions raised by my colleagues about the fact that this is a devolved function, the national Government is overreaching in its attempt to manage the water sector, yet, the Fourth Schedule of the Constitution specifies water and water services as a devolved function.

With those few remarks, I stand to oppose the Bill in its entirety. I have heard people telling us that if you are unhappy with the provisions of the Bill, you can bring amendments.

I am one of those people who has brought amendments to Bills I thought were unfavourable, unconstitutional and over-reaching in their provisions, but those same amendments have been defeated here. The question I am asking myself is: how do you amend something that is fundamentally flawed from the beginning? I want to convince my colleagues that they should not tell us to amend something unconstitutional. You do not amend something that is unconstitutional to make it constitutional. You throw it away or out. That is the only solution for unconstitutional provisions of a Bill such as the one we are dealing with here.

I thank you, Mr. Temporary Speaker, Sir, for the opportunity.

The Temporary Speaker (Sen. Wakili Sigei): Thank you, Sen. Sifuna. Sen. Orwoba.

Sen. Orwoba: Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to weigh in on the Water (Amendment) Bill. Before I either oppose or support this Bill, my biggest worry with this Bill is that we are taking away from the devolution and that we are going back to centralizing matters that have already been devolved. I refer to some of the amendments, particularly Clause 2(a) which says-

“Contracting authority” means-

“at the national government level, a state department, agency or state corporation which intends to have its functions undertaken by a private party;”

We are basically saying that after the introduction of devolution and after devolving functions for purposes of efficiency such that the people on the county and the grassroots level are able to feel the effect of Government, we are now going back and centralize these matters. Not only are we centralizing it, but also commercializing it.

I do not think the problem is water being commercialized. By commercializing this service, are we bringing the cost down? Are we ensuring that all the Kenyans in every single part of this country are receiving the water? That is the main question.

Some people will say we do not want to commercialize. However, if you look at some of the things that we are dealing with under Kenya power Limited Company (KPLC), we have always pushed to have it commercialized so that we can have competition among many other players to bring down the cost of electricity.

Mr. Temporary Speaker, Sir, commercializing it is not the problem. The problem is, are we under the guise of making amendments, centralizing back powers that have been devolved and making the provision of water more expensive? When I read through this proposed Bill, I tend to have a feeling that we are trying to even move it closer to the problems such as we have at the KPLC right now.

Mr. Speaker, Sir, I believe that on provision of basic needs such as water, we must ask ourselves whether we are amending for the interests of Kenyans or for the very few players in a commercial space.

I have heard Sen. Sifuna talking about the investments that national Government and even county governments have put on infrastructure for provision of water. It takes me back to a time when we have been able to see certain individuals using Government offices to give crazy proposals to seek loans for purposes of investment of infrastructure for whatever field.

In this particular point, this agency that we want to create will have the power and the mandate to go seek loans stating that they want to bring development in terms of infrastructure of water. However, how do we account and make sure that those loans do not trickle down to the *Mwananchi*? At the end of the day, you will be told that now the cost of water has gone up because of the loans that we took on infrastructure.

If we are talking about ensuring water provision is being effective down to the grassroots level, then let us talk about all these amendments from grassroots level and a devolved perspective. Such that if we are talking about having, PPPs, let us talk about PPPs on a devolved unit; so that we are not losing the Water Service Providers (WSPs) in terms of centralizing them back to our national Government and then having them negotiate with national Government on provision of water to their people.

The fundamental question here is - are we legislating for the interests of Kenyans or a few individuals who want to commercialize a specific industry for their own benefit?

When I read some of the Clauses in this in this Bill, I begin to wonder why this Bill originated from the National Assembly. Anytime we are proposing Bills here in the Senate that touch on issues to do with money; it is even the Senate Legal Department that will advise you that "*Mheshimiwa*, this Bill you are trying to legislate is a money Bill and should, therefore, originate from the National Assembly."

In that same spirit, I am wondering why there is a Bill touching on devolution and county assemblies originating from the National Assembly yet the Senate is mandated to oversight issues on County Assemblies and devolution. I question with due respect because we are all legislators.

This is something that as Senate, we should have been allowed to discuss at the Senate because it touches particularly on devolved functions and on county assemblies and county government. We can then agree that we need to make the space of water provision efficient for Kenyans. We would then sit down as legislators who are overseeing county governments and devolved units and talk about how to make water provision more effective for Kenyans.

When I stood I was not sure whether I was supporting or opposing. I stood to just speak my mind and then maybe I would know at the end of it. However, the more I speak and put my points there, I know that this is a Bill that has been fronted by the Majority Leader. However, I respectfully oppose.

Thank you.

(Applause)

The Temporary Speaker (Sen. Wakili Sigei): Hon. Senators, I have a communication to make with regards to a visiting institution.

(Interruption of debate on Bill)

COMMUNICATION FROM THE CHAIRVISITING DELEGATION FROM LESIRWO
SECONDARY, KERICHO COUNTY

In the Public Gallery, we have 48 students accompanied by six teachers from the Lesirwo Secondary School in Kericho County who are undertaking an educational visit in the Senate.

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

I thank you and request the Majority Whip on behalf of the Senator of Kericho to under a minute welcome the delegation.

Sen. (Dr.) Khalwale: Thank you, Mr. Temporary Speaker, Sir. On behalf the Leader of the Majority who is also the Senator of Kericho, I welcome the young people to the Senate. I know you are going to miss him, you would have loved to see him debate. He is a very good debator here.

On his behalf, I assure you that you come from a unique community; a sporting community. As young children, I am sure many of you would have wanted to run like the late Kelvin Kiptum.

The entire Senate is also mourning with you, young people from that area. We wish you well and hope one of you will fit the large shoes of Kiptum the late because you seem to have the DNA of running. It is not that I envy you. I also come from a community with the Deoxyribonucleic Acid (DNA) of playing soccer.

Mr. Temporary Speaker, Sir, my pleasure and I wish the young people well and a good stay in the Senate.

Thank you very much.

The Temporary Speaker (Sen. Wakili Sigei): Thank you very much Senate Majority Whip.

(Resumption of debate on Bill)

Sen. Osotsi: Mr. Temporary Speaker, Sir, thank you for that opportunity. From the onset, I declare that I am going to oppose this Bill. I have had an opportunity as the Chair of the County Public Investments and Special Funds Committee (CPISFC) to have audit review sessions with over 80 WSPs in this country.

My Committee has done a wonderful job trying to deal with the challenges that we have noted. They are not just management challenges, but also others which if addressed, we will be able to sort out the problem we have had with the water provision in our counties.

In these review meetings, we have noted that WASBs in our counties were seen to be autonomous from the county government because Ministry of Water was dealing directly with the water service providers and overlooking the county governments. However, we have been able to take away ownership of these water companies from the

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boards of those water companies to the county governments. This has had a great effect on the issue of the provision of water.

One example is in a county where water service provision was being managed was in your county, Mr. Temporary Speaker, Sir. The other one was Murang'a County where cartels were running water companies without the involvement of county government. We have been able to take it back to the county government and made a raft of recommendations on how these water companies should run.

When I read this Bill, all those efforts that we have made as a Committee are going to waste because this Bill tries to do the contrary. Out of the challenges that we noted when we were looking at the audit reports, we decided as a Committee to do an inquiry on water investments in our counties.

We invited the regional water works companies, including WASREB, WASPA which is an association of water service providers, the Ministry the National Treasury and the Attorney General and this Friday we are going to have an engagement as a Committee with the Council of Governors (CoG) Committee on water where seven governors are going to attend.

In this meeting, we are going to discuss what are the possible solutions of dealing with these challenges in the water sector. However, I am surprised that this Bill is being rushed in this House whereas a Committee of this House is seeking solutions to bring to this House for debate. This Bill is running contrary to what we are doing.

I will give you an example. We have regional water companies. We have the Rift valley Water Works, Central Rift Water Works, North Rift Water Works, Northern Kenya Water Works, Lake Victoria North and Lake Victoria South Water Works, Coast Water, Tana Athi, and Athi Water. I want to say in this House following our engagement with these waterworks companies.

These regional water works companies are a waste to this country. What they do is to sit there to get proposals to get funding from donors. Once the money comes, they build water projects without the engagement of counties and then, they purport to hand over those water projects to counties through a mere letter.

In those agreements, governors are not involved in negotiating those agreements. It is only the National Treasury. The Ministry of Water is involved, but the counties are not involved. Then they come and build water works then they leave them there idle or they hand them over to themselves.

We have found out that the loans which are in billions of money that those water companies took have never been repaid. However, what this Bill is doing is simply giving those companies more power. More powers in bulk water supply and even in doing what county water service providers are supposed to be doing.

As Sen. Sifuna said, we are going to see a situation where water service providers in the counties will die; people are going to lose employment. Now, effectively, it will mean that the regional water companies which belong to the National Government will be doing 100 per cent work of providing water in our counties.

(Applause)

Are we going to sit here as a Senate to approve this fraud? Of course not! Article 96 of the Constitution empowers us to protect counties. I want to implore my colleagues. If we pass this Bill here today, we will be saying that this country does not need the Senate. We better go home.

(Applause)

If we can allow ourselves to pass this Bill that is the verdict the people of Kenya are going to say about us. The issue of bulk water supply cannot be a national government function only. Allow the counties to develop capacities to do bulk water supply. However, this Bill simply limits that to the National Government by giving that to the regional waterworks authorities and storage water authorities.

When you talk about privatization, we all support it. However, we must know that PPP are not cheap. They are very expensive. What we are going to see is a scenario where the cost of water is going to shoot up. It is going to go up. The moment we pass this Bill, that is what is going to happen.

This House exists to protect devolution. However, the biggest enemy of devolution in this country and I want to say it today is the bureaucracy in the Government. They are the ones who scheme to bring such Bills to this House. If we are not careful and pass them, we will be passing corruption.

The billions of money that Kenyan people have been forced to borrow on those water projects that have not been paid, this Bill is going to sanitize that. I would request my colleagues if you allow that this Bill be stood down.

(Applause)

Allow the Committee that was doing this work to bring a report to this House. Read it through, see the challenges and look at the solutions, then we can discuss this Bill. I am sure that you are going to appreciate that this Bill is the worst that I have ever seen since I started working as a Member of Parliament (MP).

(Applause)

It will not just take water provision to the national Government, but it will create worse problems in the water sector. When you say that the regulation of water has been done by these WASREB and we have had problems with it. This is because it is regulating water, but it is a national body which is financed by water service providers which are in counties.

They do not receive any budget from the Exchequer. They do not receive any Exchequer from the national Government, but they are financed by the water service providers which are based in the counties. Now you are saying that these people are now the ones who will license who provides bulk water, including private companies. At the same time, they are being financed by county governments.

We have relook at these things in totality and make the right decision. I believe it is the total rejection of this Bill.

(Applause)

We are not talking politics here my colleagues from the other side. It is not politics. On this one, every Senator here regardless of which political party brought you to this House, has a role to protect devolution. Secondly, we do not want to be part of the mess that the Senate passed this Bill which has created more mess in the water sector than resolving the problems. Allow us to go and handle the engagement with the CoG and do a report which we will bring to this House. Hon. Members can go through it. It will be the best guide to deal with this challenge that we have before us because of having an engagement with over 80 water service providers and also the various entities in the water sector, so that we give the way forward.

The Temporary Speaker (Sen. Wakili Sigei): Thank you so much, Sen. Osotsi.

I call upon Sen. Abbas.

Sen. Abbas: Thank you, Mr. Temporary Speaker, Sir, for giving me the opportunity.

It is a very unfortunate situation today. Yesterday, while I was talking here, I said that devolution is under attack. One of the team that wants to capture this House is the leadership in the National Assembly. It is a very unfortunate situation that the National Assembly has now become a hindrance to the welfare of Kenyans. Bills are being rushed and it is detrimental to the welfare of Kenyans.

Water is a very essential commodity. It is a natural gift from God. We do not object to commercializing it. Unfortunately, how it is done, is not acceptable.

Water is a devolved function. We have over 20 water agencies in this country. We do not even know what they do yet they use a lot of taxpayers' money. As rightly said by my colleague, Sen. Osotsi, they get loans, the money is misused, and nobody pays it. It is the taxpayers' money that is being held in custody. I do not know when we are going to pay that money.

The only thing remaining to tax or commercialize is the air we breathe because everything is being commercialized. It is not bad, but you must choose what you want to commercialize in this country. I pray that the air we breathe will not be commercialized. Otherwise, it is a very unfortunate situation.

Mr. Temporary Speaker, Sir, water is life and an essential service. You cannot commercialize water yet Kenyans are surviving on for irrigation. The food that we take, the sugar that we harvest, is being produced through irrigation by water from the rivers.

If you commercialize this water, then cost of food production will increase. The cost of food will increase and accessibility of water also becomes very costly. I do not know where this country will end up.

There will be many restrictions. For example, KPLC has dams around Embu and other places. Sometimes, those communities lack water yet the water is in the dam. So, if you commercialize every single cubic meter of water, then it will be very unfortunate.

Mr. Temporary Speaker, Sir, this Bill is in bad taste and it should be rejected in totality. I come from a pastoralist area. If tomorrow they say that water will be commercialized, my animals will not access the river because we cannot afford to pay and animals will die.

The river and the dams will be restricted. So, we are going to miss water for animals. We are complaining of drought and all these things. If tomorrow the water is commercialized, the most disadvantaged people will be my community who keep animals in large numbers. About 20 per cent of them thrive on those animals.

We have been told that we are going to build low-cost housing. It is a very good idea so that Kenyans can access affordable houses. However, what is happening today is that houses are being demolished and the houses that have been constructed will not be for the poor or the owner of the house that was demolished. So, this is a very unfortunate situation.

There is a high affinity for commercialization. We have no problem if it will bring development. However, we should digest every action that the Government takes. I urge our colleagues in the National Assembly to stop being renegades in this country because they want to handle everything.

Yesterday I said that devolution is under attack. This is one of the things that are going to finish devolution. Honestly, you are giving it to people who have never invested in any of the areas.

The rivers are flowing and dams are being constructed in Wajir, Murang'a, Nyeri and other counties, then somebody comes with a bag of money and takes control of the water. He benefits through making a business out of it. This is what is happening in the low cost housing project.

Government land is taken without being valued nor costed. It is taken freely, then somebody builds a house and sells it to you again. What are we doing here? The other day I was watching on the television what is happening in Gaza. People there cannot even access rivers. If you give to a commercial person the rivers and the dams we are talking about, then we shall never access water again.

Do you see what is happening in Nairobi City County? We are thriving on water boozers. This City does not even have water. Water that is there and freely available is commercialized. Everybody has bought a water boozer and taps are closed. We are buying water at very high costs.

With those few remarks, Mr. Temporary Speaker, Sir, I beg to oppose this Bill.

The Temporary Speaker (Sen. Wakili Sigei): Thank you, Sen. Abass. Sen. Mumma, proceed.

Sen. Mumma: Thank you, Mr. Temporary Speaker, Sir, for this opportunity to speak to this Bill. We all know that water is a devolved function. Currently, we have a number of water companies that have been providing services. We need to be transitioning to a level where water services are fully devolved.

In my view, this Bill as provided is in bad taste. When this Government came in, one of the things they promised was to support devolution fully. I want to say to our team on the majority side that this Bill does not support devolution. In fact, it reverses it.

I am the Vice-Chairperson of the Standing Committee on Devolution and Intergovernmental Relations. One of the things we have been trying to do is to get a meeting with the national Government Department in charge of devolution to churn a way out where we can establish better intergovernmental relations between the national and county governments.

That meeting is long overdue. I can see my Chairperson, Sen. Abass, here. It is important to have some level of sensitization by the Senate around the issue of devolution. Otherwise, we shall keep passing laws that will be stopped by courts, which shall be under attack for stopping implementation of laws, yet they will have done their job to protect devolution.

This is one such law that requires that we have a proper conversation. It purports to bring in matters PPP, but this country already has a law on the same; a law that needs to be amended because it has---

(Sen. Mumma's microphone was switched off)

ADJOURNMENT

The Temporary Speaker (Sen. Wakili Sigei): Hon. Senators, we may rise. It is now 1.00 p.m., time to adjourn the Senate. The Senate, therefore, stands adjourned until today, Wednesday, 14th February, 2024 at 2.30 p.m.

The Senate rose at 1.00 p.m.