

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 30th November, 2023

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

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

PRAYER

DETERMINATION OF QUORUM AT COMMENCEMENT OF SITTING

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

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

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

(The Quorum Bell was rung)

(Several Senators walked into the Chamber)

The Speaker (Hon. Kingi): Serjeant-at-Arms I am informed we now have quorum. Kindly stop the bell.

Order, hon. Senators, let us take our seats and transact our business. Clerk, you may proceed to call the first order.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM UNITED STATES OF AMERICA

(Sen. Cheptumo walked into the Chamber)

The Speaker (Hon. Kingi): Sen. Cheptumo, you are holding us. Hon. Senators, I would like to acknowledge the presence in the Speaker's Gallery this afternoon, a visiting delegation from the United States of America (USA) with interest in the economic and

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political sector. The delegation is in the Senate on a courtesy call to the Senator for Nairobi City County, Sen. Sifuna.

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

(Applause)

I call upon Sen. Crystal Asige, in under one minute, to extend words of welcome to the delegation.

Sen. Crystal Asige: Thank you, Mr. Speaker, Sir, for the opportunity to greet the delegation and welcome them to the Senate this afternoon. This, of course, is the “Upper House” of Parliament. We are 47 elected and 20 nominated Senators that sit here every week. I hope their stay and visit is successful. We hope to meet even on the corridor downstairs throughout the afternoon or after the sitting. Enjoy your time.

I appreciate.

The Speaker (Hon. Kingi): Next Order.

MESSAGE FROM THE NATIONAL ASSEMBLY

CONSIDERATION BY THE NATIONAL ASSEMBLY OF THE COUNTY GOVERNMENTS ADDITIONAL ALLOCATIONS BILL

The Speaker (Hon. Kingi): I wish to report to the Senate, that pursuant to Standing Order No.46(3) and (4), I have received the following Message from the Speaker of the National Assembly regarding the decision, by the National Assembly, on the Senate amendments to the County Governments Additional Allocations Bill (National Assembly Bill No.23 of 2023).

The Message, dated Tuesday, 28th November, 2023 was received in the Office of the Clerk of the Senate today, 30th November, 2023.

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

“WHEREAS the National Assembly passed the Bill with amendments on Tuesday, June, 27, 2023 and referred it to the Senate for consideration;

AND WHEREAS on Tuesday, October 12, 2023, the Senate considered the County Governments Additional Allocations Bill (National Assembly Bill No. 23 of 2023) and passed it with amendments;

FURTHER WHEREAS, on Thursday, November 23, 2023, the National Assembly rejected the Senate amendments to the County Governments Additional Allocations Bill (National Assembly Bill No.23 of 2023), thereby committing the Bill to a Mediation Committee pursuant to Article 112(2)(b) of the Constitution;

NOW THEREFORE, in accordance with the provisions of Article 112 of the Constitution and Standing Order 149 of the National Assembly Standing Orders, I hereby

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convey the said decision of the National Assembly to the Senate and seek the appointment of Senators to the Mediation Committee on the Bill.”

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

1. Hon. Ndindi Nyoro, MP - Co-Chairperson
2. Hon. G. K. Kariuki, MP
3. Hon. Mary Emaase, MP
4. Hon. Kipchumba Toroitich, MP
5. Hon. Anthony Oluoch, MP
6. Hon. Joshua Kimilu, MP
7. Hon. Catherine Omanyo, MP

Hon. Senators, pursuant to the provisions of Standing Order No.166(2) of the Senate Standing Orders, I am in the process of appointing Senators to the Mediation Committee.

Thank you.

Next Order.

QUESTIONS AND STATEMENTS

STATEMENTS

The Speaker (Hon. Kingi): Hon. Senators we start with Statements pursuant to Standing Order No.52(1).

Sen. Lomenen, proceed.

DISCONTINUATION OF CURFEW IN AROO SUB-COUNTY, TURKANA COUNTY

Sen. Lomenen: Thank you, Mr. Speaker, Sir. I rise, pursuant to Standing Order No.52(1) to make a Statement of general topical concern. It concerns the urgent need to discontinue the curfew in major towns and centres in Aroo Sub-county, Turkana County.

I address this Statement with a matter of urgency and importance that directly affects the livelihoods, security and well-being of our constituents in Aroo Sub-county, Turkana County.

Specifically, I request the Senate and the Cabinet Secretary for Interior and National Administration to re-evaluate and discontinue the curfew imposed on major towns and centres such as Lokichar, Nakabosan, Kekunyuk, Kalemngorok, Kaputir, Kakong’u and Kainuk along the highway.

There are several compelling reasons to consider discontinuing the curfew in these insecurity prone areas in the North Rift region, as it appears to be falling short of its intended objectives and may, in fact, be causing more harm than good. The curfew has been ineffective in achieving its key objectives. The primary purpose of a curfew---

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(Sen. Nyamu stood up in her place)

The Speaker (Hon. Kingi): Sen. Nyamu, kindly take your seat.

Sen. Lomenen: Mr. Speaker, Sir, the primary purpose of a curfew in insecurity prone areas is typically to enhance security and protect citizens from potential threats during certain hours. If it is observed that the curfew is not effectively achieving these goals, its continuation may be questionable, since security officers seem to be selectively allowing some vehicles and persons to move during exceptional times of the curfew. Moreover, crime rates during curfew hours have escalated in towns such as Lokichar, Kalemngorok and Kainuk compared to non-curfew hours.

Curfews have hindered economic activities in towns and major centres where people rely on evening or night-time work. This disruption has impacted livelihoods and income thresholds, exacerbating the economic challenges faced by Kenyans. The flow of goods has been disrupted, affecting businesses since transportation trucks and passengers have to disrupt journeys in curfew-activated towns and centres.

Curfews have disrupted normal social activities and routines, affecting community life in Aroo Sub-county. Despite these disruptions, it has become evident that curfews are ineffective in eradicating insecurities, banditry and cattle rustling. If the curfew is preventing social gatherings or communal activities without a corresponding increase in security, lifting it may help restore a sense of normalcy.

Mr. Speaker, Sir, prolonged or ineffective curfews can lead to frustration among the populace, potentially resulting in civil unrest. If there is a perception that the curfew is not contributing to enhanced security, lifting it may serve to prevent tension from escalating. The community of Aroo Sub-county lacks trust that the curfew is effectively addressing insecurities, especially since the plan to evict bandits has not been well executed by the security officers mandated to do so.

Rather than relying solely on curfews, it is crucial to explore and invest in community policing initiatives and alternative security measures. Building trust between law enforcement and the community, and encouraging community involvement in security matters can be more sustainable approaches to address insecurities.

Criminal elements may adapt to curfews by changing their activities to times outside the restricted hours. If it is evident that criminals are adjusting their behaviour without a reduction in criminal incidents, this questions the efficacy of the curfew as a security measure.

In light of these concerns, I implore the Senate and the Ministry of Interior and National Administration to review the imposition of curfews in Aroo Sub-county; and consider alternative strategies that will genuinely contribute to the safety and security of our constituents.

Mr. Speaker, Sir, in conclusion, the safety and wellbeing of our constituents are paramount. It is our duty, as representatives, to ensure that Government measures are effective and serve the best interests of the community. I request all Senators to consider

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this matter seriously and collaborate to find solutions that will enhance security without unduly impacting the lives and livelihoods of our people.

Thank you, Mr. Speaker, Sir.

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

IRREGULARITIES IN 2023 KCPE RESULTS

The Senate Minority Leader (Sen. Madzayo): I thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.52(1), to make a Statement on a matter of national and general topical concern; namely, irregularities in the results of the Kenya Certificate of Primary Education (KCPE) 2023.

On 23rd November, 2023, the Cabinet Secretary for Education, Hon. Ezekiel Machogu, CBS, released the 2023 KCPE results. However, parents and schools are in uproar as discrepancies emerge in the said results.

The Kenya National Examination Council (KNEC) erroneously awarded some candidates wrong marks and assigned grades for subjects' candidates---

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

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

Sen. Kinyua: Mr. Speaker, Sir, I wanted your guidance because the same Statement was sought yesterday by Sen. Crystal Asige. I just want your clarification.

The Speaker (Hon. Kingi): Sen. Kinyua, exercise some bit of patience so that at the end of this Statement, you will know what aspects Sen. Madzayo is touching on that may be materially different from the aspects of the Statement given yesterday. Same subject matter, but touches on different aspects.

Proceed, Sen. Madzayo.

The Senate Minority Leader (Sen. Madzayo): Thank you, Mr. Speaker, Sir. The KNEC erroneously awarded some candidates wrong marks and assigned grades and subjects candidates did not sit at all for. Noticeable errors that emerged from various students were the awarding of marks for the Kenyan Sign Language (KSL) subject yet students had not sat for the said subject; and grades in Science and Social Studies and Religious Education were truncated incorrectly and were missing the plus (+) and minus (-) signs.

Mr. Speaker, Sir, the Form One placement exercise began on 27th November, 2023. It is set to be completed within two weeks in order to give parents and guardians adequate time to prepare their children to join Secondary Schools in 2024. However, the Ministry of Education has not stated the measures put in place to ensure that all students aggrieved with the results irregularities, are not disadvantaged in the selection process.

An example is drawn from the Moi Primary School Kabarak, which is among the schools that addressed their displeasure to the Kenya National Examination Council (KNEC), requesting a review of the results, as the same did not reflect the ability of their candidates. It is imperative that we take note of these complaints and their potential impact on our education system.

Marking of the Kenya Certificate of Secondary Education (KCSE) exams is yet to start. Such occurrences tend to shake the confidence that parents and schools have in the country's examination system.

Mr. Speaker, Sir, Section 10(1)(a) of the Kenya National Examination Council Act gives the Council the mandate to set and maintain examination standards, and conduct public academic, technical and other national examinations within Kenya at basic and tertiary levels.

The irregularities have portrayed a picture of the Council's failure to execute its function to deliver credible results to students who have toiled for eight good years.

Mr. Speaker, Sir, we note that this was the last cohort of the 8-4-4 System sitting for the Kenya Certificate of Primary Education (KCPE) exams and we hope that such occurrences of irregularities will not be embraced in the Competency Based Curriculum (CBC).

This year's KCPE results will go down in history as one of the worst hit by irregularities since the inception of the 8-4-4 system in 1985.

I thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Sen. Madzayo, you have another Statement to make under Standing Order No.52(1).

UNCONSTITUTIONAL INTRODUCTION OF HOUSING LEVY

The Senate Minority Leader (Sen. Madzayo): Mr. Speaker, Sir, I rise, pursuant to Standing Order No.52(1) to make a Statement on a matter of general topical concern, namely, the unconstitutional introduction of the Housing Levy through amendment of Section 84 of the Finance Act whose effect introduces amendment to the Employment Act.

Mr. Speaker, Sir, I take cognizance of the ruling delivered by the High Court on the 28th November, 2023 that declared the Housing Levy unconstitutional.

As per the ruling by Justices Meoli, Majanja, and Mugambi, for any tax legislation to pass the rule of law test, it must have a rational connection to a legitimate Government purpose, otherwise, the tax legislation will be arbitrary and unconstitutional.

To this end, I wish to point out to this House that the projected collections from the Housing Levy is as follows-

- (1). Financial Year 2023/24 KES 63.2 billion;
- (2). Financial Year 2024/25-KES 70.0 billion;
- (3). Financial Year 2025/26 KES 78.0 billion;
- (4). Financial Year 2024/25-KES 70.0 billion; and,
- (5). Financial Year 2025/26-KES 78.0 billion.

Mr. Speaker, Sir, I am acutely aware that the Housing Levy, as provided for in the Finance Act, 2023, violates the principles of taxation and is discriminatory and unfair by making a distinction between formal and informal income earners, thus creating unequal and inequitable principles of taxation.

Mr. Speaker, Sir, I would, therefore, like call to upon this honorable House, through the Standing Committee on Roads, Transportation and Housing and the Standing Committee of Finance and Budget, to liaise with the counterpart committees at the National Assembly, to pursue the matter to stop any further deductions from Kenyans, and come up with a clear plan on how the Kenya Revenue Authority (KRA) will refund the money collected from August, 2023 to November, 2023 to the citizens of this Republic.

Finally, in light of the ruling of the High Court, I call upon this honorable House, through the Standing Committee on Finance and Budget and the Standing Committee on Justice, Legal Affairs and Human Rights, to liaise with the counterparts at the National Assembly to re-evaluate and review the Finance Act, 2023 to align it with the Constitution of Kenya, 2010.

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

The Speaker (Hon. Kingi): Statements pursuant to Standing Order No.53(1). Proceed, Sen. Mbugua.

ILLEGAL DEALINGS AT THE MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT

Sen. Mbugua: I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Lands, Environment and Natural Resources regarding the illegal dealings at the Ministry of Lands, Public Works, Housing and Urban Development.

In the Statement, the Committee should-

(1) Provide a report outlining the extent of irregular acquisition of all land grabbing of Government and private land in the country and provide a list of documented cases, including the parcel numbers and the respective beneficiaries.

(2) State the safeguards in place by the Government to prevent fraudulent transaction relating to public and private land.

(3) Provide a status update on the digitization of land records and transactions to enhance transparency and reduce the potential for illegal dealings.

(4) To indicate the actions by the Government against public officers involved in the illegal land transactions and fraudulent acquisition and sale of both private and public land.

Thank you, Mr. Speaker, Sir.

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

Is anyone holding brief for Sen. Osotsi? Statement is deferred.

IMPLEMENTATION OF AUTOMATED REVENUE COLLECTION AND MANAGEMENT SYSTEMS

(Statement deferred)

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Proceed, Sen. Nyamu.

UPSURGE OF POPULAR “ALUTA” TREND IN NAIROBI CITY

Sen. Nyamu: Thank you, Mr. Speaker, Sir. I rise, pursuant to Standing Order No.53(1), to seek a Statement from the Standing Committee on National Security, Defence and Foreign Relations on the upsurge of a popular trend known as “Aluta” in Nairobi City and its environs, involving the sale of alcohol and other substances beyond the recommended hours.

In the Statement, the Committee should-

(1) Outline plans, if any, by the Government to address the concerning rise in uncontrolled alcohol consumption, clubbing and partying among the youth, particularly in Nairobi and other urban areas.

(2) Provide comprehensive statistics on licensed nightclubs, bars, wines and spirits establishments in Nairobi City County, indicating whether they pose any risks to nearby communities.

(3) State measures put in place by the Government to ensure strict adherence to the legally prescribed hours for the sale of alcoholic drinks, as outlined in the Fourth Schedule of the Alcoholic Drinks and Control Act of 2010.

(4) Spell out plans by the Government, if any, to ban and control the escalating “Aluta” activities, that pose a significant threat to the lives of young individuals at risk of substance abuse, including alcohol.

(5) Outline the Government's initiatives to address the growing number of wines and spirits outlets within residential estates in Nairobi City County, clarifying whether there are any legislative gaps that may be addressed to regulate and better manage the abuse of alcohol and other substances.

I thank you, Mr. Speaker, Sir.

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

The Speaker (Hon. Kingi): Sen. (Dr.) Khalwale, you can only rise on a point of order when another Senator is on their feet. By the time you stood on a point of order, Sen. Nyamu had completed making her request for that Statement.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, please indulge me under Standing Order No.1. The debate in this House is not just for our consumption, it is meant for the public. Majority of the Members here are good speakers of the English language. Sen. Nyamu spoke of something called *Aluta*. I do not know what that means in the English language.

Mr. Speaker, Sir, pursuant to Standing Order No.105, I request that you allow Sen. Nyamu to tell us what *Aluta* means. We want to follow her. We need to know what she meant.

The Speaker (Hon. Kingi): Sen. Nyamu, kindly explain what *Aluta* is.

Sen. Nyamu: Mr. Speaker, Sir, the trend I am talking about involves the consumption of alcohol, partying and clubbing on a continuous mode. For instance, you could choose to party from Friday evening and remain in the club until Monday morning.

The youth, in the age bracket of 19 to 40 years are exposed to a partying mood on autopilot mode, nonstop.

(Applause)

In most cases, those youths do not go home to even take a shower. There are existing laws that regulate the time that alcohol should be sold, pursuant to the Alcoholic Drinks Control Act, 2010.

Mr. Speaker, Sir, in most developed world, where we copy many things because they are ahead of us in many ways, clubs are closed at 2.00 a.m. No partying goes on in the United States of America, for example, past 2.00 a.m. In Kenya, the youth who are supposed to be participating in economic activities, the people who the future of our country relies on, are busy partying, thinking of nothing beyond tomorrow than having a good time the next weekend.

Mr. Speaker, Sir, if this trend continues, we are going to lose a whole generation. Allow me to give a personal experience. While at the University of Nairobi, I met a good friend who went to Alliance Girls High School.

(Loud Consultations)

The Speaker (Hon. Kingi): Order, Members!

Sen. Nyamu: Mr. Speaker, Sir, my friend was beautiful and bright. We schooled together at the University of Nairobi, Law School. We were exposed to an environment where our parents were not in campus. We had to make our choices on whether to drink and party non-stop. We lost my friend some years back because of the exposure. I had a doting father who kept checking my every step.

The Speaker (Hon. Kingi): Sen. Nyamu, have your seat.

Sen. Nyamu: Mr. Speaker, Sir, I am just trying to demonstrate the effects of---

The Speaker (Hon. Kingi): Sen. Nyamu, please take your seat.

(Loud Consultations)

Order Senators!

Sen. Nyamu, if I got to you correctly, *Aluta* means nonstop partying. Can that sum up the long Statement that you are giving us? Is *Aluta* a concept?

Sen. Nyamu: Mr. Speaker, Sir, if you put it that way, someone might assume that this person is partying during normal partying hours. For instance, one might assume that the person is partying from evening to 6 a.m., and then they go home and party again the next day.

(Sen. Kinyua consulted loudly)

The Speaker (Hon. Kingi): Order! Sen. Kinyua, do you partake of these parties?

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(Laughter)

Sen. Nyamu: Mr. Speaker, Sir, there are about seven notorious night clubs in Nairobi. I will take you round, if you want, on Sunday morning.

(Laughter)

The Speaker (Hon. Kingi): Order! Hon. Senators! Can the Senator be heard in silence?

Sen. Nyamu, you can only take me around churches in Nairobi. Please conclude.

Sen. Nyamu: Mr. Speaker, Sir, as other people are going to church on Sunday morning, you will see another different type of church. At some point when they are very drunk, they will break into gospel songs, and the Disc Jockey (DJ) will lead them into a mock service in the club. When you see the videos of these parties, you will be very sad because of the age group involved. I would not be very concerned if it was Sen. Madzayo involved in that kind of partying. The age group that parties in such a manner is very worrying.

(Loud consultations)

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

Sen. Nyamu: These children do not have a source of income; most of them live with their parents. We should do case studies to find out where the money used for non-stop partying comes from. We could find out that the partying is funded by the popular *wababas*, taking advantage of our girls.

Mr. Speaker, Sir, this trend---

The Speaker (Hon. Kingi): Sen. Nyamu, we have understood what you meant. Let us leave it at that.

Sen. Nyamu: Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Sen. Lemaletian, please proceed to make your Statement.

WASTE MANAGEMENT IN SAMBURU COUNTY

Sen. Lemaletian: Mr. Speaker, Sir, I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Land, Environment and Natural Resources regarding the state of waste management in Samburu County.

In the Statement, the Committee should-

(1) Provide an overview of the waste management infrastructure and systems currently in place within Samburu County, particularly in Maralal town, highlighting any recent improvements.

(2) Provide details on the budgetary allocation for garbage collection and sewerage services for the County for the Financial Year 2023/2024, and table the itemized list of all payments made so far to each garbage collector and sewerage service provider.

(3) Elaborate on any short and long term initiatives or collaborations within the relevant stakeholders aimed at promoting waste reduction, recycling and community engagement to enhance overall cleanliness and sanitation within the county.

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

UNSAFE MEASURES AND PROTOCOLS IN RESPONSE TO FLOODS DISASTER IN MOMBASA COUNTY

Sen. Miraj: Thank you, Mr. Speaker. Sir. I rise pursuant to Standing Order No.53(1), to seek a Statement from the Standing Committee on National Security, Defence and Foreign Relations regarding the unsafe measures and protocols by employees of the County Government of Mombasa, responding to floods disaster in the County.

In the Statement, the Committee should-

(1) State the number of persons engaged by the County Government of Mombasa to unclog storm water drainage systems in the County to mitigate against floods. Further stating whether the said individuals are employees or volunteers of the County Government, giving their terms of employment.

(2) Provide the number of persons involved in the unclogging of water storm drainages in Mombasa County who lost their lives and the ones injured during the exercise.

(3) State whether the individuals involved in the rescue of flood victims had prior training and skills, safety equipment and tools and confirm if there were lapses in adhering to safety standards leading to loss of lives.

(4) Outline the emergency interventions put in place to promote the welfare and safety of county employees involved in disaster responses, including medical care for the injured and compensation plans for families of disaster response personnel who die in the line of duty.

CONSTRUCTION OF RURAL ACCESS FEEDER ROADS IN NORTH RIFT COUNTIES

Sen. Lomenen: Thank you, Mr. Speaker Sir. I rise pursuant to Standing Order No. 53(1), to seek a Statement from the Standing Committee on Roads, Transportation and Housing regarding the need for construction of feeder roads in the bandit-prone North Rift counties of Turkana, Samburu, Baringo and West Pokot with a view to open up the area and boost security operations.

In the Statement, the Committee should-

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(1) State the plans the Government has, if any, to construct and grade the following rural access feeder roads in the regions, specifically-

- (a) Marigat-Kapedo-Lomelo-Napeitom-Lokori-Lokwamsing-Nakukulas–Lokichar Road;
- (b) Lomelo Nadome-Ngilukia-Kamuge-Lokori Road; and,
- (c) Lokori-Kidewa-Parakati-Baragoi Road, all in Suguta Sub-County, Turkana East Constituency;
- (a) Kakongu-Lokwamosing Road;
- (b) Loyapat-Lokwar Road;
- (c) Lokwar-Kakongu Road;
- (d) Lorogon-Nakwamoru-Kapelibok-Juluk-Locherelim-Kotaruk Road;
- (e) Juluk-Kalomwae-Nariwomoru Road;
- (f) Kainuk-Lotongot-Lochwaakula Road;
- (g) Kaakongu-Narimao-Locheresekon-Namambu Road; and,
- (h) Nakabson-Lokwakipi-Nakaparparat, all in Aroo Sub-County, Turkana South Constituency; and finally,
- (a) Lochereelim- Lopuke Road;
- (b) Naipa-Morungor Road;
- (c) Naipa - Ulukuse - Napak akali; and,
- (d) Lobei - Kangole – Lorengkipi, all in Lokiriama Sub-County, Loima Constituency; and,

(2) Provide the timelines within which the Government will conclude the works on these roads, to facilitate access to Government services and aid in curbing lawlessness in the said areas.

Thank you, Mr. Speaker, Sir.

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

BRUTAL ATTACK ON TOURISTS AT PINWOOD
BEACH RESORT AND SPA, DIANI, KWALE COUNTY

Sen. Chimera: Mr. Speaker, Sir, I rise, pursuant to Standing Order No.53(1), to seek a Statement from the Standing Committee on National Security, Defence and Foreign Relations regarding the recent violent attack on tourists at the Pinewood Beach Resort and Spa in Diani, Kwale County.

In the Statement, the Committee should-

(a) Provide a comprehensive overview of the security incident at the Pinewood Beach Resort and Spa, including the number of individuals involved, the extent of injuries sustained by guests and staff and the health status of those affected.

(b) Outline actions taken by the relevant authorities to address and resolve the security breach at the Resort, highlighting measures put in place by the Government to ensure the safety and security of tourists, guests and employees in Kenya's hospitality sector, particularly on popular tourist destinations like Diani.

(c) Clarify whether there are any existing security protocols and regulations governing the protection of hotels and resorts, and if so, assess their effectiveness in preventing such incidents.

(d) Investigate the coordination between law enforcement agencies and private security firms in their response to security threats at tourist establishments, providing an update on the progress of ongoing investigations into the identity and motives of the attackers and bringing them to book; and,

(e) Recommend strategies to enhance the overall security of Kenya's tourism sector, emphasizing the importance of promoting a secure and welcoming environment for both domestic and international visitors.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Sen. Osotsi, your Statement was called earlier and it was dropped because you were not in the Chamber. However, having explained your absence to the satisfaction of the Chair, you may now proceed to make the Statement.

Sen. Osotsi: Thank you, Mr. Speaker, Sir, for giving me an opportunity. I was still chairing the meeting of the County Public Investments and Special Funds Committee (CPIC).

IMPLEMENTATION OF AUTOMATED REVENUE COLLECTION AND MANAGEMENT SYSTEMS

Mr. Speaker, Sir, I rise, pursuant to Standing Order No.53 (1), to seek a Statement from the Standing Committee on Finance and Budget regarding the implementation of automated revenue collection and management systems in counties.

In the Statement, the Committee should-

(1) Provide a status update on the implementation of automated revenue collection and management systems in all 47 counties, disclosing details on the nature and cost of systems, the respective vendors and total revenue collected by the systems so far.

(2) Clarify whether the Commission on Revenue Allocation (CRA) was involved in the assessment of the suitability of the respective systems. If so, highlight the recommendations made by the Commission pursuant to Article 216 (2) of the Constitution;

(3) Undertake a comprehensive systems audit of all the systems, to include a detailed database level audit, a data storage infrastructure audit, a network security audit, a detailed application system audit and a systems administration mechanisms audit.

(4) Cause the Public Procurement Regulatory Authority (PPRA) to assess and report on the adherence of the tendering process, contractual and service level agreements to applicable laws and regulations.

(5) Cause the office of the Auditor-General to assess and report on the value for money, and indicate the impact of the systems on the Own Source Revenue (OSR) in the respective counties.

Thank you, Mr. Speaker, Sir.

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

RELAYING OF ERRONEOUS 2023
KCPE RESULTS BY KNEC

Sen. Tabitha Mutinda: Thank you, Mr. Speaker, Sir. I rise, pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Education regarding relaying of erroneous results for the 2023 Kenya Certificate of Primary Examination (KCPE) examinations by the Kenya National Examination Council (KNEC).

In the Statement, the Committee should-

(1) Disclose the nature of the agreement between KNEC and the Short Message Service (SMS) provider contracted to release the 2023 KCPE results, indicating the provider's level of access to KNEC servers that host the results and the security protocols in place.

(2) Table the 2023 KCPE results for Brainstar Academy, Kitengela International School and Moi Kabarak Primary School, clarifying whether an audit of the results was conducted to ascertain their accuracy.

(3) Report on the suitability of the SMS results relaying system in relaying results of future examinations, noting that the 2023 Kenya Certificate of Secondary Education Examinations (KCSE) results are yet to be released.

(4) State measures in place, if any, to address the anomalies arising from the SMS results relaying system in order to prevent recurrence of the same.

(Interruption of debate on Statements)

COMMUNICATIONS FROM THE CHAIR

NON-ADMISSIBILITY OF SEN. OSOTI'S
EVIDENCE ON BORDER DISPUTE

The Speaker (Hon. Kingi): Hon. Senators before we move to the Statements by Committee Chairpersons, allow me to make the following Communication-

Hon. Senators, as you may recall, at the sitting of the Senate held on Thursday, 5th October, 2023, the Temporary Speaker, Sen. Abdul Haji, MP, directed the Senator for Vihiga County, Sen. Godfrey Osotsi, MP, to substantiate utterances made in the course of debate.

The direction of the Speaker was made following a point of order by the Senator for Nandi County, Sen. Samson Cherarkey, MP, pursuant to Standing Order No.105 (1). In the point of order, Sen. Samson Cherarkey, MP, stated as follows -

“Under Standing Order Nos.105 and 110, is it in order for my brother, Sen. Osotsi, to incite the people of Aldai and Vihiga by alleging and stating as a matter of fact

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on the Floor of the House that there are border clashes in Serem and Vihiga? This has not been recorded in any police station.”

A reading of the HANSARD indicates that the statement that Sen. Godfrey Osotsi, MP, was called upon to substantiate states as follows -

“We have had issues even recently in my county, in the boundary between Vihiga and Aldai at a place near Serem. This was very recent, in the last month. The attackers came, provoked and attacked a village, killed animals, burnt them, injured people and burnt houses. That was not given the coverage that Sondu is being given now.”

Hon. Senators, Standing Order No. 105 (1) states that -

“A Senator shall be responsible for the accuracy of any facts that the Senator alleges to be true and may be required to substantiate any such facts instantly.”

Further, Standing Order No 105 (2) states that-

“If a Senator has sufficient reason to convince the Speaker that the Senator is unable to substantiate the allegations instantly, the Speaker shall require that such Senator substantiates the allegations not later than the next sitting day, failure to which the Senator shall be deemed to be disorderly within the meaning of Standing Order No. 121 (Disorderly conduct) unless the Senator withdraws the allegations and gives a suitable apology.”

At the sitting of the Senate held on 5th October, 2023, Sen. Godfrey Osotsi, MP, was not able to substantiate his statements as required under Standing Order No.105(1). Sen. Osotsi subsequently requested to be allowed by the Speaker, to provide the evidence at the next sitting day in accordance with Standing Order No.105 (2).

On Wednesday, 18th October, 2023, I consequently invited Sen. Godfrey Osotsi, MP, to table the evidence in support of his statement made on Thursday, 5th October, 2023. Thereupon, Sen. Osotsi tabled a Universal Serial Bus (USB) flash drive containing electronic material in support of his claim. I thereafter undertook to review the evidence and give a ruling on this matter.

Further, vide a letter dated 19th October, 2023, the Senator requested for the admission of a certified copy of a charge sheet dated 16th August, 2023, Police case No. 722/237/2023, OB No. 3/15/8/2023, as part of the evidence on the allegations made.

Following the tabling of the evidence by Sen. Godfrey Osotsi, MP, I undertook to review the documents and give a ruling on the matter as it was not practical to decide then.

Hon. Senators, as you may recall, in my Communication to the Senate made on Thursday, 16th November, 2023, I indicated to the House that any document/evidence tabled by a Senator in this House as evidence for substantiation of any allegations made under Standing Order No.105, must pass a certain threshold. I thereafter highlighted the parameters for undertaking an assessment of the evidence tabled including-

(i) Is the evidence tabled from a source, which by Parliamentary practice is official and admissible?

(ii) If the answer to (a) is in the affirmative, does the evidence relate to and verify the claim that was made and for which substantiation was required?

Hon. Senators, that being the case, the first parameter to which is subjected the documents or material tabled was whether the evidence tabled was from a source which by Parliamentary practice is official and admissible. A review of the USB flash drive indicates that it contained a folder titled “Border Clashes in Kaptikany, Koitabut”. The folder had the following -

(i) An undated 38 seconds *TV 47 Kenya* video clip showing images of dilapidated buildings and cut banana trees named “in a disturbing incident on August 15th, ‘year not indicated’ a group of over 100 youths attacked Koitabut village, Nandi County, leaving destruction in their wake.”

(ii) An undated two-minute 25 seconds *Citizen TV* news video clip named “*Maafisa na wakazi wa Kapkitany wafanya kikao na viongozi kufuatia visa vya uvamizi kaunti ya Nandi*”.

The video clip indicates that residents of Kaptikany Village in Aldai Constituency and security personnel in the area held a meeting following an attack on an individual in the area and that three houses were burnt and property destroyed.

The news clip also indicates that the attack was an alleged retaliatory one, following the death of a gentleman in the area and destruction of his motorbike. The clip further indicates that three suspects have been arrested in connection with the retaliatory attack.

(iii) An undated video clip named “VID-20231018-WA0000” showing a burnt structure and livestock;

(iv) An image named “WhatsApp Image 2023-10-18 at 13.08.15” showing burnt livestock.

As you are all aware, established practice in the Parliament of Kenya and in comparative jurisdictions is that extracts from newspapers and other media may not be tabled as evidence for substantiation of claims. This is buttressed at Standing Order No. 55 (1) which provides as follows-

“the facts on which a request for Statement is based may be set briefly, but extracts from newspapers and other media or quotations from speeches shall not be admissible.”

Consequently, and in accordance with this established parliamentary practice, the news clips from *TV 47 Kenya* and *Citizen TV* news tabled by Sen. Godfrey Osotsi, MP, are inadmissible for purposes of substantiating any claim.

Hon. Senators, the second parameter, which is whether the evidence tabled relates to and verifies the claim that was made and for which substantiation was required.

With respect to the video clip named “VID-20231018-WA0000” and “WhatsApp Image 2023-10-18 at 13.08.15, they show images of burnt livestock and structures. In my assessment, nothing in the video clips categorically states and refers to the allegation made by Sen. Osotsi. I therefore find it difficult to admit these two videos as evidence for substantiation.

The final document submitted by Sen. Osotsi was a copy of a Charge Sheet dated 16th August, 2023. As required under Standing Order No.105(2) the evidence to be tabled by a Senator for purposes of substantiation is to be tabled at the next sitting day.

A Senator required to substantiate an allegation is expected to table all documents for such substantiation as required under the Standing Orders on the day appointed for substantiation.

This being the case and noting that Sen. Osotsi submitted a letter dated 19th October, 2023, and received in the Office of the Speaker on 23rd October, 2023, making a request to allow the charge sheet to be admitted for substantiation, I find that the charge sheet is inadmissible.

The charge sheet ought to have been tabled in the Senate on 18th October, 2023, and thereby recorded as part of the documents or material submitted for substantiation.

In any case, the charge sheet indicates that an offense was committed on 15th August, 2023, by two individuals who are said to have wilfully and unlawfully set fire to a dwelling house valued at Kshs1,750,000 at Kemeloi Location in Nandi South Sub-County, in Nandi County. The charge sheet adduced as evidence does not make a connection to the allegation made by Sen. Godfrey Osotsi.

Hon. Senators, I therefore find and rule that in respect to the challenge by Sen. Samson Cherarkey, MP, to substantiate the claim relating to clashes at the border between Nandi and Vihiga counties at a place called Serem, Sen. Godfrey Osotsi, MP, did not table any evidence or provide any explanation to substantiate this claim as was required. The claim was accordingly not substantiated.

In accordance with my findings in relation to the admissibility of the documents tabled by the said Senator and the failure to meet the threshold of substantiation in respect to the claims made, I now require, Sen. Osotsi, pursuant to Standing Order No. 105(2) to withdraw and apologise in respect of the claims that there have been clashes in the boundary between Vihiga and Aldai at a place called Serem.

I also proceed to caution as provided for in Standing Order No.152, that failure to withdraw and apologize will result in the Senator being deemed to be disorderly within the meaning of Standing Order No.121 and I will at this juncture then require the Senator to withdraw.

Sen. Osotsi, you may now proceed to either withdraw that statement and apologise, or allow the Chair to make further orders.

Sen. Osotsi: Mr. Speaker, Sir, I have listened to your ruling very carefully. I provided documents and I am not willing to withdraw because I know the event happened. The documents I provided were the documents I have as the evidence. The truth of the matter is that the clashes happened. Even the Kenyans who are watching me today from that region know it happened. I am willing to withdraw from the Chamber.

(Sen. Osotsi walked out of the Chamber)

The Speaker (Hon. Kingi): Order! Hon. Senators, I have another Communication to make. What is your point of order, Sen. Kathuri?

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Sen. Kathuri: On a point of order, Mr. Speaker, Sir. Sen. Osotsi should wait for you to make the ruling because that is the order. I also saw last week that Sen. Sifuna also decided to get out of the Chamber without your ruling. This trend is not really the best practice. The Senator should wait so that you make your ruling because he is chasing himself out of the Chamber.

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

The Senate Majority Leader (Sen. Cheruiyot): On a point of order, Mr. Speaker, Sir.

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

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, this is not a very light matter as some want just to portray and wish it away. A trend is emerging and if you do not nip it in the bud, you may lose control over this House. You are constitutionally mandated to run this House and bring order. It has become a habit for a number of Senators because they think the Speaker is sending me away. What is that after all?

That is why even in the last few weeks they have begun this habit of saying: “I can even walk away before you make a pronouncement.” The sanctions that can be passed to a Senator for being grossly disorderly are enumerated and listed. It is not just about walking out of the House or being told, come back next week on Tuesday.

Mr. Speaker, Sir, can you give a ruling and guide this House on what happens to Senators who continually show this level of defiance because they are a few and they are known? Secondly, is it in order for a Senator to look at the Speaker straight in the eye and say: “I do not need you to even guide me on what I need to do, I know what I need to do” I find that to be gravely arrogant. It is wrong and it undermines the authority of this House. Please guide this House, otherwise colleague Senators will begin this habit and you will not be able to do anything because a culture will have been set.

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

Sen. Wambua: Thank you, Mr. Speaker, Sir. I would have requested Sen. Cheruiyot to substantiate when he says that a trend is being set by a few Senators who are known, but I will not go in that direction.

The direction I want to take will be that you gave Sen. Osotsi two options. One was to either withdraw and apologize or walk out of the Chamber.

(Several Senators consulted loudly)

The Speaker (Hon. Kingi): Order, hon. Senators. May the Senator be heard in silence.

Sen. Wambua: If you listen, then you benefit. If you do not listen then if it is your turn to speak, you do not benefit. Sen. Osotsi opted for the option of leaving the Chamber. After that, we moved to the next order.

On our side as leadership of the Minority, we are also finding it very difficult to reconcile ourselves with the growing trend where Members seated in the Chamber want

to take up the role of the Speaker and direct the Speaker on how to conduct the business of this House. As leadership of this side, we take great exception to that trend.

I thank you.

The Speaker (Hon. Kingi): Hon. Senators, let us not spend more time on this particular matter because on both sides - as you speak - you are basically trying to tell the Speaker that you had better run this House in this manner.

Now let me go straight to the case at hand. The case of Sen. Osotsi, having read the ruling, the first option given was for the Senator to withdraw and apologize. I stated that if he was unable to do that, then I would make further orders.

I said it very clearly. Of course, Sen. Osotsi having failed or refused to withdraw and apologise, it was upon the Speaker then to communicate the next course of action. Under Standing Order No.121, if you are disorderly, it does not mean automatically you have to withdraw from the Chamber. Maybe I was going to caution him because that is one of the options available under Standing Order No.121.

Sen. Osotsi has breached Standing Order No.121, and not Standing Order No.122. The options available to a Speaker, once a Senator breaches Standing Order No.121 is that, first; he can give caution to the Senator or he can order the Senator to withdraw for the remainder of the sitting. Therefore, the further orders would have been either to caution Sen. Osotsi under Standing Order No.121 or I would have asked him to withdraw.

He chose to walk out. However, for purposes of the record, Sen. Osotsi what I intended to rule - and unfortunately you decided to take the other option - I was inclined to caution you so that you proceed with today's sitting. However, having invited me to order you to withdraw, I will abide by your invitation and ask you to withdraw from the Chamber for the remainder of today's sitting.

GROSS DISORDERLY CONDUCT BY SEN. CHERARKEY

The Speaker (Hon. Kingi): Hon. Senators, I have the following Communication.

As you may recall, during the morning sitting of the Senate held on Wednesday, 22nd November, 2023, the Temporary Speaker, Sen. Abdul Haji, MP, directed Sen. Samson Cherarkey, MP, to withdraw from the precincts of the Senate for disorderly conduct, pursuant to Standing Order No.98 (4).

Standing Order No. 98 (4) states that-

“The Speaker shall order any Senator who unnecessarily and persistently interrupts proceedings or consults loudly and disruptively to withdraw from the Chamber and Standing Order No.121 shall apply to any such senator.”

Standing Order No.121(2)(b) provides for the consequences of creating disorder in the Senate. The Standing Order states that-

“The Speaker may call a Senator whose conduct is disorderly to order, and order the Senator to withdraw from the precincts of the Senate for the remainder of that day's sitting.”

It is on this basis that the then Temporary Speaker, Sen. Abdul Haji, MP, ordered Sen. Cherarkey to withdraw from the precincts of the Senate as Sen. Cherarkey was creating disorder by unnecessarily interrupting the proceedings and consulting in a disruptive manner.

Honourable Senators, you will also recall that at the sitting of the Senate held on Tuesday, 28th November, 2023, the Senator for Kakamega County, Sen. (Dr.) Boni Khalwale, MP, rose on a point of order, calling to question the conduct of Sen. Samson Cherarkey, MP, following the withdrawal from the Chamber, as directed by the Temporary Speaker on the morning sitting of Wednesday, 22nd November, 2023. In the point of order, Sen. (Dr.) Boni Khalwale, MP, alleged that Sen. Samson Cherarkey, MP, after being directed to withdraw from the Senate, proceeded to the Parliamentary Media Centre, whereupon Sen. Cherarkey addressed the media on various matters. Sen. (Dr.) Boni Khalwale, stated-

“My attention was drawn to the fact that no sooner had the Senator been ordered out than he went to the Media Centre and addressed the Press. I therefore would like you to guide us under Standing Order No.122 on Gross Disorderly Conduct, whether the Senator of Nandi County, by staying in the precincts of this Parliament, did or did not defy a ruling of the Chairperson.”

It is at this point that I undertook to establish the facts and give a ruling at the next sitting.

On inquiry into the matter, I have established that Sen. Samson Cherarkey, MP, after withdrawing from the Chamber as directed by the Temporary Speaker on Wednesday, 22nd November, 2023 -

- (i) Proceeded to the Senate Lounge where he had tea and interacted with other Senators;
- (ii) Proceeded to the Parliament Media Centre and addressed the Media;
- (iii) Took lunch at the Parliament Restaurant;
- (iv) Disregarded the direction of the Chief Serjeant-at-Arms to withdraw from the precincts of Parliament; and,
- (v) Attempted to access the Senate Chamber for the afternoon sitting of Wednesday, 22nd November, 2023.

From the foregoing, it can be noted that Sen. Samson Cherarkey, MP, was indeed within Parliament Buildings after being directed by the Speaker to withdraw from the Precincts of Parliament pursuant to Standing Order No.121.

For the avoidance of doubt and for the benefit of all honourable Senators, Section 3(1) of the Parliamentary Powers and Privileges Act as read together with Standing Order Two of the Senate Standing Orders defines the Precincts of Parliament to include-

“The Chamber of the Senate and of the National Assembly, every part of the buildings in which the Chambers are situated, the offices of Parliament, the galleries and places provided for the use and accommodation of Members of Parliament, members of the public and representatives of the Press and any forecourt, yard, garden, enclosure or open space, appurtenant thereto and used or

provided for the purposes of Parliament; the offices of Parliament including the places within such offices that are provided for the use of Members, members of staff, members of the public and the Press; committee rooms and other meeting places provided or used for Parliament's purposes."

This being the case, a Senator who has been called to order for disorderly conduct and subsequently directed to withdraw from the Precincts of Parliament, in accordance with the Standing Orders, must withdraw from the Chamber and all other areas referred to under the Parliamentary Powers and Privileges Act and Standing Order Two to be Precincts of Parliament. This includes all areas that are shared between the Senate and the National Assembly such as places provided for the use and accommodation of Members of Parliament, members of the public and representatives of the press, the dining areas and any other place provided or used for Parliament's purposes.

This is not the first time that the matter of disorderly conduct in the Senate has arisen. Indeed, Sen. Samson Cherarkey, MP, has been called to order for disorderly conduct severally, and directed to withdraw from the Senate on three occasions, the most recent incident being on Wednesday, 22nd November, 2023.

I have made several directives from the Chair and issued a substantive ruling on 28th February, 2023 with regard to disorder in the Senate. In the ruling, I cautioned honourable Senators to observe decorum, respect to the Chair and maintain order in the Senate and that instances of disorderly conduct will be dealt with without fear or favour and that there will be no leniency whether the disorder emanates from the Majority or the Minority sides of the Senate.

Honourable Senators, Standing Order No.122(1) highlights the instances in which a Senator displays gross disorderly conduct which includes defying a ruling or direction of the Speaker or Chairperson of Committees. The sanctions for the conduct of such Senator are provided under Standing Order No.122 (2) which states that-

"The Speaker may call a Senator whose conduct is grossly disorderly to order, and shall order the Senator to withdraw immediately from the precincts of Parliament-

(a) On the first occasion, for a maximum of three sitting days, including the sitting day of suspension.

(b) On the second or subsequent occasion during the same session, for a minimum of seven sitting days and a maximum of twenty-one sitting days, including the day of suspension."

By a letter Ref. No. NCS/113/2023, dated, 29th November, 2023, and received in my office on Wednesday, 29th November, 2023, Sen. Samson Cherarkey, MP, expressed regret and requested a pardon for his failure to adhere to the directions of the Speaker to withdraw from the precincts of Parliament on Wednesday, 22nd November, 2023.

However, I find the actions of Sen. Samson Cherarkey, MP, after being directed to withdraw from the Chamber on Wednesday, 22nd November, 2023, pursuant to Standing Order No. 121(2) (b), amounting to defying a ruling and direction of the Speaker. The Senator's actions exhibited disdain for his colleagues, the Speaker, and the

Senate as a whole. I therefore find that the conduct of Sen. Cherarkey, MP, on the stated day to be grossly disorderly.

In addition, while at the Parliament Media Centre, Sen. Cherarkey made comments, which amounted to casting aspersions on the integrity of the Chair, hon. Senators, and the Senate in general. I find the statements made by the Senator most disrespectful and contemptuous of the Senate. The statements having been made outside the formal proceedings of the Senate, may not attract the withdrawal as contemplated under Standing Order No.102. I however reprimand Sen. Samson Cherarkey, MP, for the said comments, and I will not hesitate in future to refer such actions to the Committee of Powers and Privileges for consideration.

Hon. Senators, this being the first occasion for Sen. Samson Cherarkey, MP, to be grossly disorderly under Standing Order No.122 in this session, and on account that the Senator expressed remorse for his actions on Wednesday, 22nd November, 2023. I accept the apology and take this opportunity to caution Sen. Cherarkey that such behaviour will not be tolerated henceforth. I will not hesitate to invoke the provisions of Standing Order No.122 on Sen. Samson Cherarkey, MP, in the event of gross disorder on his part.

I thank you.

Next Order.

(Resumption of debate on Statements)

The Speaker (Hon. Kingi): We will proceed to Statements pursuant to Standing Order No.56(1). These are the Statements by Committee Chairpersons. Chairperson Standing Committee on Agriculture Livestock and Fisheries, proceed.

We will now move to the Statement by the Chairperson Standing Committee on Health. The first Statement by the Chairperson on Agriculture, Livestock and Fisheries is deferred.

ACTIVITIES OF THE COMMITTEE ON
AGRICULTURE, LIVESTOCK AND FISHERIES

(Statement deferred)

Chairperson Standing Committee on Health.

ACTIVITIES OF THE COMMITTEE ON HEALTH

(Statement deferred)

The Chairperson Standing Committee on Information, Communication and Technology (ICT).

ACTIVITIES OF THE COMMITTEE ON INFORMATION,
COMMUNICATION AND TECHNOLOGY

Sen. Miraj: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No. 56(1) (b) to make a Statement relating to the activities on Standing Committee on ICT for the period between 1st July, 2023 to 30th November, 2023.

Mr. Speaker, Sir, during the period under review, the Committee held a total of 18 sittings, during which it considered one legislative proposal, nine statements and three inquiries.

On legislative proposals, the Committee undertook pre-publication scrutiny of the Digital Literacy Bill, 2023, which was referred to the Committee on 29th May, 2023. The Committee sought responses from the Ministry of Information, Communication and Digital Economy and the Ministry of Education. The Committee thereafter deliberated on the submissions and engaged the sponsor, Sen. Karen Nyamu, MP, who is a Member of the Committee to ensure that all views are adequately captured.

The Committee recommended to the Speaker that the Bill be published.

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

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

Mr. Deputy Speaker, Sir, Statements from the previous reporting period are still ongoing. Whereas seven statements were sought from the Committee during the current period, the Committee considered the responses to the two Statements from the previous reporting period and resolved to further engage the stakeholders.

The Committee is currently considering additional seven Statements that were asked during the quarter. In considering the statements, the Committee held meetings with stakeholders and respective Senators who requested for the statements.

Mr. Deputy Speaker, Sir, at a sitting of the Committee held on 23rd November, 2023, the Committee met to consider written responses on six of the Statements and found them to be unsatisfactorily. The Committee, thereafter, resolved to convene with the Cabinet Secretary for Information, Communication and the Digital economy and the Cabinet Secretary for National Treasury and Economic Planning on Friday 1st December, 2023.

The Statements are as follows-

- (1) Statement by Sen. Cherarkey, MP, on plans to install Device Management Systems (DMS), a spyware on phones.
- (2) Statement by Sen. Samson Cherarkey, MP, on the alleged Breach of Customer Data at Naivas supermarket.
- (3) Statement by Sen. Hamida Kibwana, MP, on Sexual Exploitations of Minors online.
- (4) Statement by Sen. Tabitha Mutinda, MP, on the State of Digital Skills Literacy in Kenya.

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(5) Statement by Sen. Hamida, MP, on the Sale of Telekom Kenya to Infrastructure Cooperation Africa.

(6) Statement by Sen. Hamida Kibwana, MP on the State of Digital Infrastructure in the Public Service.

Mr. Deputy Speaker, Sir, arising from deliberations with various stakeholders, the Committee developed its work plan for the forthcoming reporting period to include-

(a) Inquiry into budgetary allocations and construction of data centers and digital infrastructures in the country;

(b) Conduct a county oversight and networking engagement in Uasin Gishu, Trans Nzoia, Bungoma and Kisumu counties; and,

(c) Meeting with the Telecommunication industry stakeholders and the Cabinet Secretary for National Treasury and Economic Planning to deliberate on the matter of Import tax imposed on SIM cards and excise duty on airtime and telephone services to address the rising cost of calls across networks.

Mr. Deputy Speaker, Sir, the Committee has received a response to the Statement regarding the Financial Status and Operations of the Postal Corporation of Kenya requested by Sen. Samson Cherarkey, MP, and is scheduled to consider the response on Friday, 1st December, 2023, together with the Statement regarding the Delays in Exchequer Disbursement and Reports of Hacking of the IFMIS System, requested by Sen. Fatuma Dullo, CBS, MP, that was committed to both this Committee and the Senate Standing Committee on Finance, Commerce and Budget.

The Committee is further following up on responses to the Statement regarding the operations of the Kenya National Library Service, requested by Sen. Johnes Mwaruma, MP.

Mr. Deputy Speaker, Sir, on inquiries, the Committee is currently conducting three inquiries on the Digital Assets Infrastructure in Kenya, the Budgetary Allocations and Construction of Data Centres and Digital Infrastructure in the country; and, the Telecommunications Infrastructure and dispute between ATC Kenya and Telkom Kenya.

I wish to thank your office and that of the Clerk of the Senate for the continuous support accorded to the Committee in undertaking its work. Lastly, I also wish to thank the Members of the Committee for their commitment, diligence and contributions during the Committee activities.

I thank you.

The Deputy Speaker (Sen. Kathuri): The next Statement is by the Chairperson of the Committee on Justice, Legal Affairs and Human Rights

ACTIVITIES OF THE COMMITTEE ON JUSTICE, LEGAL
AFFAIRS AND HUMAN RIGHTS

(Statement deferred)

The next one is by the Chairperson of the Committee on Labour and Social Welfare.

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(Sen. Mbugua stood up in his place)

Sen. Mbugua, you are standing in for the Chairperson. Proceed and give your Statement.

ACTIVITIES OF THE COMMITTEE ON LABOUR
AND SOCIAL WELFARE

Sen. Mbugua: Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order No. 56(1)(b) to make a Statement on the activities of the Standing Committee on Labour and Social Welfare for the period commencing 1st July, 2023 to 30th November, 2023.

During the period under review, the Committee held a total of 63 sittings, considered two Bills, six Petitions and 64 Statements. The Committee also considered two legislative proposals.

In respect of Bills, the following were considered and reports tabled-

(1) The Care and Protection of Child Parents Bill, 2023 (Senate Bills No.29 of 2023); and,

(2) The County Hall of Fame Bill, 2023 (Senate Bills No.18 of 2023).

The Committee also considered two legislative proposals namely-

(a) The Labour Migration Bill, 2023; and,

(b) The National Employment Authority Bill, 2023.

The Committee has considered The Employment (Amendment) Bill, 2023, held public participation and tabled its report in the House.

Mr. Deputy Speaker, with regard to Petitions, the Committee considered six Petitions during the period under review and tabled five Reports on the Petitions as follows-

(a) Petition by Mr. James Muriu Gakonga and other residents of Lamu, Baringo and Nairobi counties on Linda-Soka, tapping into Kshs302 billion football economy.

(b) Petition by Mr. Kimutai Kirui and Mr. Chepses arap Koech concerning alleged fraud by the First Choice Recruitment and Consultancy Agency Limited.

(c) Petition by Dr. Davji Bhimji Atallah and others on the unfair terms and conditions for Universal Health Coverage (UHC) staff, and delay in internship posting.

(d) Petition by Ms. Tarsila Mwashimba and others concerning unlawful salary deductions of female teachers by the Kenya Women Teachers Association; and,

(e) Petition by supply chain management assistants concerning discrimination against other health workers by the Ministry of Health.

The Committee is still considering the Petition concerning the mismanagement of football in the country by the Football Kenya Federation (FKF) and will table its report in due course.

Mr. Deputy Speaker Sir, regarding Statements, pursuant to Standing Order No.52(1), where a Senator may make a Statement on a matter of countywide, inter-county, national, regional or international concern or a matter of general topical concern,

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two Statements were referred to the Committee. The Committee has concluded the first Statement and is following up on the responses on the remaining one.

On Statements pursuant to Standing Order No.53(1), 65 Statements were referred to the Committee. The Committee has concluded on 28 of these Statements, while others are at various stages of consideration. The status table on Statements is attached to this Statement.

Mr. Deputy Speaker Sir, the Committee conducted inquiries on two of its Statements, namely-

(1) The plight of Kenyan migrant workers in the Kingdom of Saudi Arabia and other countries in the Middle East. The Committee will be tabling its report soon.

(2) The payment of one-off honorarium and pension to former councillors in the defunct local authorities. This is an ongoing matter where the Committee is following up with the National Treasury on the payments.

Mr. Deputy Speaker, Sir, on foreign visits, the Committee undertook an exchange visit to the Parliament of Uganda, where it had an opportunity to meet with its counterpart Committees from 19th to 26th November, 2023. The Committee will table its report in due course.

Mr. Deputy Speaker, Sir, the Committee held two report writing retreats on Petitions and Bills before it and one stakeholder engagement on the level of preparedness on the African Cup of Nations games.

Mr. Deputy Speaker, Sir, going forward, the Committee intends to carry out the following key activities-

(1) Hold continuous engagements with the National Treasury and county governments, including the assemblies on the issue of statutory deductions, pension and Savings and Credit Cooperative Organizations (SACCO) payments.

(2) Hold continuous engagements with the Ministry of Youth Affairs, Sports and the Arts on Sports Development and Management.

(3) Hold continuous engagements with the Ministry of Labour and Social Protection on-

(i) Labour migration, promotion of skilled labour and protection of unskilled labour migrants;

(ii) Registration of Persons with Disabilities (PWDs);

(iii) Social safety nets for the vulnerable in the society; and,

(iv) The welfare of children.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kathuri): Thank you. Next is Statement under Standing Order No. 57(1).

The Senate Majority Leader.

(Sen. Cheruiyot consulted with Sen. Methu)

Sen. Methu, you are out of order. I can see you are on an intervention for a point of order. What is your point of order?

The Senate Majority Leader (Sen. Cheruiyot): Mr. Deputy Speaker, Sir, that one needs mentorship.

(Laughter)

Even after one year in Parliament, he is still pressing buttons haphazardly, but he is a good young man.

BUSINESS FOR THE WEEK COMMENCING
TUESDAY, 5TH DECEMBER, 2023

Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order No.57(1) to present the business of the Senate for the week commencing Tuesday, 5th December, 2023.

As hon. Members are aware, at the rise of the Senate on 7th December, 2023, the Senate will proceed for the long-awaited - I can add - December recess in accordance with the Senate Calendar approved on 16th February, 2023.

While we look forward to this recess, it is noteworthy that there still is a high number of business pending conclusion in the Senate. I spoke at length during my Statement last week on the business before the House and strongly felt we needed to conclude before we proceed for recess.

As hon. Senators will observe, under Order Nos.16, 17, 18, 19 and 20 in today's Order Paper, there are Motions scheduled for debate. I appeal to the sponsors of this Motion to remain in the Chamber until the business of the day is prosecuted.

At Order Nos.8, 9, 10, 11, 12, 13 and 14 seven Bills are scheduled for Division in the Committee of the Whole. I request our Party Whips to mobilize the request and the requisite number of county delegations for divisions on the Bills to be undertaken and, thereafter, forward them to the National Assembly for consideration. These will undoubtedly contribute to our legislative output for the Second Session.

However, our in-tray on Bills remains high as the number of 29 Bills that are at the Second Reading stage. I urge the Movers of these Bills to be available in the Senate whenever the Senate Business Committee (SBC) schedules them on the Order Paper.

With respect to Petitions, I commend the Standing Committee on Justice, Legal Affairs and Human Rights (JLAC), which has concluded consideration of all the eight Petitions referred to the Committee. This should be emulated by all other Standing Committees that have Petitions pending before them.

Mr. Deputy Speaker, Sir, that being said, there are 11 Petitions that are now due for reporting by Standing Committees. I urge the respective Standing Committees to expeditiously consider these Petitions and table the reports thereon.

Regarding Statements, there are a total of 525 Statements that have been sought, out of which, 282 are pending conclusion by respective Standing Committees. I urge the Standing Committees to consider the Statements and use mechanisms provided by the Standing Orders to make reports thereon.

The procedure on Questions has taken root, as Senators continue to file Questions on diverse issues affecting their counties. However, it is on record that the Senate is dissatisfied with the conduct of a number of Cabinet Secretaries for failure to honour invitations to respond to the Executive. This is a matter I undertake to address with the Executive, to ensure that Questions by Senators are addressed by Cabinet Secretaries.

Mr. Deputy Speaker, Sir, there is no hiding on this. Remember what the Members agreed on. We need to file an amendment to the Powers and Privileges Act to provide more stringent sanctions on Cabinet Secretaries and witnesses who continue to take the authority of the Senate or Parliament as a whole without the seriousness demanded thereof.

At its meeting held on Tuesday, 28th November, 2023, the SBC approved the next set of Questions scheduled for the Order Paper on Wednesday, 6th December, 2023. The summary of the Questions and the Cabinet Secretaries to appear are as follows-

1. Question No.44 to the Cabinet Secretary for Water, Sanitation and Irrigation.
2. Question No.46 to the Cabinet Secretary for Environment, Climate Change and Forestry.
3. Question No.50 to the Cabinet Secretary for Water, Sanitation and Irrigation.
4. Question No.64 to the Cabinet Secretary for Agriculture and Livestock Development; and so forth.

Next week, therefore, we shall have the Cabinet Secretary for Water, Sanitation and Irrigation, the Cabinet Secretary for Agriculture and Livestock Development and the Cabinet Secretary for Environment, Climate Change and Forestry. Two Senators form that list. It is my hope that they will find the time to appear before us. Otherwise, we will have to do what we need to do as a House.

I, therefore, thank you, Mr. Deputy Speaker, Sir, and I lay the document on the Table of the Senate.

(Sen. Cheruiyot laid the document on the Table)

The Deputy Speaker (Sen. Kathuri): Thank you, Senate Majority Leader. Hon. Senators, you will allow me to re-organize the Order Paper.

What is it, Sen. Cherarkey?

Sen. Cherarkey: Mr. Deputy Speaker, Sir, under Standing Order No.1, I request your indulgence to kindly allow us a few minutes to react to the Statement.

The Deputy Speaker (Sen. Kathuri): I am in short of those minutes today.

Sen. Cherarkey: Ten minutes for a few of us to just comment.

The Deputy Speaker (Sen. Kathuri): I can limit it to three minutes. Just a comment; it does not need a lot. I will give four Senators.

Sen. Cherarkey: Mr. Deputy Speaker, Sir, can I start with your indulgence?

The Deputy Speaker (Sen. Kathuri): You have the microphone.

Sen. Cherarkey: Thank you, you know I am always an altar boy. Mine is on the follow-up on the Committee on Labour and Social Welfare. I thank this Committee, they are doing a tremendous job.

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There is the follow-up on the Petition by Kimutai Kirui and Chepses arap Koech. In the report that was debated by this House, the Committee had ruled that within one month, a refund to the victims be made by the First Choice Recruitment and Consultancy. However, as we speak now, the same Agency has not refunded those victims that were involved in the fraud in Eldoret.

Mr. Deputy Speaker, Sir, would I be in order if the Committee on Labour and Social Welfare is directed the coming week and with your indulgence, to report back and table a report showing how many victims have been refunded by the First Choice Recruitment and Consultancy? The sad reality is that most of the victims are young people who had just completed their fourth form.

As we speak, there are parents who have died because of the stress of this fraud. There are young people also who are stressed and are having mental disorders. Many properties are being auctioned by banks because they took money to give to this Agency in Eldoret, with the hope of travelling for last year's World Cup.

Mr. Deputy Speaker, Sir, I request through your office, the Committee on Labour and Social Welfare to bring back a report on how many victims have been refunded. The directors of First Choice Limited are walking scot-free and telling the people in Eldoret, "You took us to the Senate, what happened? Where will you take us?" Can the Committee table the status of their investigations?

Finally, Mr. Deputy Speaker, Sir, on the elections by the Federation of Kenya Football (FKF) for next year, I ask the Standing Committee on Labour and Social Welfare to fast-track the issue of FKF on the issue of elections of other federations in this country, so that we can ensure that we protect the issue of sports. I request the Standing Committee on Labour and Social Welfare to meet all stakeholders as they plan, and assure this country that in February next year, the FKF do the elections, just like any other federation, so that we are not taken advantage of.

I know that Sen. Cheruiyot plays football. However, I do not know whether he plays like Harry Maguire, who has a habit of scoring own goals. Sen. Cheruiyot, will be hosting his tournament this weekend. I do not know whether he plays like Harry Maguire or Alejandro Garnacho, who---

(Sen. Cherarkey's microphone went off)

The Deputy Speaker (Sen. Kathuri): Sen. Cherarkey, your time is up.

Sen. Orwoba, you have the Floor.

Sen. Orwoba: Thank you, Mr. Deputy Speaker, Sir. I rise to support the Statement by Sen. Nyamu on regulating alcohol consumption, nightclubs and club activities.

I am a parent of a 16-year-old boy. I would like to remind parents and legislators that there is only so much that we can control. We can put regulations on what time the bars open and close. However, parents cannot outsource the responsibility of inculcating the culture or character of your child. While we put measures in place to regulate the

clubs, I urge the parents to spend some time with their teenagers and young adults. Parent should advise and inform their children of worldly things.

As much as we are going to put rules and regulations, in the end, it comes down to the choice that the youth make. The trend of *Aluta* partying from Friday until Tuesday is sad. Whether we put rules and regulations, teenagers can buy alcohol on Friday that is enough for them to party until Monday, whether we close the nightclubs or not. This is an issue of parenting. I urge parents to spend time with their children and talk to them, so that they do not end up being the kings and queens of *Aluta* culture.

For the leaders who are elected, I urge you to take charge. Hon. Robert Alai, the MCA for Kileleshwa Ward, was elected based on shutting down bars. We also need to hear their voices on this trend of *Aluta*.

I support this Statement and repeat that it is upon us, parents, to guide our children.

I thank you.

The Deputy Speaker (Sen. Kathuri): Sen. Kisang', you may proceed.

Sen. Kisang: Thank you, Mr. Deputy Speaker, Sir. I rise to support the Statement on FKF to have elections next year in February.

The current office bearers of the Federation have a tendency to go to court to block any attempts for elections to take place. There is a lot of corruption and many cartels there. We need to ensure that the elections take place. The issue highlighted do not affect the FKF alone; Athletics Kenya has similar issues. The office bearers there are people who have been in office forever and do not want to hand over the mantle to the youth, especially those who are still active in sports, both football and athletics. We need to deal with the issues highlighted in the Statement because this is a disease. It is a Cancer that has bedevilled our country.

I thank you.

The Deputy Speaker (Sen. Kathuri): Sen. Cheruiyot, you have the Floor.

The Senate Majority Leader (Sen. Cheruiyot): Thank you, Mr. Deputy Speaker, Sir. I appreciate the two committees that have tabled before the Senate the reports of their activities, that is, the Standing Committee on Labour and Social Welfare and the Standing Committee on ICT.

While at it, I would like to remind the Chairpersons of the Senate Standing Committee on Health, and the Standing Committee on Justice, Legal Affairs and Human Rights, which had also been slated to make their reports today, to take the work of this House more seriously. It cannot be that the Chairpersons, the Vice-Chairpersons and all the other Members are absent, unless those committees do not take the work of this House seriously. I have sat here in the last three days and taken time to pay keen attention to each progress report by the committees because this House is on the brink of history.

Yesterday, several Senators and I had lunch with colleagues from the National Assembly, who celebrated our House. One of the Members from the National Assembly said, "I like how the Senate works. You guys were the first to speak on this issue, for example, of edible oils. You have gone on and carried out very serious investigations about it. You are equally handling the issue of Shakahola. You have even done a report

already.” The Member went ahead and listed so many things that the Senate is seriously pursuing.

Mr. Deputy Speaker, Sir, I hold the view that were it not for the fact that this House is heavily underfunded, we would do much more. Each time we appear before our colleagues in the National Assembly Budget and Finance Committee, they do not seem to appreciate the amount and the gravity of work that the Senate is handling. If we were funded, we would do more than many of these so-called investigative agencies.

Yesterday, while contributing on the Report on Shakahola, I spoke at length. I said, ‘I wish colleague Senators would appreciate the powers that we have under Article 94(5) of the Constitution of Kenya as a body.’ We can investigate and give very serious recommendations and sanctions against people who are involved in corruption; people who are underperforming in their responsibilities; people who are mismanaging public resources, and so many other societal ills that this House overlooks, including governors, and so on.

Therefore, when committees present their work to the House, it is something that we must appreciate and thank them for the work that they are doing. I appreciate the work of the Standing Committee on ICT. There are many things I wish I had listened to in that particular Report because I know Statements that have been raised by our colleagues and many things that we need to appreciate.

I urge our colleagues in the various committees that because we are the oversight wing of the Government of Kenya, it is our duty to keep track of all promises made by this administration. It is important for the committees report to track and keep the country abreast with the things that are happening. For example, I wanted to hear, from the Standing Committee on ICT how many kilometres of the promised 100,000 kilometres of fibre optic across the country has been achieved so far. It would be good for us to be apprised on whether the offices are in sync. Do they know what is happening? That is our duty because that is what you do as oversight. This is not an issue of whichever side of the House one belongs to. We oversight as the Senate; it is not to any particular side of the House. The same goes for the Standing Committee on Labour and Social Welfare on the report that they have given to the House.

Mr. Deputy Speake, Sir, unfortunately, I am out of time. If you could graciously give me two minutes, I will conclude my remarks.

The Deputy Speaker (Sen. Kathuri): Give him two minutes.

The Senate Majority Leader (Sen. Cheruiyot): Thank you, Mr. Deputy Speaker, Sir. I would like to point out to the Standing Committee on Labour and Social Welfare one of the key promises that this administration made to the people of Kenya, on the issue of labour bilateral with other countries. It will be important to know how many have been fulfilled, the challenges that we have and why that programme has not taken off. Remember that foreign direct investment and remittance by fellow countrymen, who are working out of the country, recently overtook even our horticultural products in terms of growth of our GDP. This is a programme that we need to handle with a lot of seriousness.

It will be important for this Committee to complete the work that had been begun by the previous Standing Committee on Labour and Social Welfare on what is happening

in Saudi Arabia to many of our children, and the challenges that they are having. However, over and above it, to know that recently, last month when the President was in Saudi Arabia, he signed an expanded bilateral agreement that expands the scope of workers of Kenya who go to Saudi Arabia beyond domestic workers only.

Kenyans can now go and do professional jobs in particular countries such as Germany and the UAE. That is the level of reporting that we want to hear from our committees, and know what is happening with these ministries. Why is there delay? Does it have anything to do with legislative work that we need to do? However, I know that cannot be the case because we have done our bit. We should hold our public officers to account, so that our country can benefit.

I celebrate the work that has been done by our committees.

The Deputy Speaker (Sen. Kathuri): I hope that has gotten to the Chairpersons. That is the language we speak in the Liaison Committee. Let me give the last two.

. Mungatana, please proceed then the last one will be Sen. Crystal Asige.

Sen. Mungatana, MGH: Mr. Deputy Speaker, Sir, I rise in support of the Statement by the Senator for Turkana County, Sen. Lomenen. Before I say so, I take a minute of my time to celebrate because we are going into Christmas. We have heard some of the very good contributions on the Floor of this House from some of our colleagues; the Senate Majority Leader, the Government Whip, Sen. Okenyuri and the 'VIP' herself. We must say what is good is good. I have taken my time to sit here and listen to some of the contributions in this House. May God keep them having---

The Deputy Speaker (Sen. Kathuri): Sen. Mungatana, the Members here are not many. You could have recognised all of them.

(Laughter)

Sen. Mungatana, MGH: I recognise all of them. I specifically mention those because I have enjoyed sitting here listening through their contributions. May God help them to continue in that spirit.

The issue of curfew affects businesses badly. Unfortunately, we of the counties that are on the northern side and drier parts of the nation, have been subject to these curfews which are given by the Minister for Interior and National Administration. Generally, the curfews serve a purpose at some point.

The problem that Sen. Lomenen is raising - and I support him and want the Committee on National Security and Foreign Relations to look into - is that there is never a time limitation given to these curfews. It is like the Minister gives a curfew, the time continues then nobody remembers that a certain area has curfew.

Like in Lamu County, you are told that you should not go out and fish. Most of the productive fishing is done at night. When Ministers give orders of curfews---

The Deputy Speaker (Sen. Kathuri): Is Sen. Mungatana's time over? Give him one minute to conclude.

Sen. Mungatana, MGH: Mr. Deputy Speaker, Sir, I was on this point that when the Cabinet Secretary gives these orders, like against fishing or movement of animals,

they affect business badly. I urge the Cabinet Secretary to please review all the curfew orders that they have given, so that they do not forget that these orders actually affect business and livelihoods of people. Some people depend on that particular business to survive. Even before the Statement goes to the Committee, the CS should review. People suffer when these orders are given without a time frame.

The Deputy Speaker (Sen. Kathuri): Sen. Crystal Asige, please proceed.

Sen. Crystal Asige: Mr. Deputy Speaker, Sir, I seek clarification as I begin on a point of order that was raised by Sen. Kinyua on the Statement of the erroneous marks being given by Kenya Certificate of Primary Certificate (KCPE) through the portals.

I wish that the Chair would also help me because I raised a Statement of the exact same nature yesterday and I would like your direction as to what will happen as another couple of sequence of the same have been raised here today.

Second, I inform Sen. Cherarkey, who made a couple of comments directed to the Committee on Labour and Social Welfare which I sit in, the Committee on Labour and Social Welfare has been working hard. Very hot topics have been brought to our Committee, including the Uasin Gishu County issue as well as the Football Kenya Federation (FKF) and are being dealt with the most serious in its nature.

I reassure the Senator that we gave direction that within 90 days of the report that we did hand in already on the Uasin Gishu County matter, that the petitioners will get information as to how many people have been paid and how many are still outstanding. That is already in the works.

The FKF President and his group had a meeting this morning with the petitioner and his group. We are definitely on the way to resolving the matter. Let him be rest assured the Committee on Labour and Social Welfare is working. I say that on behalf of the Chair.

Lastly, I rise to support the Statement made by Sen. Nyamu. This partying, drinking and clubbing from dawn till dawn is a really big issue. This is a place where predators make prey to young people. They of course are vulnerable young people with sometimes asinine behaviour. However, it is not grounds for these institutions, places and clubs, which hold these parties from dawn to dawn, to take advantage of these young people.

We know that in these establishments, we see young people being drugged, taken advantage of and being groomed; that is something that has not been discussed on the Floor of the House, but is extremely important for Kenyans to take seriously. Young people are prey in these establishments. I thank Sen. Nyamu for bringing that Statement. I want Kenyans to know that Sen. Nyamu *amesema futa aluta*.

That is something that needs to be taken seriously and I support the Senator in her efforts.

The Deputy Speaker (Sen. Kathuri): Sen. Crystal Asige, you asked for some direction from the Chair. If your Statement was under Standing Order No.53 (1), then you get your response from the relevant committee. The Statement under Standing Order No.52 (1) is like a personal Statement. So, you should not be worried. Your Statement will still be replied to.

Sen. Crystal Asige: Thank you, Mr. Deputy Speaker, Sir, for your guidance. However, there was a second Statement under Standing Order No. 53 (1) with regards to the KCPE results and their erroneous nature.

The Deputy Speaker (Sen. Kathuri): That is what I am saying will be replied to by the relevant Committee on Education.

Hon. Senators, I want to reorganise our business this afternoon. Business appearing as Order Nos.8,9,10,11,12,13 and 14 will be handled in the next sitting and are therefore deferred.

COMMITTEE OF THE WHOLE

THE EQUALIZATION FUND APPROPRIATION BILL
(SENATE BILLS NO.30 OF 2023)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE COUNTY LICENSING (UNIFORM PROCEDURE) BILL
(SENATE BILLS NO.9 OF 2022)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE AGRICULTURAL AND LIVESTOCK EXTENSION SERVICES BILL
(SENATE BILLS NO.12 OF 2022)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE MUNG BEANS BILL
(SENATE BILLS NO.13 OF 2022)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE START-UP BILL (SENATE BILLS
No. 14 OF 2022)

(Committee of the Whole deferred)

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COMMITTEE OF THE WHOLE

THE PERSONS WITH DISABILITIES BILL
(SENATE BILLS NO. 7 OF 2023)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE KENYAN SIGN LANGUAGE BILL
(SENATE BILLS NO. 9 OF 2023)

(Committee of the Whole deferred)

We go to Order No.15

BILLS*Second Reading*

THE TEA (AMENDMENT) BILL
(SENATE BILLS NO.1 OF 2023)

(Sen. Cheruiyot on 29.11.2023 - Afternoon Sitting)

(Resumption of debate interrupted on 29.11.23 - Afternoon Sitting)

The Deputy Speaker (Sen. Kathuri): This Bill was moved and seconded.

(Question proposed)

Sen. Cherarkey, please proceed.

Sen. Cherarkey: From the onset, I support the Tea (Amendment) Bill.

Mr. Deputy Speaker, Sir, you remember in 2020, after Christmas, we convened for a special sitting and passed the Tea Act. There is a great improvement in the tea sector.

In Nandi where I come from, we largely depend on tea. Coincidentally, the tea drinkers, for example, Sen. (Dr.) Khalwale, are our neighbours. God knew that we will plant tea and get a good market in our neighbours who normally take tea after every meal.

I wish and pray that we could be like Brazilians. Courtesy of this House, when I was the Chairperson of the Committee on Justice, Legal Affairs and Human Rights, we

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visited Brazil together with Governor Orengo, Governor Mutula Kilonzo Jr., the former Senator of Kisumu, Sen. Fred Outa and a team of the Committee on National Security, Defence and Foreign Relations.

We learnt a few things in Brazil, apart from other beautiful things in Brazil, for example, wonderful weather, good food and wonderful people. I do not want to go into details because I might be called out of order.

(Crystal Asige consulted loudly)

Mr. Deputy Speaker, Sir, I do not know why for the first time, Sen. Crystal Asige is consulting across the aisle.

We learnt one ingredient about the Brazilians. They do their things with one heart. Out of curiosity, in the many meetings because--- We had gone to investigate the issue of collapse of Brumadinho in the State of Minas Gerais, one of the States in Brazil. We even went to other States like Rio de Janeiro among others.

Mr. Deputy Speaker, Sir, you are smiling shyly. I do not know whether you have been in Brazil and know those places. We visited a number of places. One of the things that we learnt is that in their meetings, there is no water, but coffee.

I want to propose if we can be having a cup or flask of tea in our meetings or engagements. I know after saying this, I will be very popular in Western Kenya. I know people like Sen. (Dr.) Khalwale will make me popular because they take tea after every meal. We should encourage people to take tea as part of our culture.

Our beautiful Sen. Orwoba, one of the fiery Senators said something about *Aluta*. The only way to eradicate alcohol drinking in this country is to encourage people to take tea. If there is an option of drinking, let them drink tea. That is the only way we can fight *Aluta*, which is common in this city and other cities where young people go to clubs from Friday to Monday morning.

I know there was a Statement by Sen. Nyamu about *Aluta* where people will be disappearing from tomorrow to Monday. They should be encouraged to take tea. That is the gospel we should be preaching. If we take more tea as a country, we do not need to depend on other exports. I know the biggest danger that has become a serious challenge is ---

I know Sen. Crystal Asige is a musician. The other day, a number of us attended her launch somewhere along Ngong Road. I do not want to mention the place. I was disappointed that there was no tea, but other things were there.

Mr. Deputy Speaker, Sir, I should have tagged you along. Maybe you would have guided me on how to proceed. I expected Sen. Crsytal Asige and organizers, with a lot of indulgence, to at least ensure there is tea among other drinks.

I ended up taking water the entire evening. I know I could have strained the Nairobi Water Company because I was taking a lot of water. We need to encourage people to take tea. That is my gospel. Even before taking something else, take tea. That is the secret I learnt from Brazilians. Their own market that takes coffee is so huge that they do not need to do other exports.

Mr. Deputy Speaker, Sir, I support the Tea (Amendment) Bill of 2023 by Sen. Wakili Sigei. I want Members to listen to this. Let me give you the statistics. Nandi, Bomet and Kericho Counties produce 46 per cent of the tea in this country. This is because we still have huge tracks of land and many opportunities.

In fact, Kiambu, Kisii and Nyamira and other counties, plant tea but there are densely populated. It is only Nandi, Bomet and Kericho that produce 46 per cent which contributes to two per cent of the Gross Domestic Product (GDP) in the country.

That is why some of us have been pushing for complete construction of Kerenga Airstrip in Kericho so that we can be able to directly fly our tea outside the country. Unfortunately, as at now, Kerenga Airstrip is already flooded because it is yet to be completed and does not allow our tea farmers from Kericho, Nandi and Bomet to export directly.

For us, in Nandi, Eldoret International Airport is a bit nearer. Therefore, we can export directly. However, for Bomet and Kericho, Kerenga Airstrip would be a good place to export tea. It is incomplete and flooded. Nowadays, in the social media, people call it Kerenga Lake International Airstrip, a misnomer that is being used.

We need to also diversify the imports of tea like Pakistan which is the biggest importer of tea in Kenya. When Hamas and Palestine are having a problem, what is the way forward? Iran and other countries like the Kenyan tea. If you have travelled across the world, you know that Kenyan tea is the best. It has a unique taste because of good climate and soil condition.

Mr. Deputy Speaker, Sir, I just wanted to raise a few issues. I remember at some point, my brother Governor Professor Hillary Barchok, the governor of Bomet, wanted to travel to Iran to do direct sales of tea. However, because of many obstacles including cartels in this town and in the Ministry, the county government of Bomet could not do direct sales on behalf of the farmers.

I am happy that this amendment is talking about direct sales. You only need to register. Even on the sale of tea proceeds, we are either going to do sales by auction or direct sales. Whichever is the highest is what the tea factories will go with.

This is a blessing to counties like Bomet who had such initiative. I am not sure but I heard Meru, Kericho and Nandi counties also wanted to do direct sales. If these direct sales are encouraged, the county governments of Bomet, Kericho, Nandi will be keen since 46 percent of tea produce come from these regions.

We support the amendment on direct sales of tea, because it will assist farmers.

Clause 36(b) says-

“The proceeds from the sale of tea, whether through auction or through direct sales, shall be deposited in a direct settlement system.”

To us, tea is everything. Where I come from especially in Nandi Sub-county, we majorly grow tea. We have many multinationals and private outgrowers. There is one led by Mr. Kosgei, with one or two factories, one in Kaptumo and another around Cheptabach within Nandi Hills.

In fact, when the President was the Deputy President, he went to open their building in Nandi Hills town. Many people in that area depend on tea. Almost the entire

of region Aldai is tea growing. Mosop, where I neighbour and my constituency, Chesumei, grow tea. Emgwen has also established a new factory. In Sang'alo, private investors have come and have established the Mbogo Valley Tea Factory. In Tinderet, a number of tea factories have also been established.

Mr. Deputy Speaker, Sir, in Nandi County, we grow tea almost everywhere. Therefore, where I come from, tea is life. It sustains livelihoods. I would like to thank the President, Dr. William Ruto, because under the fertiliser subsidy programme, at least all farmers, including maize, tea, sugarcane, coffee and any other farmers will get subsidised fertilizer at Kshs2500, not only Nandi County but across the region. I thank him, because the genius of subsidizing production over consumption will assist us in elevating the cost of living in the country.

On the issue of protecting mismanagement, I agree with the tea growers. They are small scale farmers that need protection. Of course, there are big farmers, with a number of factories. However, there is always sadness underlying the issue of tea. You saw the exposé by British Broadcasting Corporation (BBC) where, sexual exploitation was rampant. It was hue and cry.

I challenge Senators who are here, especially Members of the Senate Standing Committee on Labour and Social Welfare, like Sen. Crystal Asige and Sen. Mbugua, to please follow up on the exposé on sexual exploitation at tea farms. It was well elaborated and sad. No one has given us a way forward on whether the perpetrators of the sexual exploitation in tea farms have been arrested, to date, after that exposé. As we fight the issue of HIV (Human Immunodeficiency Virus) and AIDS (Acquired Immunodeficiency Syndrome) across the country, we must protect women and young girls and even young boys and men who have been taken advantage of.

Multinational companies must take their internal mechanisms to also protect their labourers and workers. In Nandi and Bomet counties, there is a soft underbelly of historical land injustices. Unfortunately, most of the tea farms owned by multinationals have allegations of having forcefully taken most of their pieces of land from our forefathers.

When you go to some areas like Kapchanga, Nandi Hills, Kapchorwa Ward, Chepkunyuk, Kapturia among other areas in Nandi County and Nandi Hills Constituency, people are living in dilapidated conditions on the hills because, the multinationals took the prime land and planted tea.

Mr. Deputy Speaker, Sir, as we address the issue of historical land injustice in multinational companies, we must ensure we have a way of sustaining that land. I am not proposing that the land be taken away and be subdivided to build houses. That land can be reverted to the community. Let the community continue taking care of the tea, so that they can still continue to sustain themselves.

The issue of historical land injustices in Nandi County must be addressed. It is the same case in Kericho County. I was there when we went to listen to a Petition in the last session. Bomet County also has similar challenges of historical land injustices. We must sit and agree.

Mr. Deputy Speaker, Sir, you were presiding on that day, when we talked about mechanization of tea farms. I call upon the sponsor of the Bill to put an amendment during Third Reading, because we need to agree to what extent we can mechanize tea farms. The more we continue mechanizing tea farms, the more we continue losing labour for the young people.

After an incident in Brooke in Kericho, many young people were taken to court after incidences of burning houses. Is that a solution to such? We need to agree. Should we mechanize 40 per cent and leave 60 per cent to manual labour? Should we mechanize 20 per cent and leave 80 per cent to manual labour, so that we balance?

Where will these young people go if they cannot pluck tea in Nandi, Kericho and Bomet counties? It is unfortunate that the multinationals have taken a hard stance. Many young people around Brooke area in Ainamoi, in Kericho, are suffering the consequences of what they did not know. I know what happened might not be condoned because it is not what we expect. Can we agree? I would like the Senate Standing Committee on Labour and Social Welfare to take the lead.

That is what the Senate Majority Leader was saying here. Let the Senate Standing Committee on Labour and Social Welfare give us pragmatic solutions. Go to these tea farms and ask them - where is the International Labour Organization Charter that says, 40 per cent should be mechanized and 60 per cent to be left to our young people?

I hope the multinationals who moved to Court as complainants when our young people were arrested in Kericho County are listening. They should at least withdraw those cases for the benefit and unity of the community, so that we can move together, as one people, one nation.

Finally, I agree that we have Tea Levy. It will allow price stabilization. During bonus, people in Nandi County ask me, why is Meru County getting higher bonuses than Nandi County? Why is Mount Kenya getting more bonuses than Kericho or Bomet counties?

I am happy that this Tea Levy will be a stabilizing fund allowing stabilization of prices. Another issue of this levy is the establishment of the Tea Research Foundation. This will allow extension of research. We are seeing introduction of purple tea and hope it will gain market.

We will do research to find out if it is good tea to grow. Is it valuable? Does it fetch better prices? This is what we want the Tea Levy Fund to do. To do more research, give extension services and ensure that we plant tea that is commensurate with the soil type.

Mr. Deputy Speaker, Sir, when I speak about tea, I get emotional because it is the livelihood of my people. I feel I am now in my real element.

On infrastructure, I have talked to the County Assembly of Nandi about the Cess money that is given for infrastructure. Why do they not form local communities and give the cess money to remain with the tea factories, within the local community to maintain roads?

The roads in Nandi County, where tea is grown are in pathetic condition because the cess money has been given to a county government which uses it to do other things.

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

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

Madam Temporary Speaker, I pray that you add me one more minute, so that I finish only on the Cess Fund. We should give Cess Fund to communities and factories so that they can maintain roads.

(Sen. Cherarkey's Microphone was switched off)

The Temporary Speaker (Sen. Mumma): Okay. Finish it.

Sen. Cherarkey: Can I have the microphone? I know the weekend is near. The Cess money should be given to factories and form local communities that will be in charge of roads, so that it becomes easy to maintain those roads.

What we are seeing in Nandi is very unfortunate. We want the money from tea to remain with tea factories and local communities around those tea factories, so that they maintain their roads.

With those many remarks, I propose to bring a few amendments at Third Reading. Thank you, for the opportunity and I support this Tea (Amendment) Bill (Senate Bill No.1 of 2023).

Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Mumma): Sen. Mungatana.

Sen. Mungatana, MGH: Bi. Spika wa Muda, nachukua nafasi hii kumpongeza Kiongozi wa Wengi katika Seneti aliyeleta Mswada huu. Sisi tulilelewa Mombasa ambako kuna hiyo *Tea Auction*.

Tulisoma Chuo Kikuu, tukamaliza na tukaanza kufanya kazi Mombasa. Nilifungua ofisi yangu ya uwakili mjini Mombasa. Kati ya wale watu kila wakili mjini Mombasa alitarajia kufanya kazi nao au kuwa mteja wao, ni wale waliokuwa wanafanya kazi ya *Tea Auction*.

Wale watu ambao walikuwa matajiri, wanaishi vizuri na waliomiliki nyumba katika eneo ya kifahari inayoitwa Nyali miaka ile tulipokuwa watoto, walikuwa wanafanya kazi katika *Tea Auction*. Hivyo basi, kusikia ya kwamba wale wanaokuza majani chai na wanaofanya kazi wa kuvuna haya majani ni watu wanaishi kwa uchochole na umaskini ni jambo la kusikitisha sana.

Jambo ambalo ninalifurahia ni kuwa Serikali hii imeamua haitafanya mabadiliko ya kijuujuu yanayojulikana kwa Kingereza kama *cosmetic changes*. Hatutafanya hayo kwa sababu hayatasaidia mkulima wa kahawa, mahindi na majani chai.

Mkulima wa majani chai anataka kupata haki yake na ndio sababu huu Mswada umeletwa hapa. Tumeambiwa kuna wakati Mswada huu uliletwa mbele ya hii Seneti na pia ukapitishwa na *National Assembly*. Lakini kuna makosa yaliyokuwepo katika ile sheria iliyopitishwa na ndio maana umeletwa kwa mara ya pili kupigwa msasa.

Sababu ya Mswada huu kupigwa msasa kwa mara ya pili ni kwa sababu tunataka yule mkulima wa kawaida apate haki yake. Serikali hii haitaki kufanya *cosmetic change*. *Cosmetic change* ni nini? Tulikuwa tunasikia Mhe. Rais kwa wale Marais waliotangulia akisema “Wakulima wa kahawa, deni lenu bilioni mbili tunalipa.” Halafu makofi Hoyee! Halafu mwaka unaofuata, tunarudi palepale. “Wakulima wa majani chai, deni lenu la bilioni moja, Serikali hii italipa.” Halafu makofi hoyee! Lakini mwaka unaofuata, uchochole na umaskini unarudi tena.

Serikali hii imeamua ya kwamba, ikiwa tunataka kufanya mabadiliko, kwanza tunaangalia sheria iliyopo. Ie sheria tukiirekebisha na kuipiga msasa, itamsaidiaje yule mkulima wa kawaida kule mashinani. Ndio maana nimesimama kidete kusema kwa sauti moja kwamba Mswada hu tuupitishie kama Seneti.

Ni Mswada wa kupigwa msasa. Tunaomba Maseneta wote wanaozungumzia huu Mswada tuupige msasa sawasawa. Ninafurahi Sen. Cherarkey amesema wakati wa Mswada huu kusomwa mara ya tatu, ataleta marekebisho mengine. Tunataka Maseneta wengine, hasa wale wanaotoka sehemu inayokuzwa majani chai, wausome Mswada huu, tuupige msasa na tujaribu kuweka vipengele vitakavyosaidia mwananchi wa kawaida.

Kwa wananchi wa kawaida wanaonisikiza wakati huu, tunawaomba wajue ukweli wa mambo ni kwamba kuna siasa duni na siasa ya ukweli. Siasa ya ukweli ni kama hii kazi tunayofanya hapa. Siasa duni ni ile ya makofi na kupigiwa kelele na kubebwa juu juu. Ie haibadilishi kitu. Mtu akija na akuambie majani yako ya chai tunalipa deni lako halafu mwaka kesho unarudi kwa deni, hajakusaidia.

Mtu akikuambia sheria tunaibadilisha ili uweze kuuza majani yako ya chai kwa bei inayokufaa wewe, ili uweze kupata manufaa katika ukulima wako, huyo mtu ndiye anafanya siasa ya ukweli.

Sisi katika Serikali hii, hatutarudi kufanya siasa ya uwongo kwa wananchi hata kama ni ngumu. Ndio sababu wakati mwingine tunapigwa, tunatandikwa kwa mitandao na watu wa upinzani wanasema hii Serikali ni mbaya. Lakini ni sawa. Wacha waseme. Sisi tunafuata mipangilio kwa sababu kugeuza hali ya mwananchi wa kawaida, kuna vipengele vya sheria ambavyo lazima tuvigeuze ili apate haki yake.

Kwa hivyo, tukiwa hapa Seneti, tunasema katika huu Mswada, kuna vipengele ambavyo vimewekwa, hasa *direct sales*. Tumeambiwa kuna Gavana aliyejaribu kwenda kuuza lakini hakufanikiwa. Lakini alisahau kuambia Seneti ya kwamba, sheria iliyokuwepo wakati huo na ambayo lazima tuigeuze, haikuruhusu kuuza moja kwa moja au *direct sales*.

Sasa tunaleta sheria hii inayosema, *on average at least for the next three months*, yaani miezi mitatu iliyopita, ile bei ikiwa iko juu kidogo, basi unakubaliwa kuuza. Sisi tutafurahia sana kuona hii inaleta faida kwa wananchi wa Kenya.

Jambo lingine ambalo tungependa sana lieleweke ni kwamba majani chai ya Kenya yanadhaminiwa sana duniani. Wakati wanatengeneza majani chai mengi na ya aina tofauti tofauti za ladha ya chai, wanatumia majani ya chai ya Kenya. Kwa hivyo, wamegeuza zile ladha zikawa nzuri na kuziua. Lakini wanapofanya hivyo, Wakenya wakulima waliofanya hiyo kazi, hawapati hiyo faida.

Unasikia Wazungu walioweka majina yao pale ndio wanaopata ile faida na hawakulima. Ukienda saa hii uzunguni utasikia kuna *English tea*. Lakini ukiangalia Uingereza ni nchi ya visiwa kadha wa kadha; ni bahari kila mahali. Hakuna ardhi ya kulima majani chai. Sasa, ilikuwaje tena wao wana *English tea* na hawana ardhi ya kukuza majani chai? Wametutumia vibaya kwa miaka mingi.

Tungependa sasa kupitia huu Mswada na wale wenzetu wa Bunge la Kitaifa na Maseneta wenzangu tunaouangalia huu Mswada tuupige msasa ili hata wale wawekezaji wanaokuja kuchukua haya majani ya chai, waweze kuweka viwanda vitakavyo jaribu kuweka dhamani kidogo ili watu wakienda kuuza wasikie ya kwamba ni chai ya Kenya na sio chai wa Wazungu wa Uingereza.

Mwingereza hajui hata kuchuna majani chai. Hawajui vile haya mambo hufanywa lakini wamejiweka mbele kwa sababu wao ndio wanaotengeneza haya majani ya chai kwa kuyasaga na kuyageuza kuwa ndio haya tunayokunywa.

Hivyo basi, nawaomba Maseneta wenzangu tulioko hapa, tuupitishie Mswada huu kwa roho moja na safi tusaidie wakulima wetu wanaoumia sasa kwa sababu bei ni mbaya na wanaofaidika ni mabwenyenye ambao hawajaona vile wakulima wanasumbuka kuleta majani chai sokoni.

Tuliwaona wale matajiri ambao wako katika ile *tea auction* kule Mombasa. Hatukatai mnafanya kazi yenu, lakini pia angalieni, mkuwe na roho maanake siyo haki wewe unapeleka gari nzuri iliyo na *air condition*, unaishi maisha mazuri, unakaa nyumba nzuri ya kifahari, una akaunti nono ya benki, lakini yule ambaye anakuletea yale majani yanayokutajirisha wewe na familia yako, ni maskini mchochole na hata mtoto wake haendi shule. Hili siyo jambo nzuri. Lazima waangalie tena namna ambayo mwananchi wa kawaida atapata fedha kwa ile kazi anayoifanya.

Bi. Spika wa Muda, mara nyingi tukiwa tunaleta hizi sheria, wale mabwenyenye kule nje wanaziangalia kuona ni kitu gani ambacho tutaweka kama kizingiti ili ile sheria isipite. Wakisikia kuna *tea levy*, hawataki kulipa. Kwa hivyo, wanaangalia namna ya kuvuruga na kuharibu ili yule mtu wa kawaida asipate na wao waendeleo na yale maisha yao.

Kwa hivyo, nawaomba wale ambao wataangalia Mswada huu katika *Third Reading*, tuuangelie kwa makini. Tusiwapatie nafasi hawa mabwenyenye waendeleo kuwakandamiza watu wetu. Mimi najua kuna watu wanaisikiza sana majadiliano yetu juu ya Mswada huu wa majani chai na wanayafuatilia kwa macho makali na umakini. Mimi najua, maanake hata asubuhi leo nilipokuwa kortini kwa kesi zingine tunazozifanya, kuna mawakili ambao waliniambia ya kwamba wanajua leo kutakuwa tunaujadili hii Mswada huu na wataisikiliza kwa makini.

Mimi najua mabwenyenye washawatuma watu ili waangalie ni namna gani watawvuruga. Kwa hivyo, naomba tuifanye kazi yetu kwa makini. Tujaribu sana tuifanye vizuri na tusiwapate watu nafasi kuivuruga. Tunataka wananchi wetu walio mashambani waanze kupata haki yao. Ile haki yao ambayo Mwenyezi Mungu anawapatia kupitia kazi wanazofanya mashambani.

Kwa hayo mengi, ninawaomba Maseneta wenzangu, tuupitishie Mswada huu ili tuwasaidie wazazi wetu na ndugu zetu ambao wanafanya kazi ngumu mashambani ya kukuza majani chai.

Asante Bi Spika wa Muda.

The Temporary Speaker (Sen. Mumma): Proceed, Sen. Tabitha Mutinda.

Sen. Tabitha Mutinda: Thank you, Madam Temporary Speaker. I rise to support the Tea (Amendment) Bill, 2023. I congratulate the Majority Leader for tabling this at a very important time.

First of all, it aligns with our Manifesto as Kenya Kwanza on matters of agriculture as far as different cash crops are concerned. Tea is one of the key cash crops in this country that plays a very key economic role in the different counties that grow it.

Tea is also the leading industrial crop in terms of its contribution to the country's Gross Domestic Product (GDP). It is a very important commodity to our country, having in mind the duration that tea farming has taken place in this country.

Madam Temporary Speaker, as I looked at the Bill, I can see that its focus is mostly on ensuring that tea growers are protected and there is less mismanagement of the tea growers by the different tea factories.

Clause 13 (b) talks about the levy. In (e) it talks about how the levy shall be appropriated in different percentages. I have looked at Part A, which talked about 40 per cent to the board for income and price stabilisation. It also talks about 30 per cent shall be applied to the board for the furtherance of exercise of any functions of the power of the board.

I feel that combined, that is a 70 per cent, which is now taken up majorly by the Board. I have noticed that only 10 per cent is applied to infrastructure development and 20 per cent to research.

In my view, where we are to ensure that we have a high-value entity product, then the percentage for the infrastructure should be much higher. Since we are in 2023, machinery has changed and the infrastructure is more advanced. The higher they are advanced, the higher the technology and the higher the cost.

Madam Temporary Speaker, if only 10 per cent will be set aside, the percentage looks a bit minimal, looking at what needs to be achieved. We are coming from having the old type of machine that has been there. Therefore, the Committee on Agriculture, Livestock and Fisheries should have given more percentage to the infrastructure ranging between 20 to 25 per cent or even up to 30 per cent.

The other issue is research. Like any institution or commodity, the issue of research is a key factor. It is through the expertise, knowledge and advanced training that should take place in the Tea Research Institute of Foundation. Research is key to bring to speed the different technologies, fertilisers and pesticides that are supposed to be used for agriculture by the tea growers to ensure we improve our tea quality.

Madam Temporary Speaker, when the allocation is a bit lower, then we might not achieve the required standard. Although it is good, it is in place the 70 per cent in which is 40 per cent is taken up by the board while 30 per cent goes to the functions and the

powers of the board. We should have minimized that and increased the percentage for the research institute and the infrastructure.

I have also looked at Clause 15(b) of this Bill. It talks about all immovable assets of the former Tea Board of Kenya and tea research, which were vested in the Food Authority of Kenya and the livestock research, shall by this paragraph vest in the board of the foundation, respectively.

This is very important, keeping in mind that agriculture is devolved and transfer of assets is key. Nonetheless, the Bill should also have given a timeline; after it is assented to and when it should take full effect. Otherwise, when it is left open, it becomes unclear in terms of what should happen or what it states.

In regards to the timeline, that needs to be in place to ensure that all these assets are moved fast and effectively to the right institution, to ensure it achieves what needs to be achieved. If it is left open, it might take longer.

I am talking in terms of where we are coming from and what we have seen. This is where the Intergovernmental Relations Technical Committee (IGTRC) had challenges such as delays in transferring some of the assets and equipment that used to be there when counties were first established.

As I speak right now, you will find that there are still challenges because most of the assets have never been transferred. A case example is the water companies where we have realised that they are still being held by the water companies. They have not been absorbed by the counties knowing very well that counties are the biggest shareholders in the different water companies that are in place.

I have also been keen to note that the Bill in Part Four says-

“A person shall not be appointed to be a Chair of the Board or Director unless that person holds at least a degree.”

This is an issue that I have always been very keen on where we, as a country, have so many degrees. If the position is left open to any degree holder, then a clinical officer or an Information Technology (IT) officer can be chairperson of the board. Where do we leave all those who have graduated with degrees in the agricultural field if they are not narrowed to this opportunity? This Bill should specify that one should possess an equivalent degree in the field of agriculture to create an opportunity for students or experts in the agricultural sector.

With all due respect, you can imagine someone who has a degree in theology being the chairperson of this board. Which experience, knowledge, experience and skills do they bring aboard as far as the tea sector is concerned? It is very important to specify the different learning levels and fields so that we encourage our people when such openings come up. If we leave the requirements open, we might not get maximum value as required.

Madam Temporary Speaker, I conclude by saying that this is the way to go. We are going to support this Bill. I have heard one of our colleagues talk about cartels out there who are calculating how they are going to sabotage this. As members of this House, together with our counterparts in the National Assembly, we have done our part.

We are going to support and make sure this amendment passes together with the few amendments that some of us have put across.

On the issue of direct market and sales by our farmers to the end user or final market is important. It reduces the brokers who have taken the bigger share. The farmers who are putting all their sweat are unable to gain or maximize their profits because cartels and brokers have come in and minimized profits that can be attained by the farmers. The amendment talks about direct sales, which then give direct proceeds and maximizes profits.

The Kenya Kwanza Government has reduced the cost of fertilizer from Kshs7500 to Kshs2500. The reduction of taxation on raw materials such as pesticides has reduced the cost of production. The farmer gets maximum profits and this is the way to go. We look forward to supporting this Bill when the time comes for Division.

I thank you.

The Temporary Speaker (Sen. Mumma): There are no more request. I know call upon the Mover to reply.

The Senate Majority Leader (Sen. Cheruiyot): Thank you, Madam Temporary Speaker. I appreciate all our colleagues who have taken time to speak to the Tea (Amendment) Bill (Senate Bill No.1 of 2023). This is extremely important in the sense that yesterday, while moving the Bill, I pointed out to the country the need to continue with this journey of reform that began in the precincts of this House.

A conversation among us Senators has seen farmers earn better over the last two or three years. We must sustain the war until we get to a point where farmers earn what is worth their sweat. We hope to get to a time where, we will proudly look at the future generations and assure them that we have fought economic colonialism.

Madam Temporary Speaker, our forefathers fought administrative colonialism, this generation must pursue the economic rights of the people that we represent which include, but not limited to Bills such as these so that we can ensure Africa's enormous resources are secured. We are a continent endowed with many resources. Unfortunately, our products are picked raw at the price of a penny while the people who process our products get far more than that.

This Bill speaks to an attempt by the House to address this injustice and ensure that one of the most important crops in the country; which earns and gives livelihoods to millions of Kenyans is well taken care of and in the years that are coming our farmers earn better. I appreciate each of the Senators who have spoken on the tea issue for all of us to benefit jointly and be happy about it. When we look back, we can say that during our time in the Senate, this is the much we did. When you drive up or down Parliament Road in a few years to come when you are no longer here, you will look at this House with pride and appreciate the contributions of Senators.

I was particularly interested by the comments of Sen. Mungatana, MGH. He spoke a few minutes ago on how people have abused the wheels of justice to deny rights to the citizens that we represent. This is a conversation that we need to have. It is emerging jurisprudence. Parliament is a representation of the 45 million Kenyans. We sit here to consider matters and vote on Bills. That is considered under Article One of the

Constitution, as exercising delegated powers that have been given to us by the people we represent. One, two or three judges cannot make a decision to deny the millions of people we represent the right to enjoy that, which has been passed by their representatives.

In the same way electoral petitions are considered, it is expected that within six months, matters elections are dispensed of because there need not be any grey areas on who is the actual representative of a certain group of people. We need to get to a point where we ask whether the courts can stop legislation that has been transacted rightfully in a House of Parliament and keep it in abeyance for two years as has been the case with the Tea Bill.

There are more than 15 clauses in this Bill of 2020, that farmers cannot enjoy the rights today. However, a judge is just issuing one order after another to extend it without due consideration that there are millions of farmers that stand to benefit from all the work done by their representatives. I do not think that was the intention of our Constitution when it gave independence to our Judiciary. It was not for justice to abort, but to get closer to the people.

If a judge knows very well that they cannot conclude on a matter of great public interest, the best thing to do is to write to the Chief Justice (CJ) and ask for a greater endowment, so that you can conclude. This is a matter of enormous public interest and it is wrong. The next time I run into CJ Madam Martha Koome, I will remind her that legislation that has been rightfully transacted in the Houses of Parliament cannot be enjoined for years, especially on such important matters, it is not right. That is not the constitutional design that Kenyans bequeathed themselves.

Sen. Mungatana, MGH, is right to argue and say that we could be doing so much work as Parliament, but there are sharks that know how to run and oil the wheels the justice. They are waiting at the courts. Immediately the President assents to a Bill containing good provisions made to benefit our farmers, it ends up being suspended and stays that way for a year or more. We are in the third year since the Tea Act, 2020 was suspended. Farmers should be benefitting from many of the provisions in the Act.

Is it not judicial blackmail? Yesterday, I gave the history. I stated that part of the reason we are carrying some of these amendments is because we have had to negotiate with some of the people. We tell them, 'You have refused the 1.5 per cent levy that we proposed. What do you think will be fair?' They say 0.25 per cent may be.

We have to negotiate with those people because the Judiciary cannot make a decision on the matter. You are wondering what we are arguing about? The people elected their representatives who voted. This is a serious issue. The next time that the Judiciary gives an account to Parliament of how they are undertaking their processes and works, this matter needs to be addressed. We should make a decision on this.

(Sen. Nyamu walked into the Chamber without bowing)

The Temporary Speaker (Sen. Mumma): Sen. Nyamu, did you bow when you walked in? Can you go back and bow, kindly?

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(Sen. Nyamu walked to the Bars and bowed to the Chair)

The Senate Majority Leader (Sen. Cheruiyot): Madam Temporary Speaker, this is something we need to strongly pursue and make a decision on.

With those very many remarks, I beg to reply.

I wish to request that pursuant to Standing Order No. 66(3) you defer the putting of the question until a later date.

I request Sen. Mungatana to second.

Sen. Mungatana, MGH: I second.

The Temporary Speaker (Sen. Mumma): It is so deferred.

(Putting of the question on the Bill deferred)

Hon. Senators, I will reorganize the Order Paper slightly. Let us proceed to consider Order No.24.

Second Reading

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

The Temporary Speaker (Sen. Mumma): Senate Majority Leader, you have the Floor.

The Senate Majority Leader (Sen. Cheruiyot): Thank you, Madam Temporary Speaker. I beg to move that the Water (Amendment) Bill (National Assembly Bills No.33 of 2023) be now read a Second Time.

This Bill was published in the Kenya Gazette Supplementary No.108 of 2023 dated 4th July, 2023. It was considered by the National Assembly and passed on the 25th of August. After that, the Bill was referred to us for consideration.

The principal object of this Bill is to amend the Water Act of 2016 to operationalize the Public Private Partnerships (PPP) in the water sector. You will recall that the President spoke about this during the State of the Nation Address in September, 2022. He called upon this House to help the Government actualize the PPP funding model for the water sector.

While this Bill is specific to the water sector, many other economic sectors need to actualize PPP, including the road sector. Many people do not know and appreciate that the only PPP project that the Government of Kenya has successfully implemented for the last 60 years is the Expressway. In the PPP unit in the National Treasury, you will find proposals and feasibility studies. Therefore, as Parliament, this is an avenue we need to unlock.

It should not be the business of the Government to fund every project. If we expect to be taxed to support every amenity, project or programme of the Government,

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then we may never know economic prosperity as a country. This Bill is a step in the right direction. We are amending the Water Act of 2016 to allow the Government to actualize this space.

The water sector in our country continues to face several challenges that impact the availability, accessibility and quality of water. Water should not just be available; the quality of what is available to our people is just as important. Access to safe and clean water remains a concern to us.

We should never lose the feelings of the people that we represent. Unfortunately, this is a possibility because of our comfortable lives. It is not known to many of us that while most of us in this House and those in formal employment will not struggle for a glass of water to drink, millions of citizens of this country cannot access safe and clean drinking water. This Bill is important because it makes it possible for the Government to tap into other resources and for a proper and considerate fee to make water safe and affordable to all our citizens.

Water pollution remains to be a problem that is mainly unaddressed to date. It is attributed to industrial effluence and agricultural product runoff. This threatens the availability of water. Addressing these issues requires concerted efforts to improve infrastructure, enhance governance and promote sustainable water management practices. This is equally important. Even in the many donor-funded projects littered across the country, like the African Development Bank (ADB), Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), and others.

Unfortunately, the national Government and county governments cannot run water management programmes or make them sustainable. Take time to read the reports I table in this House most afternoons about Kitui Water and Sewerage Company and the other water companies across the country. All these companies are loss-making entities. Many of them have serious governance issues, which is part of the challenge we aim to address by privatizing some companies.

It has been proven repeatedly that because of the makeup of the Government and the people in Government offices, they are not the best at doing business. The private sector handle and transact better. Unfortunately, in matters that are extremely important, such as water, we have to put in safeguards, so that you do not end up in a situation like in Kenya Power where they are the sole monopoly, they enjoy the economies of scale, but power continues to be beyond the reach of average Kenyans.

Even as we take the PPP route in the water sector, what safeguards will we put in place? This is elaborated in the Bill to ensure that as we do water projects run by the private sector, there is reasonable regulatory controls to ensure that Kenyans are not overcharged.

We already know what is happening on the ground, for instance, the case here in Nairobi City County where water providers move around with water bowsers. There have been stories - which I do not know whether they are accurate - that they are responsible for ensuring that certain estates in the City of Nairobi do not have water so that their business can thrive.

We know how business is transacted in this country. We must be clear on the governance model of the institutions we put in place. The Government must retain the rights. We must put across that the private sector satisfies the Government that they are charging, which is sufficient for them to transact and do business, manage the water, make it easily affordable and not make exorbitant profit at the expense of a basic need. Water is a basic need. That is why we are moving this Bill.

Clause One of the Bill provides for the name of the Act. Clause Two of the Bill proposes an amendment to Section Two of the Act to provide new definitions. Clause Three provides additional powers to the National Water Harvesting and Storage Authority.

Clause Four of the Bill proposes an amendment to Section 68 to provide for additional functions of Waterworks Development Agencies. They will now have the ability to run, control and have a say in the PPP projects.

Clause Five of the Bill proposes an insertion of new Section 68A to the Act to provide for the licensing of Waterworks Development Agencies by the Water Services Regulatory Board. This vital Board will ensure that these entities have competitive practices and guide the country towards achieving the dream of providing that every part of this country is water-sufficient. This will also help to eliminate the inequality that has seen certain parts of the country enjoying access to water.

Clause Seven of the Bill proposes an amendment of Section 72 to provide for additional functions of the Water Services Regulatory Board and to remove the Water Regulatory Board's powers to accredit water service providers.

Clause 12 of the Bill proposes deleting Section 119 of the Act on establishing a water tribunal. If you allow business entities to run these programmes without necessarily putting in checks and controls, you can lose control of a very important sector.

That, by and large, are the objects of the Bill. I hope Senators can have a debate, read the Report of the Committee, propose amendments and ensure that counties have a say. This is because reticulation of water is a fully devolved function. Therefore, counties must be brought on board.

As we sign an agreement on a revenue splitting mechanism, we perhaps may want to propose that counties earn something. Even if it is just remedial as the investors recoups whatever they have invested in, so that they do not have to wait. While the national Government can wait for 27 years before earning anything from the Expressway, counties cannot afford to let go of this particular function. Many of them earn from these water agencies. Although, like I have mentioned, very few of them are profitable,

Many of them continue to struggle with huge debts and other issues. Many of the institutions were set up during the days of councillors whereby, you will find a driver earning "X" amount of salary and the Chief Executive Officer (CEO) almost similar amount. There are very many issues of governance. Therefore, it will be important to do that particular clean up.

I invite colleagues to read, support the Bill and make their decisions, so that we can grant Kenya a very important space. This is so that our people can eventually access

water especially, in densely populated areas where people sometimes struggle to access drinking water.

Madam Temporary Speaker, with those very many remarks, I request Sen. Mungatana to second.

The Temporary Speaker (Sen. Mumma): Sen. Mungatana, you have the Floor.

Sen. Mungatana, MGH: Madam Temporary Speaker, I thank you for giving me the opportunity to make my contribution to the Water (Amendment) Bill, that has just been very ably moved by the Senate Majority Leader, Senator for Kericho County, Sen. Aron Cheruiyot.

I congratulate the Mover of the Bill. This is because he has pointed out to a few but very important issues that we are facing around water within the counties.

I was invited to sit in the County Public Investments and Special Funds Committee headed by our very own Sen. Osotsi. In that sitting, Tana River County was required to explain some of the problems that Tana River Water and Sewerage Company (TAWASCO) is facing. There were very serious governance issues and many financial problems. There were also issues of compliance with the requirements that would make the TAWASCO operational in a manner that would help the people of Tana River.

Madam Temporary Speaker, I was surprised to learn that TAWASCO was unable to meet certain requirements that would enable it to access funding from international organisation. Some of those requirements are so basic. They include; involving an incorporation certificate, contracting an advocate who would take them through and a simple follow up with Government offices so that they can get what is required in terms of compliance.

TAWASCO was unable to access huge grants just because of that. These huge grants would enable it to give serious water works in Tana River county. In comparison, you will find that other counties that had already met those criteria were able to access the funding from international donors. These counties were able to meet the criterion because of follow up.

I then ask myself, what if TAWASCO was in partnership with a private person who would follow up on things because that is the source of his income and livelihood? What if that private person was part and parcel of TAWASCO and he or she had shares there? Would he be defeated to follow up some certificates so that he can access a grant? Would he be defeated to follow up on basic requirement such as a certificate of incorporation, so that he can access some grants worth billions? Would he be requiring the County Public Investments and Special Funds Committee to order him to do that? My answer is; No. A private person will be self-driven. He or she would do anything possible to acquire cheap credit and grants to enable the business to thrive.

We are now coming up with a law that is opening up opportunities for county governments that we serve, to enter into partnerships with responsible partners so that they can raise required capital requirements, look for funding and maybe go into long-term contracts with those who have money.

(Sen. Tabitha Mutinda and Sen. Oketch Gicheru consulted loudly)

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Madam Temporary Speaker, can I be protected from the Senators?

The Temporary Speaker (Sen. Mumma): Sen. Tabitha Mutinda and Sen. Oketch Gicheru, kindly, consult in low tones.

Sen. Mungatana, MGH: Madam Temporary Speaker, imagine if a private person was a partner to TAWASCO and a shareholder, he or she would look for all these requirements. He or she would turn hell and heaven to make sure they access the grants. That person would go to any length, even to commercial banks, to make sure that they get the best equipment and personnel to carry out the works.

Even the kind of charging system that these county governments are using is not computerized; it is still manual. I am not saying it is only in Tana River County, but across the counties. Therefore, because they are not computerized, there is a lot of pilferages. If we have a private partner within any water and sanitation company or any contracting agency that enters a contract with the county government, they will not allow that.

One of the things you look at when you get into business is if you can make money. Which are the sources of possible theft? That is why nowadays, if you go to a restaurant or a gymnasium, they tell you to only pay by card or M-pesa. This is because, they want to make sure that there are no pilferages.

When you enter into a private partnership with a Government entity, all those pilferages will be taken off. It will be computerised. Our meters will come reading the truth, not something that someone has made up. You will not be brought a piece of paper in this day and age, to be told that this is what you are supposed to pay. You will not need someone to visit your house to read the meter. The meter will be well operated and monitored from a central point.

Madam Temporary Speaker, I visited Germany and I saw what they do with their sewerage system and the management of their water system. They even use their water system to generate power, which is another source of income for the public-private partnerships that they do. It is time the Senate came out and supported this Bill.

Speaking for my County, Tana River, we would appreciate if any private partner who would come and work with our County Government. This is because the county governments and the national Government have not been able to put infrastructure that can satisfy the people of Tana River. The kind of water tanks and water works we have were put up a long time ago by our colonial masters. If a private person comes and invests in the water sector in Tana River, then we would have good machinery, good billing systems and access to water. Even in the piping system, a private person would know that I need to spend money to invest so that the water from River Tana would reach each and every individual so that I make more money.

However, where we are having a County Government that has limited resources, they would try but leave it at some point. They will do one or two things due to political decision-making and say that this is not important, let us focus on something else. If we opened up this sector for investment by people, we would also be encouraging

employment and skills development in that area considering there are people who specialize in that area.

Madam Temporary Speaker, the other day, we sat as the Senate Committee on Energy and talked with suppliers of electricity meters. We discovered that the suppliers of electricity meters were only six and their biggest customer is Kenya Power. Those are the ones who can manufacture and most of them are Chinese. If they are not Chinese, they are Koreans and only one is a fully-owned Kenyan company.

The Committee challenged them to transfer skills. They told us that it is going to take time. Even in the water sector, we will need transfer of skills to our people so that they see this as an area of investment so that they can go into that sector. It will create employment and local wealth for local people. Kenyan people will see that there is an area of investment they can go into and make a good living because everyone will need to drink water, one way or the other. It is time we thought of getting into public-private partnerships, even in the water sector.

The Constitution in Article 43 says that every person has a right to clean and safe water in adequate quantities. Adequate quantities, Madam Temporary Speaker. At the bottom, it gives this responsibility to the State. Article 43(3) states -

“The State shall provide appropriate social security to persons who are unable to support themselves and their dependants.”

These social and economic rights are called progressive human rights. They are not like first generation human rights. These human rights are supposed to be attained over a period of time, so that they are progressively attained. When you look at counties that have capacity issues like our county, we still need clean water and in adequate quantities. However, where there is no investment, it is good to tweak the law to allow private capital to come in, partner with county governments and allow for investment in this sector.

Madam Temporary Speaker, when the Government says, let us open this sector so that people with capital can invest, it is a plan. It may not be a perfect plan, but it is a plan. This is because the demand is huge and all of us looked at the budget and we know that the development vote that Kenya has is very minimal. Education takes up almost everything. After education, there is defence and from there you go to Higher Education Loans Board (HELB). When it comes to water, there is little money left for its development.

When we have emergencies, they can even wipe out the Contingency Fund that is there for the nation. You will note that these emergencies go to the vulnerable Ministries; like the Ministry of Water, Sanitation and Irrigation. If it is private capital, no one will come there to touch what you are doing. When the Government is saying it is opening this sector so that we can progressively achieve clean water according to Article 43 of the Constitution in progression and in sufficient quantities, then this is a good step forward.

Madam Temporary Speaker, I have argued before and will continue to argue that the problems of this country will not be solved with good political intentions. The problems of this country are going to be solved with hard work, legislative frameworks and good policies; hardworking Ministers and legislators who will deliver good quality

legislation that will mirror policy frameworks, so that our people can have the full benefit of an administration that is responsible.

For this time, the State House occupant at this time, His Excellency the President has taken time to make sure that what he is talking about and what was done in the campaign trail, that some people have sat down to think about the policy framework and the legislative bulwark that will buttress the policy framework. Even when this gentleman leaves office after 10 years, we will have taken a long step forward towards a better Kenya.

Madam Temporary Speaker, it is time that we sometimes stop the politics and noise-making after elections and sit down and do the hard work. This is part of it. I commend this legislation to all who may not have time to read it. I am convinced that we need to change the Water Act to accommodate these amendments, so that we have the opportunity to attract private capital into investing in the water sector. Our people then will have good, clean water and according to our Constitution, in sufficient quantities.

I beg to second the Bill, Madam Temporary Speaker. I thank you.

(Question proposed)

The Temporary Speaker (Sen. Mumma): Sen. Tabitha Mutinda.

Sen Tabitha Mutinda: Thank you, Madam Temporary Speaker. I start by saying that water is a key basic commodity for each and every household. Each and every woman, youth and man need water. I am coming from a point of being a Member of the County Public Investments and Special Funds Committee (CPIC).

Madam Temporary Speaker, as Members of this Committee, we have been privileged. I am happy that Sen. Mungatana has had an opportunity to appear before this Committee on matters of water companies. We have been oversighting and our Committee is new. Out of experience and knowledge, as Members of the County Public Investments and Special Funds Committee, we have been able to oversight and come across different concerns by these water companies.

The Public Private Partnership (PPP) is positive in the sense that there is more financial muscle by the private sector in ensuring they are able to supply with the modernity that is required and the magnitude and quantity. However, the problem of having private people doing the water business is that we increase the number of cartels in this country.

We realized that the Water Works Development Agencies were the decision makers in terms of the assets they have been holding for the longest period. These assets are under them, yet they are being utilized by the water companies and have never been transferred. These are issues that we came across and raised concern about. The most worrying issue was that of loans. The Water Works Development Agencies would take loans, which would be paid by the water companies. There has been no freedom by the water companies for a long time. As a Committee, we came to the conclusion and wisdom that these Water Works Development Agencies should be scrapped because they have been making it hard for the water companies.

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We came across non-revenue water, which according to the WASREP Regulations, should be about 25 percent. The water loss percentages that were indicated across most of them ranged as high as even 50 percent. Most of them blamed the COVID-19 pandemic that occurred in 2020 and 2021. The water losses ranged from the physical and commercial water loss perspectives.

The other issue was the going concern. Most of these companies were dead. They did not have the capital to run and were running on losses. We never came across a company that was making a profit. It was worrying that in most of these companies people were still earning their salaries very comfortably yet, losses were a normal thing.

Madam Temporary Speaker, we were able to go down into the issues of who owned these companies. In none other than the County of Murang'a, we came across one of the biggest businessmen in this country who was also a director in the water company. When we summoned them because we needed the updated CR12, they quit being the directors of these companies. You realize the massive level of corruption that has been there. I advise the Senate Majority Leader that we need to look at privatizing the water companies very keenly, knowing that the water function is devolved.

We mention national water collection storage point and talk about Nairobi being the capital. When, for example, it rains today, you cannot say that we are collecting water that has rained in a region like Kitui for the Nairobi factor. No, because it is across and so, every county should be able to manage its water company within the county levels.

Clause 9(a)(1) says-

“A contracting authority may enter into a public-private partnership for the exercise and performance by another person as a licensee of some or all of its functions with respect to some or all of its functions with respect to a part or the whole of its area of water service provision.”

On this statement of saying “another person” gives private people the opportunity to have these water bowsers around these towns. Nairobi City County has been highly affected. We have cartels who have sabotaged the normal water supply in Nairobi, so that they can reap massively from their business of supplying water. This Clause should be amended to read “performance by counties.”

On tariffs, we realized that there have been so much delay and inactivity in ensuring that tariffs are there on time and have been approved on time. We realize that the issue of going concern is because these tariffs have not been amended. The greatest issue that has been there with these water companies is governance. We have incompetent people who have served in these water companies for the longest period.

As I said earlier, no company reported profits. It was losses throughout, yet people are sitting in the office earning salaries at the end of every month. People have served in these companies for the years and years and there is no single improvement. Issues of governance and competence have been noted.

My suggestion would be that the Water Works Development Agencies should be scrapped. We should then allow and strengthen, directly, the water companies that are also co-owned by the county government. Governors are also part of this directorship

because Article 175 of the Constitution of Kenya, 2010, states that they are the CEOs of these different counties.

For us to ensure we improve on the water service provision for the different counties, then there should be much more support to the water companies by the governors in different counties, which some counties have done. For some, it has been also political and chaotic whereby some agencies are leaning more toward one county and not the other.

At times there is co-sharing of the assets. This affects counties for example, on loans. One county may be paying the loan while the other county is not. At the times, that county is still paying recurrent expenditure such as electricity for that water company. Hospitals also need water provision by the water company. There were many issues that came about mostly championed by these Water Work Development Agencies. Therefore, the support should be much more on the water companies directly or by the county government. Focus should be on not giving more powers to these agencies because they have messed up the operations of these water companies as we were able to come across.

I like Clause 12, which talks about the Water Tribunal. The Water Tribunal sounds tremendous because, in the longest of our oversight, we never came across any set body that can intervene. We realized there were many issues to the extent that when a new Governor comes in, he or she is cautioned by some of the managing directors. It seems as if the managing directors have the final say on water companies, forgetting that the Governor is the CEO and boss of that water company. As much as there is the Managing Director, we were able to correct many of these anomalies and bring much more light to these particular companies.

In conclusion, I remember a few months ago, many improvements have been done. However, the solution is a wrap up of these Water Works Development Agencies because of the level of incompetency and poor governance that we came across that affected women, youth and men of this country in not getting sufficient water supply as they are supposed to get. There needs to be a lot more discussion on the issue of the Water (Amendment) Bill.

That will be my contribution, Madam Temporary Speaker.

The Temporary Speaker (Sen. Mumma): Sen. Oketch Gicheru, please proceed.

Sen. Oketch Gicheru: Thank you, Madam Temporary Speaker. I know that the Majority Leader perhaps is within the premise of the Chambers. I wish that he could listen in on some of the feedback that we want to give on this particular Bill. I believe that this Bill is critical as it affects one of the most essential functions of governance that is fully devolved. Water is unlike any other function that is fully devolved. This is because without water, you face a serious existential threat.

The context perhaps can be equal to what we have seen in healthcare. The moment you leave healthcare in the hands of private individuals completely, then it becomes inaccessible to some people to the extent that despite the fact that people are contributing a lot of money in different healthcare schemes in this country, accessing

healthcare, especially when you get into a situation where you have terminal diseases, it becomes the hardest thing you can ever experience.

That is what we are facing with water in this country. To the extent that if water was fully commercialized and commercial viability becomes the only angle with which you want to get water in this country, then it becomes a commodity that will be out of reach of many Kenyans. That is why the framers of the Constitution under Schedule Four saw it best to not only to devolve this function, but also try and give counties full control of water.

For instance, if you read the Public Finance Management (PFM) Act, Section 182 provides room for counties to establish corporations which can become the vehicles with which you can allow for commercial viability of this kind of commodity, while also allowing for service provision with this kind of commodity.

If you read Section 184 of the PFM Act, the structure with which these provisions are given are, therefore, structures that are supposed to enable not only focusing on being able to make these corporations viable, but also being able to make counties accountable. Importantly, is to take ownership of these water services and these corporations that are giving us what I would call essential services.

Madam Temporary Speaker, if you look further into Section 77 of the Water Act, 2016 that we are seeking to amend today and read it together with Part Two of the Water Services Regulations that were established in 2021, it further emphasizes the role of the county executive and its members to be able to take full responsibility on establishing what the Act calls water service providers.

I am giving this backdrop because we have experienced a number of times when water is left in the hands of private individuals, it takes the simple course of the market economy where you are leaving water to supply and demand theories. However, the truth is the availability and access of water in this country is not evenly distributed.

Today, if you go to Turkana County, you will find that there are a few water bodies that people can access. There is no predictable rainfall in that region. If you go to Mandera County, you find that at times like now when there is *El Niño*, people face extreme weather conditions in certain times of the year and extreme weather conditions in the other. At some moment, it gets extremely hot that some people cannot access water and at some other moment, it is extremely cold and wet in such a way that even if you are able to access surface runoff of water, it is not safe for consumption. That is why the case for water is something that we cannot lose sight of giving counties a framework and a legal basis for controlling it absolutely to the extent that everybody can at least have some sense of equity in terms of access and availability.

Madam Temporary Speaker, this Bill is against that spirit of absolute ownership of water provision and water services in our counties. I will walk you through some of the amendments that this Bill seeks to bring and why I believe that they are hugely problematic. Not only problematic because they are going to prohibit the idea of access and availability of water to different counties, but also prohibitive in the sense that they are going to claw back completely on why we have the function called devolved units in this country.

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For instance, Clause Four of the Bill proposes the amendment of Section 68 of the Act to provide for additional functions of Water Works Development Agencies. I am a Member of the County Public Investments and Special Funds Committee. This entire year, one thing that I have been doing together with my colleagues, and under the leadership of our able Chairperson, the Senator for Vihiga County, Sen. Osotsi, is to look at what we call country strategic plans for all the water service providers in all our counties across the country.

These water service providers are facing some serious eminent challenges from the Water Works Development Agencies to the extent that I personally believe that should this debate continue next week; the Members of our Committee will tell you that one of the reasons we have got dysfunctional water services in our counties is because of these agencies. They are completely making it difficult for water service providers to operate.

They control all the asset bases that are there to provide water. These assets are sitting in their books. They are using those assets to take huge loans from banks. Those huge loans are not restricted to the water service providers and their activities in respective counties to the extent that where that loan is used, we cannot substantiate. Then they are forcing counties to pay for those loans on those water services; loans that they were not part of and do not know why they were taken in the first place, and that are not integrated with those respective county development plans that we work very hard to develop.

If there is one thing that this Bill could have proposed is the banning and disbanding of all these Water Works Development Agencies. We do not need them. If you look at things like integration of bulk waters across bodies right now, as we are talking, the Water Services Regulatory Board (WASREB) is struggling to cluster some of the water service providers in different counties. I know for sure that Kisii and Nyamira counties are having a stalemate right now on who runs the Kisii Water Company that is the biggest distributor of water in that area.

There is nothing like a water development agency coming to help them to provide water in a way that they are developing similar infrastructure. In fact, they have approached the Committee. We have had the Governor and the County Executive of Nyamira approaching the Committee to help them separate these two companies, which I think is the best spirit.

Also, the Governor of Kisii, Hon. Simba Arati, has approached the same committee to separate this particular Water Service Provider (WSP) so that everybody can provide water that is safe, accessible to their respective counties in volumes that can be able to sustain their population. Therefore, we do not need these water agencies.

Secondly, these water agencies, while they have these assets of water provision in these counties, in their balance sheets, the servicing of those assets, has no proper agreement drawn between them and water service providers. It is not that they do not have capabilities of being able to draw these agreements, it is a deliberate way to make sure that they can strain those water service providers financially by essentially making it easier for them to own the assets and use them for whatever purposes of their balance

sheets, but on the other side, the servicing of vehicles, the equipment and every single infrastructure that are used for water provision in those counties are left to the water service providers.

This is straining governors and the counties. You can imagine where we have serious delays like now, in exchequer releases where counties are trying to get money to be able to run different functions. Where there is serious delays in resources going to the counties, it becomes completely impossible for these water service providers to operate.

Secondly, Clause Five of the Bill proposes the insertion of a new section 68A to the Act to provide for licencing of Water Works Development Agencies by the Water Services Regulatory Board (WASREB). We have been dealing with the issue of non-revenue water in the counties. This is one of the biggest issues. WASREB itself described that for commercial viability, at least every single water service provider in every single county should not have more than 25 per cent of total water that they get being non-revenue water.

Madam Temporary Speaker, what has been happening in these respective counties is that all the water service providers are facing serious challenges with being able to control their non-revenue water. That means that the fundamental mandate of WASREB, which is ensuring commercial viability of water service providers in our respective counties, is completely defeated because they have a good idea prescribed to a wrong disease. This disease---

Madam Temporary Speaker, I seek your indulgence regarding the time because I got in when it was 6.14 p.m. and I see my time --- I think I still have a lot of time, but you will guide when the right time comes.

I was saying that when you try to dissect the consecutive factors of non-revenue water that makes it completely financially viable, then you will realize that WASREB has completely failed in this mandate not only of licencing, but also being able to ensure that there is commercial viability of these entities.

For instance, if you look at physical losses that comprise non-revenue water, those physical losses are not caused by mere recklessness of counties, but serious development activities that are going on in those counties. For instance, you find that pipes providing water in different areas in those counties, like right now Migori County has got many roads being done, both paved and unpaved road. Sometimes, they end up passing in areas where there are pipes that had been constructed before.

This has nothing to do with the commercial viability angle by counties. It has something to do with development that is going on in counties, that makes it difficult for people to physically plan well and avoid destruction of those pipes.

Madam Temporary Speaker, in other areas, these physical losses are due to dilapidated pipes. Some pipes are old while some have metering issues. The meters are old to the extent where the response is not a simple equation of just investment and attracting private partners to these companies. It is just an issue of investing in infrastructure that is updated and modern. That can accommodate the kind of volumes that counties are doing. It has nothing to do with WASREB.

Our biggest problem in this Committee is the response by WASREB to those kinds of problems. To them, the issue becomes the tariffs. If there is non-revenue water in any region, WASREB will review, impose or keep regulating the tariffs.

Madam Temporary Speaker, we do not need WASREB. If the issue is about safe and good water for people to consume, give governors power to take control of standards of water that people drink in their counties. I trust our governors to work with Members of County Assemblies (MCAs), to establish standards in their respective counties, and ensure that there is safe water within their borders. Do not leave it to WASREB to put some blanket descriptions, definitions and supervision that do not resonate with the challenges and opportunities that some counties face. For instance, commercial losses that come with lack of enforcement of billing system and proper invoicing, has nothing to do with WASREB. That is a commercial practice that can be controlled by different counties in their own ways.

Madam Temporary Speaker, if there is anything that this Bill could help us to do, it is to do away with the Water Works Development Agencies and WASREB. Let the powers of WASREB in water provision bodies be taken back and given to counties.

Madam Temporary Speaker, Clause Six of the Bill proposes that the amendment of Section 69 of the Act to provide for clarity between the roles of Water Works Development Agencies and water service providers. This is true because that redundancy, as I have said before, is simply caused by Water Works Development Agencies. Let the provision of water services be fully given to water services providers, which are owned by counties.

Madam Temporary Speaker, Clause Seven of the Bill proposes the amendment of Section 72 of the Act, to provide for additional functions of water service providers regulatory body; and to remove the water service regulatory bodies' power to accredit water service providers.

This is problematic because it will touch on Sections 75, 76 and 77 of the Water Act, 2016. This will mean water service providers will be purely for individuals and not counties anymore. That will take the entire water function to the private sector. I have nothing against the private sector providing water. However, my only problem is that everybody in this country will have the economic potential, capabilities and resources to acquire water, regardless of who provides it.

The intent of the Fourth Schedule of devolving water was to give water to people who cannot afford it. This Bill makes it impossible for counties to take full control and give this water service provision back to the private sector entirely. That makes it impossible.

(Sen. Oketch Gicheru's microphone was switched off)

The Temporary Speaker (Sen. Mumma): Sen. Oketch Gicheru, you will have a balance of two minutes, when debate on this Bill resumes.

ADJOURNMENT

The Temporary Speaker (Sen. Mumma): Hon. Senators, it is now, 6.30 p.m., time to adjourn the Senate. The Senate, therefore, stands adjourned until Tuesday, 5th December, 2023, at 2:30 p.m.

The Senate rose at 6.30 p.m.