

**PARLIAMENT OF KENYA****THE SENATE****THE HANSARD****Tuesday, 20<sup>th</sup> February, 2018**

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

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

**PRAYER****PAPERS LAID****THE SENATE CALENDAR FOR THE 2018 SESSION**

**Sen. Dullo:** Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate, today 20<sup>th</sup> February, 2018.

The Senate Calendar (Regular Sessions of the Senate) for the year 2018 (February to December, 2018).

*(Sen. Dullo laid the document on the Table)*

**The Speaker** (Hon. Lusaka): The Chairperson, Standing Committee on Education, is not in the House neither is the Vice Chairperson. We, therefore, defer the laying of the Paper. Let us move to the next

Please proceed, Sen. Poghio

**REPORT OF THE 8TH ORDINARY SESSION OF FP-ICGLR**

**Sen. Poghio:** Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate, today 20<sup>th</sup> February, 2018.

Report of the 8th Ordinary Session of Forum of Parliaments of Member States of the International Conference on the Great Lakes Region (FPICGLR), 5th – 7th December, 2017, Central African Republic.

*(Sen. Poghio laid the document on the Table)*

**NOTICES OF MOTIONS**APPROVAL OF THE SENATE CALENDAR  
FOR THE 2018 SESSION

**Sen. Dullo:** Mr. Speaker, Sir, I beg to give notice of the following Motion:-  
THAT, pursuant to Standing Order 29(1), this House approves the Senate Calendar (Regular Sessions of the Senate) for the year 2018 (February to December, 2018), laid on the Table of the House on Tuesday, 20<sup>th</sup> February, 2018.

**STATEMENTS**

**The Speaker** (Hon. Lusaka): We have Statements to be requested. Please proceed, Sen. (Dr.) Ali.

HUMAN-WILDLIFE CONFLICT AND LIVESTOCK  
PREDATION IN WAJIR COUNTY

**Sen. (Dr.) Ali:** Mr. Speaker, Sir, I rise to seek a Statement from the Chairperson of the Standing Committee on Lands, Environment and Natural Resources regarding human wildlife conflicts and livestock predation in Wajir County.

In the Statement, the Chairperson should respond to the following concerns:

(1) State the cases of human-wildlife conflict in Wajir County for the last 10 years.

(2) How many deaths have occurred as a result of human-wildlife conflict in the last 10 years?

(3) How many cases of bodily injuries have been recorded as a result of human-wildlife conflict in Wajir County in the stated period?

(4) How many cases of livestock predation have been recorded in the same period?

(5) What is the estimated cost of lives lost, human injuries and livestock predation to the Government of Kenya?

(6) What measures has the national Government put in place to mitigate the aforementioned losses?

(7) What measures has the county government put in place to mitigate the aforementioned losses?

(8) What measures have been put in place by the national and county governments to compensate the affected families in cases of human-wildlife conflict in Wajir County?

I also request for the provision of a vehicle for the Kenya Wildlife Service (KWS) Wajir, which covers over 56,000 km<sup>2</sup>. The KWS in Wajir has no car yet there are a lot of problems all over the county.

Thank you.

**The Speaker** (Hon. Lusaka): Please proceed, Sen. Olekina.

KILLING OF LIVESTOCK IN RATIA, LAIKIPIA  
NORTH CONSTITUENCY, LAIKIPIA COUNTY

**Sen. Olekina:** Mr. Speaker, Sir, Mr. Speaker, Sir, pursuant to Standing Order no. 46(2)(b), I rise to seek a Statement from the Chairperson of the Standing Committee on National security, Defence and Foreign Relation regarding the killing of livestock in Ratia, Laikipia North Constituency, Laikipia County.

In the Statement, the chairperson should state:

(1) Whether the period within which the Gazette Notice dated, 17<sup>th</sup> March 2017 by the Cabinet Secretary for Interior and Coordination of National Government declaring Rumuruti, El Molo, Kerimon, Ng'arua, Marmanet, Mgogodo East, Segera as disturbed and dangerous areas where possession of any arms was prohibited was extended.

(2) Enumerate the number of cows that have allegedly killed by the police officers since the area was declared a disturbed and dangerous zone.

(3) Explain what happened immediately following the shooting of the cows.

(4) Whether any herders were arrested by the police officers from the scene of crime and the status of the arrested herders.

(5) State the measures that the Inspector General of Police took to preserve the crime area following the killing of over 300 cows last week.

Mr. Speaker, Sir, this Statement was presented quite a while ago but we did not get any response and that is the reason why I have re-introduced it.

(6) Confirm whether as alleged, the herders invaded a private ranch and if so, whether the ranch owners filled a complaint with the police officers.

(7) State the names and owners of the said ranch where the cows were killed.

(8) Table a list of the disciplined forces who were deployed to the areas and the specific makeup of each discipline, stating the community from which they come and percentages per community.

(9) State the measures that the Government will take to compensate the herders who lost their cows and specifically Mr. Lena Kukuyia who lost 168 cows and Mr. Lekale Simiyu who lost 138 cows

(10) Explain the measures that the Government has put in place to bring to an end the killing of livestock and foster harmonious living between the communities and the ranch owners.

Mr. Speaker, Sir, allow me to add that it would be good for the Chairperson of this Committee to explain how and what the Government is doing to bring the three communities together because as of yesterday, the three communities were stilling killing one another.

Thank you.

**The Speaker** (Hon. Lusaka): Before I call the Chairperson of the Standing Committee on National security, Defence and Foreign Relations to respond, let me call the Chairperson of the Standing Committee on Lands, Environment and Natural Resources to give a commitment on the first statement.

**Sen. Mwangi:** Mr. Speaker Sir, I undertake to give an answer to the Statement two weeks from now, obviously after consulting the Ministry concerned.

**The Speaker** (Hon. Lusaka): That is adequate. Chairperson of the Standing Committee on National security, Defence and Foreign Relation, please proceed.

**Sen. Sakaja:** Mr. Speaker, Sir, in as much as this statement is extensive, in terms of the number of questions, 10 questions to be exact. The statement even requires some statistical data from the Ministry as well as percentages of communities, ownership of ranches, *et cetera*. I note that this is a statement that was asked previously in the Session. I am assuming that it was already forwarded to the relevant Ministry. The answer should be ready somewhere. Let me give a response in the next seven days.

**The Speaker** (Hon. Lusaka): Is seven days okay with you Sen. Olekina?

**Sen. Olekina:** Mr. Speaker Sir, that is fine.

INTRODUCTION OF TEA EXPORT TAX BY  
MOMBASA COUNTY GOVERNMENT

**Sen. Cheruiyot:** Mr. Speaker, Sir, pursuant to Standing Order 46(2)(b), I rise to seek a statement from the Chairperson of the Senate Committee on Agriculture, Livestock and Fisheries regarding the introduction by the County Government of Mombasa of a tax/levy of Kshs32 per packet of tea being exported through the Port of Mombasa.

In the statement, the Chairperson should:

(1) State whether the Government is aware that tea is among the leading export earners in Kenya.

(2) That the tea sector employs more than five million Kenyans.

(3) Table a schedule showing the type and amounts of taxes being levied on the tea farmers and all the dealers in the tea sector.

(4) Explain why the County Government of Mombasa has introduced this tax of Kshs32 of made tea being exported through the Port of Mombasa.

(5) Explain the measures the Government will take to harmonise and waive some of the levies, licenses and fees that are being charged on tea farmers, leaving very little earnings for them.

**The Speaker** (Hon. Lusaka): The Chairperson, Committee on Agriculture, Livestock and Fisheries.

*(Sen. Ndwiga spoke off record)*

**Sen. Sakaja:** Mr. Speaker, Sir, I want to ride on that statement because there is a growing trend across the country, especially with many governors to ignore the very specific provisions of the chapter on Public Finance. Article 209 of the Constitution is clear, for instance, that only the national Government may impose:

(a) Income tax;

(b) Value-added tax;

(c) Customs duties and other duties on import and export goods; and

(d) Excise tax.

Additionally, imposition of tax is governed by law in this country. You cannot impose a tax if there is no law that supports it. I, therefore, just want to ride on that request and ask that as those questions are being responded to, the Chairperson should:-

(1) Tell us if the Cabinet Secretary (CS) is aware of any law that permits Mombasa County to levy export tax.

(2) Whether it is constitutional even if that law was passed by the county assembly to charge tax on made tea,

(3) Tell us when it was passed and what action is being taken to ensure that all governors and county governments in this country know their limits when it comes to imposition of taxes in the country.

**The Speaker** (Hon. Lusaka): The Chairperson Committee on Agriculture, Livestock and Fisheries.

**Sen. Ndwiga:** Mr. Speaker, Sir, I undertake to give that statement within fourteen days.

**The Speaker** (Hon. Lusaka): That is okay. Sen. Olekina.

#### STATUS OF LAND OWNED BY ADC IN LAIKIPIA COUNTY

**Sen. Olekina:** Mr. Speaker, Sir, pursuant to Standing Order No. 46(2)(b), I rise to seek a statement from the Chairperson, Senate Committee on Land, Environment and Natural Resources regarding the status of over 63,000 acres of land owned by the Agricultural Development Corporation (ADC) in Laikipia County. In the Statement the Chairperson should:-

(1) State whether the government is aware that Samburu community has for over 40 years grazed on over 63,000 acres of land owned by ADC.

(2) Confirm the status of the said land and specifically around Mutara Area.

(3) Explain who owns the land adjacent to the ranches which the Samburu Communities have occupied since Independence; and finally,

(4) Explain what happened to the communities that were forcefully evicted from the said public land.

Mr. Speaker, Sir, this is a statement that I raised earlier on in the last Session, so I expect that it will take a shorter time to get the response.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I would wish to ride on that statement and also ask the Chairperson Senate Committee on Land, Environment and Natural Resources, in bringing the answer, to bring the Policy Statement. ADC lands were community lands that were taken by ADC as a public corporation at no cost.

Where there is a need to dispose of the land, will the chairperson tell this House and the country that with the advent of county governments and devolution, the national Government should unconditionally transfer ADC lands to county governments because this is where they belonged in the first place. Those county governments can utilise the land as tools of economic production as stated in the Constitution.

We are having situations where, because of very nominal monies owed by ADC lands, this is leading to monstrous auctions of such land to people with money and this ends up disenfranchising the people of the counties that have looked after these lands from time immemorial as properties of those people and counties.

**The Speaker** (Hon. Lusaka): the Chairperson, Senate Committee on Land, Environment or the vice-chairperson.

*(Sen. Mwangi walked into the Chamber)*

**The Speaker** (Hon. Lusaka): Okay the Chairperson is there. I hope you heard the question.

*(An Hon. Senator spoke off record)*

**The Speaker** (Hon. Lusaka): He needs to provide an answer when he will be ready.

**Sen. Mwangi**: Mr. Speaker, Sir, I did not hear what he asked so I am requesting that he repeats so that I can tell him when I will give him the answer, whether in one day or three weeks.

**The Speaker** (Hon. Lusaka): Okay repeat.

*(Sen. Lelegwe walked across the Floor without bowing to the Chair)*

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

**The Speaker** (Hon. Lusaka): Proceed.

**Sen. M. Kajwang**: Mr. Speaker, Sir, I paused so that you could watch the offending Senator in action. The Senator for Samburu County has done it not only once, but twice. He has crossed the aisle without ceremony. You need to guide us and he is a former Speaker. We might need to take him for induction on how to be a Senator.

**The Speaker** (Hon. Lusaka): As a punishment he knows that he should go back and do the right thing. Walk to the Bar and do the right thing, he was a Speaker so he should be able to understand the rules and procedures.

*(Sen. Lelegwe walked to the Bar and bowed)*

**Sen. Olekina**: Mr. Speaker, Sir, in the statement the Chairperson should:-

(1) State whether the Government is aware that the Samburu Community has for over 40 years grazed on over 63,000 acres of land owned by the ADC.

(2) Confirm the status of the said land and specifically around Mutara area.

(3) Explain who owns the land adjacent to the ranches which the Samburu Community has occupied since Independence.

(4) Explain what happened to the communities that were forcefully evicted from the said public land.

**The Speaker** (Hon. Lusaka): Yes, Sen. Wetangula.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, the question will be found in The HANSARAD and the distinguished Senator can peruse the HANSARD and answer the question.

However, for avoidance of doubt, ADC lands were trust lands that were then transferred to ADC by the former governments at no cost, including your County Nyandarua. These lands are being routinely disposed of on spurious loans defaults and so on.

Will you bring an answer to this House and to the country, stating clearly where ADC lands are to be disposed of, the first point of call is to transfer them from the National Government to the county governments to use them as tools of production to enhance the economies of the counties. Since, that is where the lands came from anyway.

**The Speaker** (Hon. Lusaka): The Chairperson of Committee on Agriculture, livestock and fisheries.

**Sen. Mwangi:** Mr. Speaker, Sir, I will undertake to give an answer in three weeks because this question was not in the Order Paper. In the answer, I will include what my friend Sen. Wetangula has asked.

**Sen. Olekina:** Mr. Speaker, Sir, during the last Session I brought this matter up. The reason why I revived it is because we could not proceed with matters of the last Session. So, three weeks is not good enough. One week would be enough because this is a matter that the Speaker referred to the relevant Senate Committee. Therefore, seven days are sufficient to get us a detailed answer.

**The Speaker** (Hon. Lusaka): The Chairperson of Committee on Agriculture, livestock and fisheries.

**Sen. Mwangi:** Mr. Speaker, Sir, this question requires a comprehensive answer. Listening to what Sen. Wetangula said, I require to do a lot of work on it. I need to talk to the Ministry concerned. I need to interrogate the Ministry to get the appropriate answer. If I am given one week, I will bring a shoddy answer and that will not be pleasant to this House and it will erode my integrity.

*(Applause)*

**Sen. Wako:** Mr. Speaker, Sir, this is a very important question touching on land which was trust land and then given to ADC. If you read the Ndung'u Land Report, you will see that quite a number of pieces of land which now belong to corporations like ADC have been alienated in favour of some individuals and not reverted back to the trust land or the county governments.

I would like the Chairperson in his answer to inform this august Assembly whether any of the lands being referred to here have been alienated to other people other than being reverted to trust land. Those people should be named and the procedure that was used for them to get those lands be set out.

**Sen. Wambua:** Mr. Speaker, Sir, last week the issue of the time that Committee chairpersons would take to respond to questions was brought to the Floor of this House. The Chair's direction was that the time given should not be just arbitrary time. For instance, if the chairperson says three weeks or four weeks, that should suffice. I want to inform the Chairperson that his reputation will be a lot more injured if he attempts to do what he says he will do.

It is not for him to carry out investigations. If he does so, the report that comes in here may injure his reputation even further.

The information concerning issues that have been raised by the Senator for Narok are available in Government documents. Therefore, I believe a maximum of two weeks should be enough to do this job.

**Sen. Mwangi:** Mr. Speaker, Sir, as much as Sen. Wambua would like me to bring the answer in two weeks' time, I would like to inform him that I can be given answers by the Ministry which would not be satisfactory. I may also require to return the same answers to them and advise them to give me answers that are satisfactory. So, three weeks is not far too long to get the right answer. In any case, the Senator for Narok settled for three weeks. If he did not settle, he can put his case and I will consider it.

**The Speaker** (Hon. Lusaka): I will make a ruling. Time is not a strategy so I will give you three weeks to present the answer as requested.

Sen. Mutula Kilonzo Jnr. Is not in, we move on. Yes Sen. Kasanga, you have two Statements to make. Please, proceed.

#### STATUS OF NHC PROJECT IN WOTE, MAKUENI COUNTY

**Sen. Kasanga:** Mr. Speaker, Sir, pursuant to Standing Order No.46 (2) (b), I rise to seek a statement from the Chairperson of the standing Committee on Roads and Transportation regarding the National Housing Corporation (NHC) project in Wote Makueni County. In the statement the chairperson should state:-

(1) When the contract for construction of the NHC project in Wote Makueni was awarded and indicate the name of the contractor undertaking the project.

(2) When the construction of the project commenced and the projected date of completion

(3) How much money was allocated to the project and how much has gone into the project, so far.

(4) Whether he is aware that the NHC project has stalled.

(5) The circumstances that led to the stalling of the project.

(6) When the NHC will revive the project and indicate the new date of completion of the project.

**The Speaker** (Hon. Lusaka): The Chairperson of the Committee on Roads and transportation.

**Sen. Wamatangi:** Mr. Speaker, Sir, I undertake to give the statement in two weeks' time.

**The Speaker** (Hon. Lusaka): Is two weeks okay? Yes, Sen. Haji.

**Sen. Haji:** Mr. Speaker, Sir, can the Chairperson also give us an answer to the problem of repairs of roads in the city. If you go to overseas, these repairs are normally undertaken at night or over the weekend. However, in this country, they are done in the middle of the day and in the morning. We see tippers with stones blocking people going to work. Can there be a rule that will guide these people to be doing their work on holidays, weekends and in the evenings, instead of the mornings when people are going to work?

**The Speaker** (Hon. Lusaka): Go ahead, Sen. Sakaja.

**Sen. Sakaja:** Thank you, Mr. Speaker Sir. I seek the Chairman's indulgence to ride on that statement as requested by Sen. Kasanga with respect to National Housing Cooperation (NHC), which has been a player in matters of low cost housing. As we know, part of the Governments big four agenda is universal housing. Can the Chairman also seek the policy that NHC employs when it deals with the tenants, many of who were previously in slums and such informal settlements?

Only recently, we heard of more than 160 families being evicted from the NHC houses in Majengo Estate, Nairobi only for the NHC to hold a forum the next day, sensitizing Kiambiu slum owners on how they will build houses for them. So, now that we have focused on the Big four at this time, can we get the policy on how they are dealing with the low income earners who they are charging more than Kshs11,000 to stay in those houses, yet we want to achieve universal housing for them?



**The Speaker** (Hon. Lusaka): Sen. Olekina, the Floor is yours.

**Sen Olekina:** Thank you, Mr. Speaker Sir. I would like to ride on that statement, specifically on the road reserves. We have noted, particularly in Nairobi County, that most of the road reserves are occupied by people. There are stalls for businesses and sometimes they cause a lot of hazards and many accidents occur, particularly in Kangemi on your way to Narok. So, the Chairperson of Standing Committee on Roads and Transport should come up with a policy on whether those road reserves are reserved for roads or for markets and people's housing.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Chairperson of Standing Committee on Roads and Transport, please respond to that?

**Sen. Wamatangi:** Thank you, Mr. Speaker Sir. The question that has been raised by Sen. Sakaja, on the NHC policy, is a far reaching issue affecting so many people in Nairobi. The House may note that, indeed, most of the houses previously owned by, for example, the County Government of Nairobi when it was the City Council of Nairobi, also reverted to the NHC. Therefore, in light of the width and depth of this matter and for us to give a comprehensive reply to the statement on the matters raised, I seek your indulgence to do it in two weeks. This is so that I can make a demand to the NHC and probably rope in the County Government of Nairobi so that they can give satisfactory answers, including details of the transactions and how they have proceeded to either compensate or dispose of such property in such cases.

**The Speaker** (Hon. Lusaka): Are you asking for two weeks?

**Sen. Wamatangi:** No, I am asking for three weeks, Mr. Speaker, Sir. I seek your indulgence to expand it to three weeks.

**The Speaker** (Hon. Lusaka): Okay.

**Sen. Wamatangi:** This is also in order to include the new statements as requested by Sen. Haji and the Senator for Narok County. In as much as the request by Sen. Olekina is a new statement, I still undertake to bring an answer.

**The Speaker** (Hon. Lusaka): Three weeks is okay. Your plea is granted.

Proceed, Sen. Kasanga.

#### STATUS OF NAIROBI-MOMBASA HIGHWAY

**Sen. Kasanga:** Thank you, Mr. Speaker Sir. Pursuant to Standing Order No. 46(2)(b), I rise to seek a statement from the Chairperson of the Standing Committee on Roads and Transport regarding the status of the Nairobi-Mombasa Highway, which is a critical infrastructure to Kenya as well as East and Central Africa region. In the statement that Chairperson should:-

(1) State whether he is aware that the Nairobi-Mombasa Highway – which forms part of the Northern Corridor – is the busiest and the most important transport network route in East and Central Africa because it provides a gateway through Kenya to the land locked economies of Uganda, Rwanda, Burundi, Eastern Democratic Republic of Congo as well as South Sudan.

(2) State whether he is aware that the highway, together with its sister road, the Nairobi-Malaba road, moves more than 50 per cent of all goods traded in the East African Community.

(3) State whether he is further aware that due to the volume in traffic and concentration of heavy duty transport vehicles, the route is accident prone, accounting for a larger number of injuries and fatalities in the region.

(4) State what the respective short term (five year), long term (ten year) and ultimate plan for the highway is under the Kenya Vision 2030.

(5) Indicate the budgetary allocation for the Nairobi-Mombasa highway expansion, highlighting the phases already commissioned, what is planned for the highway in the short and long term, respectively.

(6) Table the original designs of the highway and indicate changes made, if any, stating what occasioned the changes.

(7) State whether there has been public participation and deliberations on the project and, if so, whether he could table the Report and demonstrate how views from the stakeholders have been incorporated into the designs and design changes, if at all.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Chairperson of Standing Committee on Roads and Transport, please respond to that?

**Sen. Wamatangi:** Thank you, Mr. Speaker Sir. Two weeks will be adequate for me to give a reply to that statement.

**The Speaker** (Hon. Lusaka): Sen. Kasanga, is that okay?

**Sen. Kasanga:** Yes, Mr. Speaker Sir.

**The Speaker** (Hon. Lusaka): Thank you.  
Proceed, Sen. Chebeni.

#### VIOLENCE IN JAMHURI HIGH SCHOOL, NAIROBI

**Sen. Chebeni:** Thank you, Mr. Speaker, Sir. Pursuant to Standing Order No. 46(2)(b), I rise to seek a statement from the Chairperson of the Standing Committee on Education regarding the violence that broke out in Jamhuri High School, Nairobi County, on 23<sup>rd</sup> January, 2018. In the statement, the Chairperson should:

(1) State the cause of the violence in the school.

(2) Explain how the students managed to get into the school premises with knives and other weapons.

(3) State the measures undertaken by schools to address social and psychological distress that affect students leading to violence.

(4) Explain whether there are established comprehensive school crisis management plans to help schools respond to crisis situations; and,

(5) State whether there is provision for support of students exhibiting signs of disruptive behavior.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Can we have the Chairperson of the Standing Committee on Education responding? If he is not there, can we have the Vice-Chairperson? If both are not there, let us have the leader of majority responding.

*(An Honourable Senator spoke off record)*

Do we have a member of the committee present?

**Sen. Dullo:** Mr. Speaker Sir, I believe there are Members of that Committee in the House. One of them needs to respond.

**The Speaker** (Hon. Lusaka): Sen. Seneta?

**Sen. Seneta:** Thank you, Mr. Speaker, Sir. On behalf of the Chairperson of the Committee, I undertake to give a comprehensive answer to that statement in two weeks' time.

**The Speaker** (Hon. Lusaka): That is satisfactory.

Proceed, Sen Beth Mugo. If she is not in, let us have Sen. George Khaniri.

SHOOTING OF RESIDENTS IN LUANDA MARKET,  
VIHIGA COUNTY

**Sen. Khaniri:** Thank you, Mr. Speaker, Sir, for indulging me; I know the statement just came in this afternoon. Pursuant to the provisions of Standing Order No. 46(2)(b), I rise to seek a statement from the Chairperson of the Standing Committee on National Security, Defence and Foreign Relations concerning the shooting of residents in Luanda Market, Vihiga County, on 19<sup>th</sup> February, 2018.

Mr. Speaker, Sir, in the Statement, I would wish the Chairperson of the Committee on National Security, Defence and Foreign Relations to:-

(a) Explain whether the Cabinet Secretary for Interior and Coordination of National Government is aware that five individuals, including a 15 year old boy, were shot by members of Disciplined Forces in Luanda Township on 19<sup>th</sup> February, 2018;

(b) Explain the circumstances under which the police shot and injured citizens participating in a peaceful demonstration;

(c) Explain the action taken by the National Police Service to discipline the trigger happy officers who shot and injured the five people in the said incident;

(d) Explain the National Police Service's possession of rubber bullets, which ordinarily should be used in crowd control rather than live bullets that were used yesterday; and,

(e) Provide details on the procedure for compensation, including settlement of hospital bills and state when the Government will provide compensation for the individuals and families affected in this specified incident.

Mr. Speaker, Sir, I know it has been the practice of this House, when a Statement is requested, that the Chairman would stand up and say: "Give me two or three weeks to respond." For those of us who served in the National Assembly, including Sen. Wetangula and Sen. Haji, the Chairman who I expect the answer from, we used to have Questions by Private Notice, which required answers within 48 hours.

Since I believe that this qualifies to be a Statement by private notice, I do not expect the Chairman to stand here and tell us to give him two weeks, when people are in hospital and bills have to be paid after the police have shot innocent people. I plead with the Chairman that this is a matter that should be resolved within the next 48 hours, if possible.

Thank you, Mr. Speaker, Sir.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, cases of police brutality against unarmed peaceful citizens are on the rise. When the Chair of the Committee on National Security, Defence and Foreign Relations brings the Statement,

could he tell this House under what circumstances and what provoked the incident for the police to unleash live ammunition on citizens that were peacefully demonstrating, in line with the provisions of the Constitution.

Secondly, as a matter of emphasis, have the officers who carried out this cowardly and heinous act be disarmed, arrested and locked up ready for prosecution for the homicides that they committed? Murder is murder; it matters not matter who has committed it and where.

International law requires that crowd control is done by truncheons, horses and less lethal weapons. Why does the police leadership allow armed trigger happy policemen to descend on citizens, not to mention the cases we saw in Nairobi County during our Independent Electoral and Boundaries Commission (IEBC) demonstrations, where they killed many Kenyans whose deaths have gone unaccounted and unanswered for?

**Sen. Outa:** Thank you, Mr. Speaker, Sir. I want to put a rider. When the Chair brings the Statement, it should include the case of the three teenagers who were killed in Ahero in Kisumu County. Have the officers who killed the innocent peaceful demonstrators been arrested? Is there any compensation to the families that lost the three teenagers who will be buried on Friday? Lastly, will there be an end to this police brutality and use of live bullets anytime there are peaceful demonstrations, especially in NASA areas?

**The Speaker (Hon. Lusaka):** Sen. Outa, that sounds like a different statement. It does not sound like a rider on a question.

**Sen. Outa:** Mr. Speaker, Sir, if it is not a rider, then I will seek a fresh statement, because we will be burying these innocent Kenyans on Friday.

**The Speaker (Hon. Lusaka):** Okay. Raise a new statement, which will be addressed.

Chairperson, Committee on National Security, Defence and Foreign Relations.

**Sen. Sakaja:** Thank you, Mr. Speaker, Sir. I have listened to Sen. Khaniri and it is true that there are certain things that should not take long. I know the area he is talking about. In fact, I am very closely attached to it. The place is near a market called Kima, where I made my transition from a boy to a man, if you understand what I am saying. We will do our best to bring the response as soon as we can.

After discussing with the relevant organs, the Committee will see whether we can give a status update on where we have reached, if we will not have the full answer to it, before the last sitting this week. So, by the close of business on Thursday we will be able to give a status update. However, we will try as much as possible to have the entire Statement done by then, because it is a matter that happened recently.

#### ONGOING RECRUITMENT EXERCISE BY KDF

**Sen. Mugo:** Thank you, Mr. Speaker, Sir. Pursuant to standing 46 (2) (b), I rise to seek a Statement from the Chairperson of the Standing Committee on National Security, Defence and Foreign Relations regarding the Ongoing Recruitment Exercise to the Kenya Defence Forces (KDF). In the Statement, the Chairperson should:-

(1) Provide a comprehensive ratio of the women and men recruits who shall be recruited in the ongoing KDF recruitment exercise;

(2) Confirm if the female recruits have been allocated only eight per cent of the available slots and if so, why the allocation has not been pegged on the 30 per cent rule on recruitment to appointive and elective offices, as per the Constitution of Kenya and the Government policy on filling up all new vacancies and promotions in Government agencies;

(3) Explain the measures that the Government will take to ensure that female recruits are not denied at least 30 per cent of the available slots in the ongoing and future KDF recruitment exercises; and,

(4) Highlight what the Government of Kenya is doing to ensure adherence to the two-thirds gender rule principle in recruitment and promotion of staff in all key sectors of the Government.

Mr. Speaker, Sir, we have witnessed a lot of cries from girls who are being harassed and almost thrown out of the recruitment centres. I seek that answer from the Chairperson and I hope that there will be corrective measures.

**Sen. M. Kajwang'**: Mr. Speaker, Sir, allow me to ride on the statement requested by Sen. Mugo because it touches on the ongoing KDF recruitment.

I would like the Chairperson to explain the relationship between the colour of teeth and the KDF recruitment exercise. In the past, many young men and women have been left out of this exercise because of the colour of their teeth. This is something that is not of their own making. The reasons for the discolouration are sometimes related to the failure of successive governments to provide them or their areas with clean drinking water. I want to understand why young men and women are still being locked out because their teeth are not of the right colour.

He should further tell us whether our soldiers use their "teeth" to fight the enemy or they use other gadgets.

**Sen. (Dr.) Musuruve**: Thank you, Mr. Speaker, Sir, for the opportunity. I would also like to ride on the statement asked by Sen. Mugo. I would like an investigation to be done so as to find out the number of People with Disabilities (PWDs) who have been recruited join KDF. The PWDs who are not mobile can be recruited to do different jobs such as desk jobs. However, we also have those who are mobile. How many mobile PWDs have been recruited to join KDF in the ongoing recruitment exercise?

I would also like to know what is being done to ensure that PWDs are recruited just like any other Kenyans. In the past, PWDs missed opportunities. When such opportunities arise, there is need to ensure equal representation in recruitment of KDF officers or any other officers as stipulated in the Constitution.

**Sen. (Dr.) Ali**: Thank you, Mr. Speaker, Sir. I would also like to ride on that statement by Sen. Mugo. What surprises me is that when young men and women go for recruitment as KDF officers, it is not only the issue of the teeth that they look at; but they also check whether one has scars on their body. Someone who lives in the northern part of Kenya and has been looking after animals, obviously, has scars all over his body. There are small scars here and there. You get somebody who is fit, but because of scars, he is chased away. We should have an answer on that one as well.

**Sen. (Prof.) Ekal**: Thank you, Mr. Speaker, Sir, for giving me the chance to ride on the statement by Sen. Mugo. With regard to the recruitment exercise, I would like to add onto what the Senator has said about the scars and cuttings on the body of the people

that would have been recruited to be in KDF. The Turkana people do have cuts on their bodies. If I take off my shirt right now---

*(Laughter)*

**The Speaker** (Hon. Lusaka): Order, Senator! Do not remove your clothes here.

**Sen. (Prof.) Ekal:** You will, probably, run away or maybe get surprised that I have so many cuts on my body. Some of these cuts are traditional. We go through certain ceremonies and get those cuts. The military or whoever is recruiting should not bar our people from being recruited because they have those cuts on their bodies. This is part of the culture of many Kenyans. They should be aware of things like that and should not victimize people for having those cuts.

More serious is the issue of discrimination during the recruitment exercise itself. I have received complaints from the Turkana people that they do not get their fair share of recruitment. We all know that every county in the country is given chance to recruit their youth to join KDF. However, in a county like Turkana, we have noted that some people are brought from other counties to be recruited because they give *kitu kidogo*. The many of our people are then left out because other people have taken their place after bribing.

I hope that the recruitment exercise will be fair this time and that they will recruit brave Turkana young men to go and defend Kenya.

**Sen. (Eng.) Maina:** Thank you, Mr. Speaker, Sir. I want to add to Sen. Mugo's concern. My issue is that in Nyeri County, there was one particular area, Kieni West, where few people turned up for the recruitment. This was due to logistical problems. I do not know what happened. I wish that an assurance would be given that when a situation as that arises in any area, other methods should be used to see that as many youths as possible are recruited. That would, probably, involve leaders so as to make sure that their quota is not allocated to other people because of not making it to the venue of recruitment when they have genuine cases.

**Sen. Halake:** Thank you, Mr. Speaker, Sir. I would also like to ride on this statement. I find the requirement that one cannot get employment with KDF because she is pregnant discriminatory. I know that there is strenuous exercise that needs to be done, but why is it that a woman cannot get employment because she is pregnant? That kind of exclusion is discriminatory. What needs to happen is that KDF or anybody else, should come up with ways in which a pregnant woman does not get excluded from employment and livelihood. It is discriminatory and we need to find some answers to it. We should also find some innovative ways in which pregnant women can be given chance to be recruited into KDF.

**Sen. Cheruiyot:** Mr. Speaker, Sir, the question that I wanted to add on has been asked by Sen. Halake. I wanted to speak for the girl child, but she has done it and I am satisfied. I find that law---

*(Laughter)*

**The Speaker** (Hon. Lusaka): Order!

**Sen. Cheruiyot:** Mr. Speaker, Sir, protect me from the men who do not like the girl child.

**The Speaker** (Hon. Lusaka): They seem to doubt you. Sit down Senator.

**Sen. Cheruiyot:** Mr. Speaker, Sir, my final point is that the Chairperson should explain to us the logic behind sending away the young girls who are found to be pregnant while leaving the young man who is responsible. Why should they send away the girl child alone? They should also send away the responsible young man, if he is there.

**Sen. Poghio:** Mr. Speaker, Sir, we have been recruiting in the same way since Independence and even after Independence. Could the Chairperson find a way to have continuous recruitment which in modern sense does not discriminate anybody?

To add on what Sen. (Prof.) Ekal said, some of those markings that he talked about indicate that one is a brave man. They should help in recruitment or make one to be recruited faster because the person has already shown that they are brave.

**The Speaker** (Hon. Lusaka): Hon. Senators, this is getting interesting, but we have to bring it to a close. I will now call the Chairperson of the Committee on National Security, Defence and Foreign Relation to respond. The others can follow later.

**Sen. Sakaja:** Thank you, Mr. Speaker, Sir. I would like to respond to the statement and all the riders to that statement. Mr. Speaker, Sir, you should encourage Members to be asking their own statements because, sometimes, those who ride on others' questions have more other issues than the original questioner.

I will respond that, cognisant to the fact that the recruitment is going on, I do not think it is prudent for us to injunct an on-going process. However, we will respond to the policy question that has been asked. What we know for sure is that the Military is not an equal opportunity employer and that is for a good reason; because of their specialised service. I have heard questions about Persons with Disabilities (PWDs) having the same opportunity to be a military officer. It is not realistic because it is a physical job. But there are certain administrative functions within the military where we can have the PWDs, such as, some office work, carpenters, *et cetera*. Many PWDs are very skilled in different arts, but in terms of being officers like the ones being sought in the recruitment that is going on right now, apart from the cadets and the specialised ones, we do not expect to see that.

Mr. Speaker, Sir, I do not know if we will ask about the issue of teeth as asked by Sen. Kajwang. We will just know their policy. Maybe it affects the camouflage.

*(Laughter)*

There is enough camouflage on the uniform; there is no need to add it also on the mouth. I heard somebody once saying that the police check the teeth to know if somebody has the ability "*ya kukula hongo*". I am sure that is not the case with the Military. But the original question is a very important question; the gender policy of the military. Naturally, we would have a bigger percentage of men in a military than women. However, it is important to know what the policy is with respect to all the other jobs as well. Once they are recruiting, they should tell us what quotas they are looking for.

However, on the rider from Sen. Cheruiyot to Sen. Halake's question on the pregnancy, it is rather obvious that these people are recruited for immediate training. It is not possible to immediately deploy a recruit who is pregnant for training. I would like to establish if there has been discrimination within the military on the ladies who are pregnant. Once it is established that the ladies are pregnant, they are then dismissed from

the service. I am sure that is not the case but we will look at the decisions. Please give us two weeks on this.

Thank you.

**The Speaker** (Hon. Lusaka): Two weeks is granted.

**Sen. Mugo:** Mr. Speaker, Sir, two weeks is far too long. The recruitment will be over and the girls will not be helped. So, we would like this answer to come quicker. There is nothing to go and look for. The commanders and the generals are there.

*(Laughter)*

**Sen. Sakaja:** Mr. Speaker, Sir, apart from the fact that the military clearly is engaged in this exercise, because we want an answer from them not just from the ministry, the response will not change the policy that is currently being used. This is also not the last recruitment they are doing. This should enrich future recruitments as we move forward. This is because even if you get the answer today, it does not mean that it will make a change in the policy they have right now.

As Sen. Poghio has stated, the military has been recruiting the same way since independence. The Committee would like to engage further with the military to look at an overall change in the military policy. Recruitment is just one of the things. So, we will just ask for that time to get the answer and moving forward, we will have some of these changes in-cooperated.

**The Speaker** (Hon. Lusaka): Yes, Sen. Seneta.

**Sen. Seneta:** Thank you, Mr. Speaker, Sir. My question is already answered by the Chairperson.

**The Speaker** (Hon. Lusaka): I presume two weeks will be adequate, because just as the Chairperson has said, we may not change so much what is already going on. However, we will inform the other recruitments that will occur in future.

Proceed, Sen. Kalonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, it should be Kilonzo. Otherwise, you will expose me to many things.

*(Laughter)*

DELAYED COMPENSATION FOR PERSONS DISPLACED  
BY MANOONI DAM PROJECT IN MAKUENI

**Sen. Mutula Kilonzo Jnr.:** This is a request for a statement on the delayed compensation for displaced persons during the construction of Manooni Dam in Makueni Constituency.

In the statement, the Chairperson should:-

- (a) State the size of land acquired for the construction of the said dam;
- (b) State the total number of persons whose land was acquired to pave way for the construction of the said dam and the respective acreage acquired from each owner;
- (c) State the reasons that were given for the said acquisition and whether public consultations on the matter were undertaken;
- (d) Explain why the affected land owners are yet to be compensated to date.



(e) Explain why the said dam has not been utilised for the benefit of the local communities since the construction;

(f) Explain why the Ministry of Water and Irrigation has not allocated any funds for the desilting and expansion of the said dam.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Let us hear from the Chairperson of the Standing Committee on Lands, Environment and Natural Resources or any Member of the Committee.

The Senate Majority Leader, can you take a commitment. Where is the Chairperson?

*(Loud consultations)*

**Sen. Mwangi:** Mr. Speaker, Sir, I was talking to Sen. (Prof.) Ongeru here. We had something to confide in. Can he repeat the question?

**The Speaker** (Hon. Lusaka): Sen. Mwangi, this is the second time you are not paying attention to questions. Since it is on Hansard, can you provide an answer in the next two weeks?

**Sen. Mwangi:** Yes, Mr. Speaker, Sir. I can provide an answer in the next two weeks.

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order, hon. Members!

## COMMUNICATIONS FROM THE CHAIR

### INDUCTION RETREAT FOR SENATE COMMITTEES

**The Speaker** (Hon. Lusaka): Hon. Senators, you are aware that the Committees of the Senate were constituted in December, 2017 and the elections of the positions of chairpersons and vice chairpersons were held in January, 2018. So, to equip Senators with the requisite information to effectively execute their mandate in Committees, the Senate leadership has organised a half day induction retreat for all committees of the Senate on cross-cutting topics, scheduled to be held at the New Stanley Hotel, Nairobi, tomorrow, Wednesday, 21<sup>st</sup> February, 2018, from 7.30 a.m. to 1.00 p.m. This will be followed by clustered induction retreats for respective committees commencing this weekend.

Hon. Senators, due to the importance of this meeting, I direct that all committee meetings scheduled for the morning of Wednesday, 21<sup>st</sup> February, 2018, be suspended to allow all Senators to attend this half day retreat. I appeal to you to make time to attend and participate at this workshop.

Thank you.

VISITING DELEGATION FROM WEST POKOT  
COUNTY ASSEMBLY

Hon. Senators, I wish to acknowledge the presence in the Speaker's Gallery of Hon. Catherine Mukenyang', the Speaker of the County Assembly of West Pokot.

*(Applause)*

The hon. Speaker and Members of the House Business Committee of the County Assembly of West Pokot are also visiting the Senate to benchmark on the best practices and procedures.

So, hon. Senators, in our usual tradition, let us recognise and welcome Hon. Mukenyang' and her delegation.

*(Applause)*

Thank you so much.  
Let us proceed to the next order.

**MOTION**

APPROVAL OF THE SENATE CALENDAR  
FOR THE 2018 SESSION

**Sen. Dullo:** Thank you, Mr. Speaker, Sir. I beg to move the Motion for the approval of the senate Calendar for the Second Session.

Mr. Speaker, Sir, I believe that it is important for this House to come up with a Calendar so that we are properly organized in terms of our mandate. I believe it is a fairly straightforward Motion. I do not have to belabour so much on it. I would request Sen. Mutula Kilonzo Jnr. to second.

**The Speaker** (Hon. Lusaka): Deputy Senate Minority Leader, you have not moved the Motion. Can you move the Motion in the normal procedural way?

**Sen. Dullo:** Thank you, Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, pursuant to Standing Order 29(1), this House approves the Senate Calendar (Regular Sessions of the Senate) for the year 2018 (February to December, 2018), laid on the Table of the House on Tuesday, 20<sup>th</sup> February, 2018.

Mr. Speaker, Sir, as I said earlier, it is fairly important for a House like this to have a Calendar and programme for the Session that we will have. I believe it is a fairly straightforward matter. I do not have to waste a lot of time on it. I hope the House will approve the Calendar as it is. I, therefore, request Sen. Mutula Kilonzo Jnr. to second.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Speaker, Sir. I rise to second the Motion for the Calendar of the Second Session.

For the Senators who have the Calendar with them, there is some consideration on some of the things we are doing from number one to ten, for example, the Devolution Conference in Kakamega County, Legislative Summit in May, consideration of the

Budget Policy Statement (BPS), Division of Revenue Bill, County Allocation of Revenue Bill and the Cash Disbursement Schedule.

The advice is that we will need the cooperation of 24 Senators to be present so that we can pass all these things that appear from number four to ten. We are all advised to be available, particularly for the Devolution Conference and the Legislative Summit. I hope that we will be sufficiently accommodated in Kakamega County to be able to participate in the first Devolution Conference of this Session.

*(Question proposed)*

*(Question put and agreed to)*

## BILLS

### *Second Reading*

THE IRRIGATION BILL (SENATE BILL NO.5 OF 2017)

*(Sen. Murkomen on 15.2.2018)*

*(Resumption of debate interrupted on 15.2.2018)*

**Sen. Poghiso:** Thank you, Mr. Speaker, Sir, for giving me the opportunity to support this Bill and join the rest of my colleagues who have already spoken on it. A lot has been said that would increase our irrigation techniques, technology and the amount of land that will be under irrigation in various places of this country.

I come from a county that has very good potential for irrigation. West Pokot County has sources of water on one end, especially on the higher levels of West Pokot County where there is plenty of water. However, the lower parts are dry but it is possible to do irrigation through the sources of water which are up in the highlands by way of gravity, downwards. That is the case in point. There have also been many irrigation schemes that have in the past failed.

In this day and age, I would like to suggest that with modern technology and modern sources of power, with clean energy and the possibilities that we can study what other drier lands have successfully done, there should be no place in this country where hunger is experienced on account of drought or not being able to fulfill the food security issues in those counties.

I know that in Turkana County, which is one of the driest counties, we have had irrigation schemes which have in the past been successful. The policy on irrigation ought to be for food security and exploiting whatever resources we have for the good of our people.

Mr. Speaker, Sir, there is another sense in which northern Kenya which is popularly known for insecurity can turn into very secure areas by simply having an irrigation policy that targets those dry areas. We know that in Kenya, there is only a small area that is potentially good for agriculture and the rest is dry. It is for that reason that we

should begin to support this policy development so that it is possible to have food security for our country.

It is not good to hear that sometimes in Kenya we have to wait for relief food to come from other counties. We have to be supplemented for food, yet there are individuals, for example, in Naivasha who have personally been able to successfully do irrigation on a large scale. If an individual can do these things individually and be successful, definitely, the Government can do better. With the resources that the Government has, enhancing what the counties get, we should be able to do these things in every county.

Instead of increasing the national debt on account of things that may not even be of any returns to us, we should focus on taking loans on account of food security and solving a problem which has permanently been there; scarcity of food and water which leads to insecurity.

If we sort out the food and water situation in some of these insecure areas, people will settle down. It will be very unusual for somebody to run away with another person's cow when they know they have food in their home. It will be hard for us to have the situation that we have right now, where Mr. (Dr.) Matiang'i has to go around telling people to open a school because of insecurity or not to move cows from one area to the other. We should sort out the problem of food. It is the biggest resource that people do not have. We should also sort out the issue of drinking water and water for the livestock.

Mr. Speaker, Sir, I believe by passing this Motion and being able to support it, we will have improved our farming methods, improved technology and improved food security for our people. We will change the face of this country. We will have more children going to school. We will then begin to repay our national debt very quickly, become more secure and free from begging.

I beg to support.

Thank you very much, Mr. Speaker, Sir.

**Sen. M. Kajwang'**: Thank you, Mr. Speaker, Sir. I also wish to join my colleagues in supporting the Irrigation Bill, Senate Bill No.5 of 2017. To some people, irrigation sounds like rocket science, yet it is something that has been applied by mankind for a long time. For those of us who went through the 8-4-4 Curriculum, we were exposed to the irrigation methods that the ancient Egyptians used which allowed them to produce a lot of food. I do recall in the study of History when Caesar was Emperor, Egypt used to be one of the greatest producers of corn and other grain products that would feed the Empire just because of irrigation.

Mr. Speaker, Sir, it is important that we have an Irrigation Bill that brings about some order and synergizes the different initiatives that we have already put in place as far as this matter is concerned. If you look at Kenya, irrigation seems to be synonymous with certain areas, particularly the rice growing areas in Nyanza and Mwea. If you look at the great water mass that we have in this country, which is in Lake Victoria, there is very little that is happening around that area as far as irrigation is concerned.

Sometime back, there were leaders who had come before us who argued that instead of us fighting over pumping oil from Turkana County – where my good brother with a lot of marks comes from – maybe we should think of pumping water from Lake Victoria so that we can feed all parts of this country and take care of the thirst for water, which this country has.

Mr. Speaker, Sir, many people have said that the next frontier for conflict will not even be oil, but water. Indeed, in the last Parliament, I sat in the Committee on National Cohesion and Equal Opportunity. When we went to Northern Kenya, we realised that most of the conflicts that many people were experiencing there were as a result of water. We need, as a Parliament and as a Government, to find ways of unlocking the irrigation potential of the lake region so that farmers in that region can move away from rain-fed agriculture, which has disadvantaged them in many ways.

The lake region is blessed with very fertile soils. In fact, it is one of the places where God, in his wisdom, decided to put the black cotton soil. But this soil sometimes does not produce value because the farmers there have to wait for God to send rain. So, God has given them the soil and they have to wait for Him to send them rain again, yet God has given them a lake. It is the duty of both the county and the national governments to help the people of those regions to tap the potential of that natural resource.

Secondly, Mr. Speaker, Sir, there are a number of irrigation initiatives that this country has attempted to put up. Some of them are very well conceived but they have not delivered their full value. An example in case is one that received some media attention not too long ago; it is called the Kimira-Oluch Smallholder Irrigation Development Scheme. This is a project that was sponsored by the East African Development Bank (EADB) in partnership with the relevant Ministry. It involved digging canals across Karachuonyo, Rangwe and Homa Bay constituencies.

This project was meant to deliver water to the farms so that the farmers there would produce crops all year round. In recent media reports, we saw that the residents of those areas were using the water from the canals, not for growing of plants, but for washing clothes and, to a small extent, cattle are quenching their thirst out of that water.

Mr. Speaker, Sir, if you set up irrigation projects without having a good understanding or a good connection with the local population, it will end up like the Kimira-Oluch Irrigation Scheme. We are not saying that this is a white elephant as it is. But as local leaders and through Parliament, we will have to find a way of ensuring that the project is fast tracked and that it is handed over to the county governments. To a great extent, a lot of the initiatives that the national Government is holding as far as irrigation is concerned should, ideally, be held by the county Governments.

Mr. Speaker, Sir, I also want to talk about the approach to irrigation that we have seen presented to this House through the Budget Policy Statement and in support of what is being called the “Big Four” Agenda. Food security is a matter that must be at the heart of everyone; be they in the opposition or in the Government. For us to achieve food security, we must ensure that we make rightful investments in agriculture. In agriculture, it is not just about talking about the Kenya Meat Commission (KMC) of the past or trying to revive some white elephant so that people can cut deals; it is in doing meaningful things that will change the lives of our farmers.

Mr. Speaker, Sir, I beg to propose that this House, even as we look at the plans for irrigation and food security that will be brought to us, we need to ask a few questions. The Government plans to put under irrigation about 700,000 acres of land. We know that in the past three or four years, the Government’s objective of putting under irrigation one million acres of land floundered; it went up in flames. We were told that the Galana/Kulalu Food Security Project, which had one million acres, was to be the next

game changer. We brought in expatriates from Israel but nothing came out of that particular project.

This is the time when we, as a House, should say that instead of centralizing the risks and projects in one place, let us identify ten counties with potential for irrigation and give them a target of putting 10,000 acres of land under irrigation and give them one year. That way, Kenya will put under irrigation, 100,000 acres of land under irrigation and, in a span of five years, we will achieve the 500,000 or possibly one million acres under irrigation. Let us not think that irrigation can only be done where you have one million acres of land that has been set aside. But let us be confident that even if we devolved some of these resources---

Mr. Speaker, Sir, some of the reasons that make the state of the national Government want to put one million acres under irrigation, to be honest, sometimes it is the potential for big tenders which carry with them big rewards. Some of the rewards might be unlawful while others could be lawful. So, we need to push some of this thinking and some of these projects to the county levels because ideally, agriculture is a devolved function. Therefore, ideally, irrigation should also be a devolved function where, at the centre, what should be happening is policy formulation and just doing the linkages.

This will ensure that whatever the counties are doing is not too disjointed. We need to see more of the money – the Kshs14 billion that is being set aside for irrigation – going to counties. If the national Government has worries about how the counties will use that money, then it can be pushed out as conditional grants in the manner that I proposed – a conditional grant that a county would put 10,000 acres of land under irrigation. If no county is willing to offer themselves, I would, on behalf of Homa Bay County, say that we would be very happy if the Government could give us more money and we can put 10,000 acres under irrigation.

Mr. Speaker, Sir, the county neighbouring Homa Bay, Kisumu County, has always had rice irrigation schemes. The interesting thing about these schemes is that a good number of them were established in the 1970s or in the many days past. There are very few irrigation schemes that we have established in the recent past. The question would be whether we are getting better or worse as a nation. I would have expected that successive Governments should have identified additional areas where they could put up irrigation schemes.

As a Member of the Committee on Agriculture, Livestock and Fisheries, I know that this matter will come before us. Definitely, as we proceed, there are certain provisions in the proposed Bill that will need to be looked at. As a Member of the Senate, and pursuant to Article 96, when I look at a Bill, the first person whose interest I have to put forward is the county government. I hope we will not pass a Bill that will recentralize irrigation and matters agriculture, water and food security. These are the functions of county governments. We will have to look at certain clauses of this Bill which put a lot of power in the hands of the national Government.

Sometimes we think that the involvement of county governments is achieved once there is a nominee of the Council of Governors (CoG) to some parastatal or council. That should not be the case. We must look deeper and go beyond saying “a nominee of the CoG or a few consultative meetings should be undertaken.” We must find a way through

which irrigation and the Irrigation Bill is one that is driven by counties upwards, so that it is more of a bottom-up rather than a top-down kind of strategy.

Mr. Speaker, Sir, with those remarks, I beg to support the Bill, subject to the amendments that will come up in the Committee stage.

**Sen. Kihika:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to also join my colleagues in supporting the Irrigation Bill (Senate Bill No. 5 of 2017). I am quite happy that we have this Bill at this point, granted that we actually should have had it yesterday or even many years ago. Irrigation is such an important aspect in making sure that we bring change to the livelihoods of the Kenyans.

I am also very happy that the current Jubilee Government has identified agriculture and specifically, food security as one of the big four sectors of the economy, to be the pillars of this second term of its performance.

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

*[The Deputy Speaker (Sen. (Prof.) Kindiki) in the Chair]*

In doing so, irrigation has a big role to play. We can no longer rely on rain-fed agriculture to feed our population; be it the people or livestock. It has become such a problem that irrigation must now take center stage due to the unpredictable rainfall pattern we have in this country. We have seen farmers not only lose their crops, seeds or fertilizers, but also end up with zero harvests after they have planted. Due to the very large population in the country that continues to grow, feeding the population has become an issue. This is a great Bill that will help us make sure that we have a country that is food sufficient.

Under Article 43 of the Constitution of Kenya, 2010, every Kenyan has a right to be free from hunger and have adequate food of acceptable quality. When we look around, we see from statistics and data that only about 161,840 hectares, which is only about 12 percent of the total potential area of about 1.3 million hectares, are under irrigation in this country. If we only have 12 percent at this point, I am hopeful that with the Implementation of this Bill, we shall create a framework that will allow the full exploitation and sustainability of an increased food production in our country.

As my colleagues who have spoken before me, I would also like to point out my concerns with regard to this Irrigation Bill. We are all aware that agriculture is a devolved function. After reviewing the Bill, I want to note from the outset that the spirit of structuring the Irrigation Bill, 2017, seems to negate the fact that agriculture is a devolved function under the county governments. I am obviously aware and can tell that it is the objective of the Bill to bring about better management of water resource in boosting food production. However, in doing so, we must also be cognizant that agriculture is devolved and, as such, we must empower the counties to conduct a lot of these functions.

Even if the Senate appreciates that the new National Irrigation Development Authority (NIDA) will take over the national offices and facilities of the current National Irrigation Board (NIB), the reservations are due to the time and resources that will be lost by the movement from Nairobi to the operational areas under irrigation. Obviously, we are aware that the irrigation will happen at the county level. My concern is that a lot of

the facilities and resources seem to remain in Nairobi, which then negates the devolved agricultural function.

As the Bill continues to go through the process, I am hopeful that maybe we will take a look at it a bit more closely and have some amendments that will make sure that we do not leave a lot of the powers, facilities and resources in Nairobi. We should set these up at the counties. I will give an example. We can set up the irrigation headquarters in Perkeria in Baringo County, Wei Wei and Kaminia in West Pokot County. It can also be done at West Kano Irrigation Scheme in Kisumu County or even the Mwea Irrigation Scheme in Kirinyaga County. Turkana County also has a very high potential for irrigation. We should consider setting up these facilities at the county level and not centralize everything in Nairobi.

The benefits of this Bill far outweigh any of the issues. I am confident and hopeful that as we proceed with the process, we shall bring any necessary amendments that, maybe, would help in devolving this matter further. Irrigation and technology obviously will remain very important in enhancing food production for our country and very highly growing population due to the rise in urbanization levels in this country.

I also note the integration of the irrigation scheme farmers through formation of the Irrigation Water Users Associations (IWUA) in this Bill. This will earn legitimacy and ownership of all the water usage with the farming schemes, mechanization, strategies, and product marketing. Overall, this will definitely add benefits to the farming communities of our country. Hopefully, this will also help in reducing the turf wars between the national and county governments over irrigation land. More so, community land placed under irrigation will be eliminated through this framework.

The full implementation of this Bill is something that I highly support, as most of my colleagues have stated here. It will go a long way in enhancing the agro-based industries, the Small and Medium Enterprises (SMEs), and the cottage industries that utilize the raw materials obtained from irrigation land. It will also establish and serve to drive our country to attain a high ratio of food availability per person. Ultimately, the Irrigation Bill, 2017 will help both levels of government to jointly attain the goals of Vision 2030 and the demands of the Constitution in meeting the basic needs of food provision for our citizens.

Mr. Deputy Speaker, Sir, I beg to support the Irrigation Bill, 2017.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you.

Proceed, Sen. Olekina Ledama.

**Sen. Olekina:** Thank you, Mr. Deputy Speaker, Sir. I rise to support the Irrigation Bill, 2017 albeit with some amendments. This Bill is timely and wants to repeal the Irrigation Act, Cap 387. Technology has evolved and given us various ways of using water efficiently to guarantee plant growth. Every year we have floods in Narok County where I come from. I would propose that this Bill be amended to include aspects on how we can harvest rain water so that we can use it for irrigation purposes.

Mr. Deputy Speaker, Sir, I have noted in the engagements built in the Senate Bill Digest that a lot of powers have been given to the national Government. It begs the question as to why agriculture is devolved yet the decision on this Bill will heavily be made by the national Government.

I think it is imperative that we look at the administrative structure to be really focused on the devolved government from the county levels. This is because it is where



people on a daily basis are faced with big challenges such as drought. If we wait for The National Government to come up with policies for the entire structure of the National Irrigation Development Authority (NIDA) which the Bill proposes to set up, it will then really limit what the devolved governments are able to do in order to help their people improve on food security.

Mr. Deputy Speaker, Sir, I think this Bill would be able to help communities when it goes down into the sub-location levels where every community has different ways on how they carry out irrigation. Where I come from, most people use flood irrigation and sometimes, excessive water in terms of irrigation increases a lot of saline and alkaline. There are various ways we need to be able to consider when debating this Bill and also coming up with various amendments to be able to help farmers and people conserve the environment.

Mr. Deputy Speaker, Sir, today I read somewhere that the Chinese government has deployed about 60,000 soldiers to go and plant trees. When you look at Narok County, a lot of trees have been destroyed. We use them for fuel. The Mau Forest has been destroyed. All the timber which probably is used in your homes for the furniture comes from there. So, I think we need to add more incentives in terms of this Bill and also when it comes to structuring on how these projects will be developed to include things like tree planting.

I have planted over 30,000 trees using irrigation. I think in this country if we are able to tap the flood water which sometimes will require us to build dams, we can improve on the environment.

I support this Bill, and hope that the sponsor will take into consideration the contributions by the Members of both sides; that the management of this new Bill should be focused on the county governments and not the national Government.

I also would like to just contribute a little bit more on the different types of irrigation. I think it will be important that in this Bill, it narrows down - or maybe that will come up on the issue of policy - to what types of irrigation can be used in different parts of this country. There are parts where flood irrigation can work to some level, but in most parts of this country, I think if we focus on drip irrigation or new technology, it can help us to save water and guarantee that our soils will still be good to guarantee plant growth.

With those few remarks, I support, albeit with amendments.

**The Deputy Speaker** (Sen. (Prof) Kindiki): Thank you Sen. Olekina. Indeed the remarks are few.

**Sen. (Dr.) Milgo:** Mr. Deputy Speaker, Sir, I also rise to support this Bill and say that it is long overdue. There is a lot of arable land in our country, Kenya. However, the major challenge is that we have been relying on rain-fed agriculture. You do realise that with climate change, of late we are having very unpredictable seasons. For example, right now we are having a lot of drought and sometimes when there is rain there is a lot of flood water that comes to destroy the few crops that have been grown. In this case, if an irrigation Bill was already in place under proper policy, I think we would be able to harvest this water and use it in the proper manner. I realise that Kenya has been relying on this for a long time and this has forced our country to be searching for food elsewhere to feed its population.

Secondly, agriculture has been our major backbone in the economy which has not only been feeding into the Gross Domestic Product (GDP) but also assisting in employment. We realise that there are many unemployed youth and if the irrigation policy was in place and proper irrigation done, we would be able to encourage them to take part in agribusiness. However, right now, many of our youths will engage in such practices as drug abuse. Sometimes we even have others joining some of those militia groups because of being idle. If we can sensitize our people on this and engage the counties, most of our youths will be engaged in the proper manner.

Thirdly, our Jubilee Government Manifesto is standing on four pillars and the most important one, of course, is food security. To be food secure will only be a pipe dream if irrigation is not properly looked into because, as I said, of late we cannot rely on rain-fed agriculture.

All the four pillars in the manifesto are just intertwined. If we are going to be food secure, we will be able to provide many of the products into the industries. We will even be able to ensure that people are healthy when they get sufficient food. A healthy people will reduce costs on medical care. I realise that if the counties are engaged to take part in this irrigation, we will be able to actually achieve these four pillars and even go beyond.

It is quite shameful or absurd to find that our country has to rely on relief food. My county of Bomet used to produce sufficient food to the extent of even having surplus but right now, it is in the list of counties that are going to rely on relief food.

With those four points, I support.

**The Deputy Speaker** (Sen. (Prof) Kindiki): Thank you Sen. (Dr.) Milgo. Let us have the Senator for Turkana, Charles Ekal Imana.

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

**Sen. (Prof.) Ekal:** Mr. Deputy Speaker, Sir, my names are Malachy Charles---

**The Deputy Speaker** (Sen. (Prof) Kindiki): Order, Senator. Resume your seat. I am informed that you had spoken earlier to this Bill. If that is the case, put off your microphone. You cannot contribute on the same Bill twice.

*(Sen. (Prof.) Ekal resumed his seat and put off his microphone)*

I see no reason as to why your name should be appearing on my screen. Since I do not want to pursue that matter further, put off your microphone and wait for the next Order which you might participate in. I cannot see Sen. Linturi, Sen. (Eng.) Maina, Sen. Wambua of Kitui. Is he there? He is there but I cannot see him. Now, I see him. Sen. Wambua, you have the Floor.

**Sen. Wambua:** Mr. Deputy Speaker, Sir, thank you for giving me the floor. I am surprised that I am so invincible. I stand in support of The Irrigation Bill, Senate Bill No. 5 of 2017. This Bill could not have come to the Floor of the House at a better time than this. Arising from rain failure in most parts of the country and especially the lower eastern region of Kenya, millions of Kenyans---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Order! Order, Senator for Turkana. You have just committed a very serious misdemeanour. It is a misdemeanour

but it is serious. The contradiction is deliberate, so organise yourself to purge your sins. You cannot criss-cross this place like you are in a---- Do not put words in my mouth.

*(Sen. (Prof.) Ekal crossed the Floor without bowing to the Chair)*

*(Laughter)*

You can go wherever, but use the right path ways. Sen. Wambua, please proceed.

*(Sen. (Prof.) Ekal bowed to the Chair)*

**Sen. Wambua:** Mr. Deputy Speaker, Sir, this Bill could not have come to the floor of this House at a better time than this. Arising from massive rain failure in most parts of the country especially the lower eastern region of Kenya, millions of people are facing starvation. It would be good if this Bill, once debated and passed, would put in place proper policies that would deal with the most important issue in irrigation which is sustainability of the projects.

Mr. Deputy Speaker, Sir, I talk about sustainability of irrigation projects because I come from Kitui County. In the year 2011, the Government of Kenya through the National Irrigation Board in collaboration with Moi University and the University of Alexandria initiated a mega irrigation project at a place called Wikithuki where 5,000 acres of land were put under irrigation. However, the project stalled and has collapsed only one or two seasons after the project had been started, simply because there were no proper mechanisms on the payment of electricity bills for the project. The collapse of that project went down with hundreds of billions of shillings, thus becoming another white elephant.

Once this Bill goes through and becomes law, there should be proper policy guidelines on how to initiate and sustain these projects for the benefit of this country. It is common knowledge that for a country to be food secure and to fulfil constitutional provisions on the right to food, as a nation, we need to strategically invest in irrigation. Since, rain fed agriculture has failed this nation for so many times.

I am just not talking about the Wikithuki irrigation project; the Kulalu-Galana Project comes to mind as well, a really good project that if implemented with proper policies perhaps sections of this country that are starving today would be food secure and even export surplus to other regions and other countries. In support of this Bill I propose that; as we think through irrigation schemes, we look at the possibility of pursuing the public-private partnerships to undertake some of these projects.

Consequently, it is not only Government investing public resources in irrigation schemes, but it is also private institutions with proven expertise in food production that partner with government institutions and local communities to grow and produce food for this nation.

I support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Wambua. The last speaker on this order is going to be your geographical neighbour, Sen. Mutula Kilonzo Jnr. of Makeni.

**Sen. Mutula Kilonzo Jnr:** Thank you, Mr. Deputy Speaker, Sir. You are also my neighbour from far, and I hope you can join us in the former eastern province. I rise to support this Bill. I have about seven comments to make.

One, this Bill is timely, and I support the Senator for Nakuru for the contribution, particularly on the fact that this is a devolved function. I am not certain whether in drafting this Bill we have captured the idea. We might in the process create an executive body that is managing this function and at the same time, lose the function itself to National Government. I am also not certain - maybe the Majority Leader can confirm - whether this country has an irrigation policy. The irrigation policy ought to dictate what we need to do.

Thirdly, the question of whether to irrigate or not to irrigate reminds me of Shakespeare: "To be or not to be, that is the question". It is not because we lack water or rain; it is mismanagement of our water resources which includes forest. The Senator has mentioned that unless we can manage forests and water reservoirs, it appears we will not irrigate. The way we are cutting trees in Mau forest, we will not have water in the Mau river, upstream and downstream. I am glad that the new Cabinet Secretary, the former Director of Public Prosecutions, Mr. Keriako Tobiko, the first riot act he read is on forests, since we must conserve water to have irrigation.

On the question of how to manage irrigation, I actually went to Sen. Murkomen's County during the campaigns and discovered that they are doing one of the dams that the national Government is doing. One of the problems about all the irrigation schemes in Kenya is acquisition of land. We should have enough money to acquire land to do proper dams, unlike what is probably happening in your county, Mr. Speaker, where they are doing small water pans for Kshs3 million to Kshs4 million which is not helping.

Mr. Speaker, Sir, somebody mentioned the Budget Policy Statement (BPS). One of the things that we have concern with in the BPS is that the national Government has issued a directive that they may start rationing water because the levels at Masinga and Sondu-Miriu dams have gone down. Is it possible that Kenya needs to find another method of generating electricity so that we can use that water for domestic consumption? Masinga Dam - I do not know where Sen. Wambua has gone - does not benefit the people of Kitui or Ukambani in general because there is no irrigation component.

On Thwake Dam, the Kshs36 billion project the national Government is doing, we have insisted - even though we are aware that it is in the interest of Kenya to do hydro - the people of Makueni, Kitui and Machakos counties should benefit from the irrigation component which must be amongst the top first or second layers. These are the issues that this Bill ought to address.

On capacity building, under Article 199, we ought to capacitate counties to do large irrigation projects. The project in Elgeyo Marakwet at some point must either be done by Governor Kipchumba Murkomen or somebody else.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Sen. Mutula Kilonzo Jnr. Did I hear you talk of Governor Kipchumba Murkomen?

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, I thought in the future - It is a good prayer - say five to ten years from now, if Sen. Kipchumba Murkomen aspires

to be a Governor - he ought to have capacity to do the project that the national Government is doing in his county.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well, but be aware of campaigning outside the official gazetted campaign period.

**Sen. Mutula Kilonzo Jr.:** Thank you, Mr. Deputy Speaker, Sir. If I may continue, that would, in fact, anchor this function firmly at county government. There is another component that we must tackle and I am glad that Sen. Wambua mentioned it. It is called Public-Private Partnerships (PPPs). It is obvious that Makueni County cannot afford the Kshs36 billion project that is being done in Thwake. It is also obvious that Elgeyo Marakwet cannot do the Kshs24 billion project that is being done in its county, but it is possible under the constitution to do a PPP.

Mr. Deputy Speaker, Sir, I want Sen. Murkomen to take note that the regulations on the PPPs on county governments have not come to the Senate. This is one of those methods of raising funds for counties so that they are able to do these projects whether it is Kshs10 billion or Kshs3 billion because, again, the three-year period for borrowing by counties has lapsed. I am told that the counties will begin to borrow. One of the things they are going to do is to enter into this sort of programme and grants so that they can do big projects. Our objective as a Senate is to ensure that counties can do these projects.

There is a canal called the Yatta Canal Water Project which has not helped food security in Ukambani. I do not know whether we are analysing these issues, like funding of these projects. I am surprised that the project in Kitui which we were all proud of is stuck because it relies on electricity as opposed to many other methods of generating electricity that we can do.

Lastly, Egypt is famous for the Aswan Dam which we learnt in primary school. It does not receive as much rain as we do. But as a desert, they are doing much better in agriculture than we are. I am glad that the Senator for Embu County, Sen. Ndwiga is here because he should know this better than I do because he was the Chairman of Tana-Athi Development Authority when we began Thwake Dam Project.

The amount of funding available to do good jobs is something that we have refused to exploit. Legislators from the County Assemblies, National Assembly and the Senate are flying to Israel like nobody's business to check on Agriculture and part of it is management of water. So, I propose, just like the Senator for Nakuru County has said, we must look into the national Government component in this Bill to see whether in the end, we will claw-back on the functions of water services by counties and whether we will get capacity.

I would rather that we do this prospectively and say that, in future, this body that has been set up here will hand over capacity to all county governments. Sen. Murkomen was the Chairman of the standing Committee on Devolved Government when we sent all appeals by all counties on some of these functions. This was one function that he approved and moved this Senate to approve as a function that must remain at the county Government. In doing so and in following Article 187, resources must follow these functions.

Sen Murkomen, you remember fighting about whether this is a money Bill or not; just make sure that in the end, we put capacity under Article 189 and funds under Article 187 and truly make this a function that we are all going to be proud of.

Thank you, Sen. Murkomen for this Bill, it is timely. You are the true Majority Leader of the Senate. Make sure - as I finish - that this is will not be one of those Bills that will end up in the annals of shelves. It should go into history. I would want to see you standing behind the signatory and the assenting authority as one of those Bills that the third Senate will have passed.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Sen. Mutula Kilonzo Jnr. I know you are finishing. All of us know that Sen. Murkomen is the great Majority Leader of this House, but you have used a strange word. You have said: “You are the true Majority Leader” Is there a false one?

*(Laughter)*

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, Sir, I am sorry for embellishing the words “true Majority Leader”. I meant to say that he has truly occupied his position as the true Majority Leader. I have always asked myself, without mentioning names, where is the Majority Leader of this House?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Mutula Kilonzo Jnr. Please conclude your debate.

**Sen. Mutula Kilonzo Jnr.:** Mr. Deputy Speaker, let me conclude by saying that we want to see this Bill signed into law so that we can truly be proud of the Majority Leader.

Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Mutula Kilonzo Jnr.

Order Senators. Mover, do you want to reply?

**The Senate Majority Leader** (Sen. Murkomen): Thank you, Mr. Deputy Speaker, Sir. I want to thank all the Senators for their insightful contributions to this Bill. It is true that irrigation agriculture, particularly implementation of agriculture is a county function.

As to why the national Government still does irrigation, the devil lies in the detail, particularly when it comes to how a Government can guarantee food security because the national Government’s responsibility is to ensure that there is food security in the country.

Purposive interpretation of the Fourth Schedule of the Constitution would still give room to what Sen. Mutula Kilonzo Jnr. Said; that when it comes to counties, they have certain responsibilities that they can do, for example, most of the irrigation that we are saying should be done, it is now private work, more less facilitating private investors to do irrigation. It is not like a county government can go and till land, literally speaking or that the national Government should be able to do that, except that the Agricultural Development Corporation (ADC) used to do it for purposes of research and training of farmers.

The truth is that irrigation is not *per se* a Government project. It is a Government facilitated project. If you go to Aror where I know, Mr. Deputy Speaker you have been to, you will find that the Kerio Valley Development Authority (KVDA) is facilitating an irrigation scheme that is owned by the community. The Government just facilitates the

community to do irrigation and the yields and benefits accrue to the individual people who are doing the actual irrigation in the community.

At the small scale level, that county government should do it in terms of facilitating small scale farmers. For example, people who have two or three acres in places like Marimanti or Kathangachini in Tharaka Nithi County so that we can make it to Kathangachini---

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Be careful!

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I am trying to demonstrate my knowledge of those areas in your county, where you have worked very hard. I saw you over the weekend launching a water project ---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): And doing other things!

*(Laughter)*

Yes, and doing other things. But, more importantly, you were inspecting a water project. These are some of those things that we usually fight for our voters to get. At a small scale, I do not see why counties cannot prepare an irrigation system and facilitate it for communities at the local level on two or three acres of land. But where you are attracting an investor from other countries, the national Government plays a role to facilitate those investors to have a good investment environment to do what they are going to do and to recoup their investments.

They can till one million acres of land and that means that the food prices for staple food, for example, maize, will be reduced. As such, you are able to remove the responsibility of farming in certain areas where there is no irrigation and maybe people can move to zero grazing of livestock, and so on, and so forth.

So, the idea here is that there should be nothing suspicious when the national Government is involved in irrigation because it is not tilling the land and getting the benefits for itself. It is just facilitating either the local community or investors to do the irrigation projects. That is why this Bill recognizes situations where you are doing irrigation on a large scale and where the project is crossing counties, where you need to manage the water conservation.

Mr. Deputy Speaker, Sir, if Sen. Mutula Kilonzo Jnr. had followed my speech when moving the Bill, I made it very clear that you cannot discuss irrigation without discussing water conservation. So, you are also going to deal with situations of upper and lower riparian and their fighting, saying "all of the water that is being used in Makueni County; it should have gone to Tana River County and other places in the lower side of our country towards the coast".

The same applies to Elgeyo Marakwet County. If you are doing irrigation in Keiyo County, it has an impact on irrigation done in counties like Baringo, Elgeyo Marakwet and ultimately Turkana. Therefore, all this requires a body that has a bigger national view on the situation of irrigation. That is important as captured by the Irrigation Bill.

However, Mr. Speaker, Sir, I recognise that we must delay this Bill a little bit before it comes to the Committee on Agriculture, Livestock and Fisheries– Chaired by the able Sen. Ndwiga– for approval to look at the management structure to ensure that it is not top heavy – in this sense meaning that it is national Government-heavy and weak at the county level.

Secondly, it is so as to look at it in a manner that will ensure that counties also, at their own level, must have unquestionable capacity and right to undertake investment projects related to irrigation with the ability to attract local and international investors at the scale that they want to undertake their irrigation. So that, then, the body that has been established under the Act will become like a facilitator.

The county governments can apply and that body will ensure that water and infrastructure related issues that may affect another county have been checked and approved to undertake the irrigation scheme. Ultimately, because of the reducing amount of water in this country, irrigation in future may cause disputes. People will be asking, “Why are you irrigating upstream and those of us in downstream are suffering because we want water for livestock?” In fact, the irrigation technology that is going to be used must also be checked so that you do not waste a lot of water in the manner in which you are going to carry out irrigation upstream at the expense of the irrigation downstream.

All these issues must be taken into consideration when dealing with matters irrigation. That is why the existing institution now is the National Irrigation Board (NIB). That institution has been established vide a legal notice and we are now establishing it vide an Act of Parliament with the powers to consult with the National and county governments.

Therefore, Mr. Speaker, Sir, I want to request Sen. Ndwiga to work expeditiously and invite the Council of Governors (CoG); and that is what I am going to say when it also comes to the next Bill. Most of the Bills we are dealing with here, especially where there is a relationship with the National and county governments, we have to deal with our clients because they are the ones who are interacting with the Bill on a day to day basis.

I would be very interested to listen to the views that county governments are going to bring. Luckily, Sen. Ndwiga comes from Embu County, where irrigation is taking place. There is also a massive irrigation scheme in the neighbouring Kirinyaga County that is going on there in Mwea. That experience that comes from the former Cabinet Secretary will assist in coming up with this Bill. Since this is a Bill that came from the Executive, it is for us to look at it and by the time it is going to the National Assembly, we do not find ourselves in situations where they will approve in the manner in which you have sent as a Senate, but they have not primarily looked at the concerns of our clients, who are the county governments.

I, therefore, request the Committee to take it very seriously. This is coming from the Senate Majority Leader, who would otherwise have said that this Bill is clean and it should go forward; I do not believe so. I believe that there are certain things that must be tweaked in the Bill to accommodate the concerns of county governments and also to accommodate irrigation in the modern age.

Mr. Speaker, Sir, having heard all the views that came from the Senators and what Sen. Mutula Kilonzo Jnr. has said, it is a timely Bill and we need to work expeditiously since irrigation is the future of the country. It is a shame that we have oranges that come



from Egypt on our shelves; a country where it rarely rains, and when it rains, it is news. I used to ask myself why the pyramids in Egypt stayed for those many years. I just realised it is because it does not rain there and that is why they have all the historical monuments. Yet, because of Lake Victoria and River Nile, they are doing fantastic irrigation and feeding millions of people with a greater population than us and still export produce to us.

It is a shame that we have fruits from Israel, but one might argue that they are from Canaan. Kenyans have been yearning to reach Canaan for so many years, maybe, to explore how products from Canaan taste. But when you have situations where you have to get food from countries that rarely receive rain, it is an indictment on us, who have an abundance of rivers and water.

Mr. Speaker, Sir, I met the Cabinet Secretary for Environment and Natural Resources, Mr. Keriako Tobiko, who is also a Senior Counsel, over the weekend. I told him that I do not think we will have rivers in this country in another ten years. In fact, a friend of mine we were together with said it is maybe seven years. We have a problem. We have a problem and we, politicians, are also part of the problem. If we say, for instance, let us protect Cherangani Hills or Embobut Forest, where I come from, one has to make painful choices, like I did. We then ask ourselves “what is the solution to the people who are living there?” and “what can we do for them?”

The only place that Cherangani Hills has some forest is a small stretch in Marakwet West, from Kapsowar to my place in Embobut. The Embobut Forest is even depleted because if you cross to the Pokot side, there is no forest! There is absolutely no forest! In fact, the complaint there now among the Marakwet is that, why are Pokots allowed to clear the forest and our side we are told to protect the forest? Why do we not just clear the whole thing? They are saying that because of insecurity. They are saying that they attack us and run away; and so on, and so forth. Once in a while I fly over this country. I know that you are a former member of the ‘sky team’---

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senate Majority Leader.

**The Senate Majority Leader** (Sen. Murkomen): I know the members of the ‘sky team’ in this House. Their past exploits have been used to attack them. The truth is that if you overfly this country, even if you are in a big aeroplane, you will realize that this country is becoming a desert. That is the case whether you cross Mau Forest, Cherangany Hills or Mt. Kenya. You may think that Mt. Kenya Forest is safe only to realize that logging is going on there and hardwood is being destroyed. Which forest will we remain with? There is a problem.

In fact, I was telling the Cabinet Secretary (CS) that his Ministry should be called a super Ministry of some sort, and that is what I can tell the President. I say this because people say that there is a ‘super minister.’ If that is the case, then the ‘super minister’ should be the one in charge of environment. That Ministry should be called the Ministry of State in Charge of Environment. The environment should be something in the heart of the President to salvage, if we care about the future generations. We want to take care of ourselves and go, but our children will have nothing called the forest.

As Kenyans, we must have this conversation everywhere. I see many people in central Kenya engage in agroforestry. This could be as a result of the impact that they have had over time as a result of depletion of the forests. If you overfly Murang'a, Kiambu or even Nyeri County, you would think that it is generally forested, because people are practicing agroforestry. However, if you go to Nakuru County where Sen. Kihika comes from, it is a desert. Apart from a few trees, there is no forest to be proud of in Nakuru County.

If we say that Elgeyo-Marakwet County is the second or third county with the biggest forest, then we have a problem. What happens to Kakamega County and Kiambu County that have 12 constituencies each? We also have other large counties like Kitui and Makueni. It means that we have a problem. We need to have a candid conversation in this country. In fact, the President should revise his focus in terms of the four agenda to include environment. I thought about it over the weekend. Without the environment, all the other things that we are trying to do such as food security and employment become impossible. This is because of the importance of the environment in supporting the other systems.

We must do something, including allocating enough money to the Ministry of Environment and Natural Resources, so that we can salvage the environment. When that is done, we can then have a conversation on what we need to do with the indigenous people who live in the forests. We can then think of what should be done to the income generating activity that those people are engaged in. However, we must make the first decision of moving our forest cover to a certain level.

Sadly, we are now replacing our forest with soft trees such cypress and some funny trees that cannot last long. This is a country with beautiful indigenous trees in Mt. Kenya, Mt. Elgon, Cherangany Hills and Mau Forest, which are the four major water towers. Look at the beauty of the indigenous forest compared to the exotic trees that we are planting. The Cabinet Secretary of the Ministry of Environment and Natural Resources has dealt with issues of polythene papers and so forth, which is good. However, he must take the issue of protection of the environment very seriously.

Secondly, you cannot irrigate with the water that comes from Nairobi River. The pollution in Nairobi River is a shame. If you overfly many other areas, you wonder how people survive downstream. The chemicals and toxic substances that are poured into Nairobi River ultimately get to people downstream with their livestock. This should pain us because we think that it is only the people who live in the slums who are suffering because of the dirty water. That is not true. They are the ones who plant vegetables downstream, which are eaten in Karen, Lavington and other places. This problem affects all of us.

I am told that when Britain realized that River Thames had become so polluted, they decided to form a Thames River Commission. If you go to London they will tell you that the birds along River Thames were not there a few years ago because of pollution. The birds are now back because there is life in the river. There is even fish. The late hon. Michuki tried to clean Nairobi River. We do not want to become a nation where good things depend on one person. We must have a culture and system that pursues good things. It must be a dream of each of us to ensure that we have an environment that has clean water for irrigation and human consumption.

I saw a picture, and I am sure some of you saw it on social media, where a so called 'clean water' bowser was collecting water from a dirty river. That water finds its way to our houses. Even if you just use it to clean utensils or cook the food, you will still consume the dirty water in one way or the other. What goes around comes around. As leaders, we should not think that we are too comfortable to deal with environmental challenges that are in this great Republic.

I support this Bill. We want to leave it to the Committee. The Chairperson should invite the Council of Governors and explain to them the seriousness of engaging on the Bill. He should also invite the County Assemblies Forum and the rest of the public. That should also include practitioners in matters of irrigation. We should improve the Bill then have it in the next two or so weeks. We should then have the amendments that the Committee will propose. If they are good, we will negotiate and pass them, so that we can have this law in place.

With those many remarks, I beg to move.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, the Senate Majority Leader. At least you are honest; the remarks are many. That marks the end of the debate on the Second Reading of Order No.9.

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Senate Majority Leader?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, there was an oversight on my part. I would like to request you that the question be put at another date to be appointed by you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Under what Standing Order are you rising? As the Senate Majority Leader, you should have crammed that Standing Order by now.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, my predecessor took about a year to cram that Standing Order.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Then your predecessor is the true Senate Majority Leader.

*(Laughter)*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, it has taken me only about six or seven months to do so. It is under the Standing Order No.55(3).

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It is Standing Order No.54(3).

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, it is Standing Order No.55(3). The Standing Order has changed. It was amended.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): So, they have changed?

**The Senate Majority Leader** (Sen. Murkomen): Yes, Mr. Deputy Speaker, Sir. It is now under Standing Order 55(3).

**The Deputy Speaker** (Sen. (Prof.) Kindiki): So, the new Senate Majority Leader has changed the Standing Orders. It is now Standing Order 55 (3). That is noted.

*(Putting of the Question on the Bill deferred)*

Order, Senators! I direct that Order No.10 be dropped by consensus with the Mover and the relevant Senate Committee of this House.

*Second Reading*

THE COUNTY GOVERNMENTS (AMENDMENT) BILL  
(SENATE BILLS NO.11 OF 2017)

*(Bill deferred)*

Next order!

*Second Reading*

THE URBAN AREAS AND CITIES (AMENDMENT) BILL  
(SENATE BILLS NO. 4 OF 2017)

**The Senate Majority Leader** (Sen. Murkomen): Thank you, Mr. Deputy Speaker, Sir. I beg to move that The Urban Areas and Cities (Amendment) Bill (Senate Bills No. 4 of 2017) be read a Second Time.

Mr. Deputy Speaker, Sir, this is a straightforward Bill. It is simple and brings amendments to the Urban Areas and Cities Act. I had the occasion to interact a little bit with the Technical Committee of the Summit which worked on this Bill. However, I have a lot of reservations on it which can only be addressed by the Standing Committee on Devolved Government and Intergovernmental Relations. The Bill has already been referred to them and I hope they will take on board the concerns of all other stakeholders.

This Bill creates boundaries, urban areas and cities structure. At the top of that structure, is the Cabinet Secretary (CS) who is responsible for the matters related to devolution. If you read the original Bill, there is a definition of what qualifies to be urban areas, cities and the number of people who should reside there. That is provided for in the Urban Areas and Cities Act. An *Ad Hoc* Committee will be established from time to time to deal with boundaries, urban areas and cities review. It will be established if the CS, on his own motion, thinks that there needs to do a review of an urban area, a city, a town or a centre or when there is an application from the county governments to the CS to establish the same.

This is a good idea to have a proper mechanism of determining boundaries of towns and urban areas because they keep changing. However, there might be some problems. In the current Act, an urban area, a city or a town, for that matter, is defined as an entity under the governance of the county governments. Therefore, what is the purpose of subjecting the determination of boundaries of towns and urban areas to the national Government? The national Government does not have a role in creating cities and urban areas. There are no extra resources it will give to a county as a result of changing their boundaries. The Standing Committee on Devolved Government and Intergovernmental Relations must relook at this to see whether it is necessary for the CS to be involved and what wisdom informs such a move.

Mr. Deputy Speaker, Sir, we have Kapsowar Town, for example, with less than 10,000 people. There is also a debate whether we will use the population of the people

during the day or at the night, to determine boundaries of cities and urban areas. The last census and the successive census exercises used to be done at night. When it is done at night, it cannot give a true reflection of a town's population. A town like Nairobi, for instance, has an extra of over one million people during the day. Many people travel from their villages to come and work here during the day.

Every morning, they tell their relatives that they are going to work and live in Nairobi yet they live in Ongata Rongai in Kajiado County. Others live in Gachie and Kiambu Town itself in Kiambu County. Therefore, the pressure that Nairobi has during the day is not comparable to what Tharaka Nithi has during the day. Therefore, governing a place like Nairobi is not easy because of all these people from Thika, Murang'a, Nyeri, Limuru, Kikuyu Town, Kajiado, Kitengela, Machakos, Mombasa and other places.

They come to Nairobi during the day and go back to where they live at night. When they come, they create a pressure here; they need more toilets here. There is no one who stays for the whole day without using the bathroom maybe twice. So, sanitation becomes a problem in Nairobi. They bear the brand of a dirty city. However, the person criticising Nairobi as a dirty city has brought his dirt from Kiambu, Kajiado and other places to Nairobi.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Be a bit diplomatic.

**The Senate Majority Leader** (Sen. Murkomen): It is not just about human waste, but if you go to Burma Market, for example, where they sell meat, you will find that all the things they use to wrap the meat, they leave them there. The traders who bring cabbages from Nyandarua to Nairobi also dump the leaves of the cabbages and other waste products here. Everybody comes, does his business here during the day and goes back to his county where they live.

Now, Gov. Mike Sonko, Sen. Sakaja and all the team that manages Nairobi will have to carry that burden which is initiated by, for example, the people who come all the way from Sen. Pareno's place in Kajiado with their cows and goats to sell in Dagoretti. They dump their waste products here and go back to their respective counties.

Mr. Deputy Speaker, Sir, we must relook on this issues about the questions of what a town is, the population of a town and when to make it a city. This is because you must tell me what the incentive is. If we are going to change it to give a CS the responsibility, then there must be an incentive that counties are going to be given more money based on the more responsibilities they have. Is Kisii Town a town or a municipality? It is a municipality clamouring to be a city. The Senator of Kisii County is here. There are challenges that they deal with there. But with those challenges, there is nothing extra we are giving them from the national Government, for instance, giving them some extra money to manage their urban areas or city or municipality.

That is why I have a problem with even the original Bill. The reason why I am very conversant with this is because I was in the task force on devolved government that came up with the original Bill itself. We established what a town or a city is and so on. We did it in terms of categorisation. Looking back, in my opinion, we made a mistake in forcing a management structure to it to provide the number of people that must be in-charge of a municipality or a town.

I remember, in the debates of the task force of the devolved government, I kept saying that, for example, if you say Eldoret Town is going to be called a municipality, they must have a mayor or a municipal manager; an independent person running the

municipality. But what is Uasin Gishu County without Eldoret Municipality? It is nothing. So, will a governor accept that you establish a management structure of Eldoret Municipality that will have a manager, its own system of collecting taxes and so on?

This means he becomes a governor of the rural area. Technically, the governor will be reduced to a governor of a rural area because the town itself would have been taken over by a management structure that has been created by an Act of Parliament. That Act of Parliament is likely to contravene the Constitution itself.

Mr. Deputy Speaker, Sir, I am just making this contribution because I respect the technical Committee that worked on this Bill. However, we can improve on it. I wish the Chairperson of the Standing Committee on Devolved Government and Intergovernmental Relations was here. Why can we not allow the county governments to be in charge in the sense that we forget the management of the counties and leave it to them to pass county laws that deal with administrative structure of their counties in the manner they want?

If you tell people in the county that they must have a municipal manager, ten people and a committee involving so-and-so, you will increase their wage bill and perhaps, it is something that could have been administered by the County Executive Committee (CEC) Member responsible for urban planning in the county. That flexibility must be in-built in this law.

Mr. Deputy Speaker, Sir, there was debate in the last Parliament under your leadership that people were clamoring for a municipality or a city in their towns. What is the point of reducing a city to 250,000 people? This Bill reduces the population of a city to 250,000 so that, for example, Nakuru Town should now become a city, then what will follow?

Mr. Deputy Speaker, Sir, the same Bill tries to change the population of a municipality to 50,000. If the population of a place reaches 50,000, it becomes a municipality. If this is the case, every constituency in Nairobi will be a municipality because none of them has less than 50,000. The Committee should lead us to re-think these things. Initially, it was proposed that a population of 500,000 people would be a city and 250,000 will be a municipality. In fact, the Bill says that every county headquarters must be given municipal status. What is the incentive? If, for example, the headquarters of a county like Elgeyo-Marakwet is established in a place like Tot, or the headquarters of Tharaka-Nithi is moved to Kathangachini or Marimanti which are small centres, if that was to be the case, let the town grow. Let us call the county headquarters 'the county headquarters'. Let the status of a town be scientific in terms of the population and the challenges of a municipality that is required to be.

I believe that these things may need some re-looking at, but not in entirely the manner in which the Bill is proposing. I agreed to move this Bill because we have a duty to facilitate institutions of governance which are provided for by the Constitution and the Act of Parliament which are assisting the Summit and the Council of Governors (CoG) who worked on this Bill.

Again, like I spoke earlier in regards to the other Bill, I will be more than happy to see if the Committee can have serious conversations with the Committee of CoG that deals with matters of urban areas and cities to see what areas we might need to re-look at. We should forget the burden of creating too many bodies that are creating committees that 'eat' public money. If you want something not to be done, establish many

Committees. There are too many Committees that will bog-down the counties and increase their wage bill.

Let us make governance as lean as possible and decision making as fast as possible to enable accountability to be easy. When oversight is done, it will be easy to know what particular role is for the governor, for example, the Governor for Narok County cannot run and say that they cannot manage Narok Town because the Act of Parliament says that it is the responsibility of the city manager. Responsibility must lie where it belongs.

Unfortunately, I am struggling to move this Bill because I do not agree with most of its clauses. The conversation about what a town, a centre or an urban area is must be finalised by the relevant Committee which is the Committee on Devolved Government and Intergovernmental Relations, to ensure that we have a proper legal framework that will support this issue.

I thank the Technical Committee of the Summit that worked on this Bill and for bringing forth these provisions. I understand some of the pressure that comes from areas that everybody wants to feel that they have a municipality. In the past, people wanted to have municipalities because it brought services closer to them.

However, under devolution, services have been brought closer to the people via the wards or village. This is the structure that is provided in Section 54 of the County Governments Act that creates administrative structures to the local level. A municipality like Eldoret Town which has four wards, already, the ward is an entity for purposes of dispensing services. Turning it back to the management of the town might be an issue of, for example, conflict.

There is wisdom in the original Act for having various bodies assisting in managing the towns. If there is a governor whose strength is only in the rural area, he or she may not just sit there and say that he or she will not do anything about the town. There must be that entity that is delegated that responsibility. However, its links between what the county government does, what the constitutional responsibility of the county government is and the management structure must be re-looked at.

I am ready to be consulted by the Committee for ideas on this issue. From my previous institutional memory, when I was in the Committee on Devolved Government, we sat together with people like Prof. Winnie Mitullah and many other members. It will be good for this Committee to consult them for institutional memory to see if we can improve on this Bill.

I am moving this Bill to provide the structure and opportunity for conversation on this issue, properly so, through the Committee and clearly and scientifically explain to us why we need a municipality of 50,000 and not 250,000 and the incentives for reducing the requirement. Is it to force small villages to be called cities by name or is there an incentive that will benefit the counties and county governments?

Mr. Deputy Speaker, Sir, with those many remarks, I am aware that the Senate Majority Whip has read this Bill. Therefore, I give her the benefit of seconding it.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Senate Majority Leader, resume your seat. The Chair was not so clear whether you are moving this Bill or opposing it. Eventually, you have claimed that you are moving it. We will grant you that. On the other hand, we have noted some considerable institutional memory around the issues the Bill is raising, except that you could not remember the members of the task force except for

Prof. Winnie Mitullah. Be that as it may, the Bill is now moved. I now ask the Senate Majority Whip, Sen. Susan Kihika, to second.

**Sen. Kihika:** Thank you, Mr. Deputy Speaker, Sir. I rise to second the Urban Areas and Cities (Amendment) Bill, Senate Bill No. 4 of 2017).

As I second the Bill, I would briefly like to add that there is definitely need to amend the existing Bill as the urban areas and cities continue to have an increased population and as the counties continue to settle in and probably need more structures as they set up the areas and as they continue to provide services to the masses.

I also take the opportunity to point out a few things that will be great if the relevant Committee, which is the Committee on Devolution and Intergovernmental Relations, will consider as the Bill goes through the process. I question why we would be reducing the population instead of increasing because the populations of these areas continue to grow. For example, in the current Act, a city's population is at 500,000 people. So, when I look at the amendment, the intention is to get the population to 250,000.

By halving that population, it makes it seem that almost every place or town then becomes a city. The cost implication is that we will then have a management board that will require salaries and sitting allowances in counties that are already extremely overstretched financially. When you talk of a town of just about 10,000 people, I would even think that we should be increasing the population and not reducing it.

Obviously, I am cognizant of the fact that with devolution, we want to reach to the smallest unit and maybe that is what is informing the reduction in the population. However, at the same time, the wage bill in the country has become a big concern. I have come from a county where I worked. I saw the very small percentage of money that went to counties and the amount that went into development because a lot of that money then tends to go into paying personnel.

So, by doing this, my concern then becomes; are we increasing the financial burden on the counties at the expense of development money and what really is the necessity in doing this? Those are just a few of my concerns and I hope the relevant Committee will consider that as they proceed with the Bill. In general, I am in support of the Bill and hopefully, we will see a few of those amendments.

Mr. Deputy Speaker, Sir, I take the case of Nakuru County, for example. I have been looking forward to the day that Nakuru Town becomes a city. I know that is contradictory but at the same time, it is one of the cities with very high population. So, I note with gratitude that under this category, obviously then, Nakuru Town would be a city. However, I do not think that we should make laws just for our interests but for that of the country at large. As we move in that direction, let us do that by increasing the populations of the units and not by reducing them so that then we do not have a lot of financial implications that the counties will be unable to meet.

I recall in the County Governments Act, there were also very many structures that were set up at the village level. You would have a county wanting to set those up but would not have the money to pay the people required to manage that unit. So, as we continue to add these burdens to counties, we must do so having really thought through it, especially from the financial aspect, of what kind of a burden these counties will have to meet.



Having said all that, I second the Urban Areas and Cities (Amendment) Bill (Senate Bills No. 4 of 2017).

*(Question proposed)*

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Deputy Speaker, Sir. I rise to support this Bill with as many caveats as introduced by the Mover whom, Mr. Deputy Speaker, you thought was opposing because of the many caveats that he issued. Many things in this Bill worry me because I thought that the criteria for considering population would be to improve services.

In fact, the criteria for classifying an area as a city is that it has a city development plan, capacity to generate revenue, a good system of records, capacity to deliver essential services, institutionalised active participation by its residents, and infrastructural facilities including but not limited to roads, street lighting, markets, fire stations and adequate capacity for disaster management.

If we were to follow these criteria strictly, Nairobi does not even meet the criteria of being a city. We have a history of fire stations and extinguishers running out of money. Requirement “H” states that- has a capacity for a functional and effective waste disposal. Nairobi City does not have that. In fact, in areas where we live, they are disposing the waste into Kirichwa Kubwa River. We should look at the criteria for markets, for example, and a town population; demonstrable economic, functional and financial viability, existence of integrated development plan in accordance with the Act and capacity to effectively deliver essential services. The same applies to boards of cities and urban centres. You can see that there is even criteria for a market.

The Committee concerned should actually ensure that the ultimate purpose of this Bill is to make sure that as Sen. Kihika strives to have Nakuru County as a city or urban centre, whatever, it should do so by meeting the criteria set out in this Act. It should be able to deliver services, make sure it is clean. One of the things that make you know that you are either in Nairobi, Mombasa or Nakuru is garbage which will tell you that you have arrived at a city centre or traffic jams and immediate floods when it rains. That is what demonstrates that you are either in a city or an urban centre. So, this Senate should be able to assist. If you make Gatwikira in Kibera a market, that meets this criterion, then we ought to develop it and make sure that people are making money in a clean way and that there are services that people can be proud of.

Mr. Deputy Speaker, Sir, former Senator, Professor and now the Governor of Kisumu County, may be the only Governor – I do not know about the rest –who has appointed a City Manager. This is because the law requires that every city must have a manager. Mombasa and Nairobi cities must have managers. It is not right the way they are. I applaud the Governor of Nairobi for taking it upon himself to ensure that he walks around when they are cleaning garbage. Although, ideally, they should not wait for that garbage to accumulate such that they look like they are working.

Ideally, there should be a city manager. We should identify a manager whom we can ask questions. If the Nairobi City County Assembly wanted to ask questions of the waste; either disposal or garbage that is in our cities or Eastleigh Section III and all other places, I am sure they would not call the Governor to answer the questions but somebody else.

There are times in this country where we used to have disposable--- I do not know what you call them but there are things that people used to leave outside their gates for disposal of waste. We used to have trucks that used to recycle waste all over the city. There is nothing to be proud of about these cities.

The City of Nairobi, under Section 10 of the Urban Areas and Cities Act 2011--- I can see an amendment to Clause 10(a) here for the county governor to confer status of a market centre in areas that meet the criteria. Clause 10 itself is the only part in the Bill where Nairobi is put squarely under the national Government and the county government. That is the reason why when you look at the objects under Clause 10 in page 60, you will see that Nairobi is supposed to be a city which meets the criteria of being the center for diplomatic services. It says as follows:

“The capital city shall provide infrastructure necessary to sustain the following; the seat of national Government, the offices of diplomatic missions, the efficient transport network connecting to rural areas and towns; and commerce and industry. The capital city shall decentralize its functions and the provisions of its service to the extent that is efficient”.

So, instead of amending Clause 10 of the Bill to give the governor power to approve market centres, we should be amending Section 10 of the Urban Cities Act to ensure that it meets the original objective of making it the seat of national Government and the centre of market and industry. We should do that instead of making sure that Nyamakima becomes a centre, Gatwikira becomes a market, Toi becomes a market, and Dagoretti Corner becomes a market. Of what use is that to all of us? It does not help anybody.

One of the things that I would seek to amend, if not amended, is how do we tap into the potential? We say that Nairobi City contributes 60 per cent of the Gross Domestic Product (GDP). Up to what extent is that GDP or 60 per cent, if you put it in figures, is in billions? Do we return to the city to ensure that it is safe? Yesterday, I watched a very interesting clip on television of a gentleman in Karen who was attacked by AK-47 gun-wielding men, and he shot one of them. But what happens to people like us who do not own a gun, who cannot shoot and do not have CCTV?

If you, as the Senate, truly want to help the capital city and many others, one of the things we should do is that when we amend this Bill, we should make sure that in Clause 10, we can put the government to task to buy a certain number of ambulances and fire extinguishers every year. We should not load it on the county government. Nairobi County Government has pending bills of Kshs60 billion as we speak today. Strictly speaking, Nairobi County is bankrupt based on the division of revenue; and Sen. Kihika has said it. Are we actually going to load county governments in some of these amendments with such extra functions without giving them resources? How do we fund and ensure that we just do not make markets for the sake of a market?

Mr. Deputy Speaker, Sir, I have been to some of your markets in Nkubu, which is a big place. They have done a “modern market,” but what is modern about that market is that they have done iron sheets; that is not a modern market! That is what anybody would do; an ordinary Kenyan would do that. The idea of making these markets modern is to make the place efficient in terms of collection, cleanliness and many other things. The women who spend a lot of time in these markets must have sanitation. I do not know about other counties, but in Makueni County, all markets do not have sanitation facilities.

So, other than population, the women who spend most of their time in the markets in some of our centres actually have to go knocking their neighbors' doors to access this facility.

Sen. Pareno, this is something I would like to hear all of you mention. The people who spend a lot of time in markets are not men; they are women. So, in making these market centres, making these criteria is good enough, but they do not have the most basic thing – a sanitation facility. We must compel our county governments to ensure that if you are going to upgrade – like you are saying you want to upgrade in Clause 10 – one of the things to check is to make sure that women with children have a facility; that ordinary women working in the markets can have the most basic thing that you can offer any person. It is a basic facility.

I have done sanitation facilities through Rotary International when I was its President in Lang'ata. I put hot water showers both in Kibera and in Mathare. It has an ablution block – we do not call them toilets; we call them ablution blocks –because they have water, sanitation, a washing bay and those who can afford can use hot water. In fact, they manage them better than county governments because they pay and they are clean. We can do so for these market centres so that we are a little more useful. We must put a lot of intellect into this.

In fact, the committees and boards, as far as I am concerned are just where we are putting people to earn sitting allowances for nothing. It is not necessary. In fact, if you go to some of these centres---. When I was the President of Rotary International and I was constructing toilets in Kibera, I just got those guys to organize themselves. They cleared the garbage for all those sites and we constructed toilets. We did not need a committee; they did it themselves. All I did was to ensure that for the ten facilities that I did in Silanga, in Kibera; the funds were available.

These committees are a waste of public resources. The county governments must appoint managers for every market and not these ten people sitting and one of them holds a bachelor's degree. What is the degree for? In Toi market, what you need to do is to make sure it is clean. You do not need a person with a degree. In any event, we want to provide employment to our youth and some of them would not meet these criteria. It is not objective at all.

As I support this Bill, Mr. Deputy Speaker, Sir. I urge the Committee that is going to look at this to put in a little more effort. Prof. Winnie Mitullah was my teacher and maybe it is time we consulted her again and made sure that we have cities. I have gone to small little towns outside the country and you will be embarrassed to say you come from Nairobi. Simple little things like management of water, like what we were talking about a few minutes ago--- One of the distinguishing features about the cities of Beijing, London, and Geneva is actually a river or a clean water source. Maybe that is what this Senate should strive to do in Nairobi as a beginning so that by the time we go to Nakuru to check on Lake Nakuru and Lake Naivasha, we would have been more useful.

We should then compel the county governments, through the Urban Areas and Cities Act 2011, to have town planning. One of the things that you do not have and which will not make Nakuru a city, is the town planning. You know how your city is; you know how crowded it is. The person who has a *tuk tuk*, the person who has a *matatu* and the person who is selling their wears are on the same road. All of them are looking for space. They are all hooting like the world is coming to an end. That is your problem in Nakuru

and major cities because there is no planning. The hotels are facing one another and nobody knows what the other person is building.

If you go to Athi River, for example, how on earth did somebody approve construction of cement factories in the middle of residences? Day and night, they are grinding stone, generating all that dust. In fact, the people who live in a place called Sidai and opposite, as you go to the interchange in Athi River, do not open their windows because of poor planning. Somebody thought that they should put up a cement factory.

The one in Kajiado is possibly better placed because it is far away from human habitation. I wish we can do what Bamburi Cement Company did in Mombasa. You would not know that there is a cement factory in the middle of that city because they have planted so many trees that absorb the dust. You would not know that you are breathing limestone because the trees that they have planted have taken care of that.

Something went wrong in Nairobi and unless we can input here, it will not help us. I do not know whether the Senate Majority Leader mentioned the Metropolitan Urban Policy by the national Government that was tabled in the National Assembly last year. Since it is available let us use that. The Committee should also use that because we have a policy, both at the county and national level, which can inform this Bill.

With those few remarks, I beg to support.

**Sen. (Prof.) Ongeri:** Mr. Deputy Speaker, Sir, I thank you for giving me the opportunity to comment on this Bill. I do not know whether to support or oppose it because the Mover and the seconder have cast doubts on the Bill. They are not quite clear what it should be or what direction we should take. They have not provided this House with a clear reason this Bill is on the Floor of the House.

Nevertheless, from my previous experience as the Minister for Local Government and having been in other organizations that have managed the cities and urban centres, the philosophy behind the urbanization of any given area, making it either an urban centre, market centre, or for that matter a municipality or town, is to decentralize services that hitherto have not reached the population at that level. One of the fundamentals that we all agreed upon during the negotiations for devolution is being able to transfer not only the structure, like we are trying to do through this Bill, but that structure must be accompanied with both human and financial resources to create equity in the way the national resources are being spent for the rest of the population of Kenya.

Granted, Nairobi generates 60 percent of our GDP. One of the reasons we say that this is skewed up is that we should enable our rural towns to contribute decently towards the national GDP. Therefore, the GDP will have a direct impact on the populations of the people staying in that rural level. That was a concept of rural-urban settlement schemes or programmes.

You have cited London City where I have lived with nostalgia. But it is a city with equally immense problems. You have cited Beijing. In fact, what you see in Beijing is a cloud of air full of smog. You can hardly survive there because of industrial pollution. These are not the kind of towns and cities we want to create for our populations in this country. We want to create towns and cities that have clean air, good sanitation and social services that would normally drive our people to come to the main City of Nairobi and other rural cities in search of job opportunities and clean facilities. They leave home thus congesting these towns and cities as we see them today.

My concept of wanting to support this Bill will be basically hinged on the understanding that as we do so, we will be devolving resources to county governments so that they can pass on these benefits to our rural populations.

I would like to see a small village where I grew up many years ago enjoying the kind of facilities, not to the same level as Nairobi City, but to see them having piped water, tarmac roads, street lights - not just one occasional light, accessible health facilities, Early Childhood Development (ECD) facilities, decent primary schools and security where they are staying. These are elements that add to good governance where there is a market, an urban centre, a town or municipality.

There should be provision of water since it is life. Without water, it will be very difficult for any population to even appreciate that we are in leadership. Hon. Senators, you will all agree with me that one of the biggest problems we have in the rural area is that we are not able to provide anything for the people we represent here. We are not able to get our children good secondary schools when they are joining form one. We have problems of diseases to tackle.

Our children get sick from all manner of diseases since there are no decent health facilities for treatment at the local level. Our people involve themselves in fundraising activities. It is a common feature for our people to send patients to Moi Teaching and Referral Hospital Eldoret, the Nairobi Hospital, India or South Africa for treatment. We need to address these concerns in the society, both at national and county levels.

Mr. Deputy Speaker, Sir, if we are making administrative arrangements in creating the boroughs like what the London City has done for convenience of goods and services, then I will support this Bill. This is because I know it will create job opportunities for parents, *wazees* and young men in our country. Instead of them coming to Nairobi, they will look at their town and village that has created opportunities for them as a place to work. They will have a chance to work and a sense of ownership that they belong to that place and can do something useful. That is the way I see this Bill.

Its development eventually should not just be creating an empty structure. I suggest that the drafters of the Bill at the Committee stage should put meat into it so that they can say, "Yes, we are reducing the population from 500,000 to 250,000 for a town to be upgraded to a city status." Every town would like to be called a city. All the 47 counties are potentially 47 cities. However, they should be such with a purpose. To me, at the end of this exercise, they should be serving the population that is resident in that area.

With all the attendant facilities that I have mentioned from governance which we have already said will be done by the county governor and his team, the human rights issues which are legislative in nature and will be looked after by both the governor and the County Assemblies, but, fundamentally, what does it potent to that mother who is vending her vegetables in a small market in that village at the end of the day? Does she sit waiting the whole day only selling items worth Kshs20, Kshs50 or Kshs100?

I will accept the concept of urbanisation as creating a population capable to sustain commercial activities in that centre. Therefore, there is mutuality in benefiting from one another. The planning of the urban and town centre, the social facilities alongside the economic activities is every important in attracting the population and their sustainability. However, creating a bare structure is confining this thing to another level where people will see them as monuments and will have no value for anybody.

I would have started hearing from the Government side that they have now agreed on expanding the resources to devolution and support to the county governments to the extent of 45 percent. If they start with that, then as Senators, we will say that the county governments have money and now charge them with the responsibility of creating these structures. Eventually, that is what devolution is all about. Nevertheless resource sharing must be equitable to each and everyone of them. They should not be concentrated at one level. Then we should say, yes! County Government of Kisii, Tharaka-Nithi---

I am sorry, Mr. Deputy Speaker, Sir, we are all brothers and sisters in one way or the other. I am referring to that because we are the most hit, population wise, we have very high populations and our counties are almost becoming semi urban centres. You cannot differentiate what is the rural area and what is the town or the urban centres and these are the needs that are required.

If you look at Hong Kong, basically, it is a town and a city on its own. The same applies to Singapore; basically a city in itself on its own, but by provisions of services. In Malaysia, for instance, the concern and the concentration they have put on their environment, the provision of clean water, health services, security in those areas and ICT, today, Hong Kong is a thriving city with a very high population. Singapore is a city you admire. When you get at the Singapore Airport, the surrounding and the environment is acceptable.

However, when you walk from Tom Mboya Street to Moi Street, you will see the amount of garbage. The stench you meet there and we say we are living well, we are not! As legislators, we now have both the moral and political responsibility to ensure that the resources that are collected for this nation are equally distributed in equal measure in a particular percentage to our rural centres so that these structures we are proposing, which I support, can then serve as a template for reaching out to the population at the rural level. Then we would say this country is truly on the development path.

At the Committee Stage, I will be excited to see what the Government side is planning to do. We are with you, we are supporting you and we are not shying away from this support because all these people belong to Kenya. We must create a favourable environment for these structures to survive, to be adopted and implemented in a meaningful manner.

I can go to Keroka and tell the people there that they are now qualified for the status of a Town. They will be excited and sing my name the whole day, but at the end of the day they will ask me: Prof. Ongeru what have you put on the table for Keroka Town to be at the Municipality level?

If the road network within that town and the health centres around that area are not complete, if the Primary and ECD schools are not in place, if the courts are not there for crime control and the security system is not there, then these are the issues that we should interrogate in our minds. Once we are satisfied, the fundamental issue is the resource flow to these areas.

Let us not be greedy about the resource flow. Let us generously accept that we need to support our Rural-Urban development programmes and structures, then use the new urban agenda which I had the pleasure of negotiating on behalf of this country. I almost died in South America. They can then have a meaningful structure in uplifting these urban centres because there will be support coming in, one way or the other, once we are properly organized.

So, I want to support this with a clear understanding that we are creating a structure to be followed by the flow of resources, both internal and external, to support the development of our people to another level so that we do not become paupers. We do not have to be poverty stricken all the time. The whole idea is to improve the income of our people. Therefore, this structure will then be held as something that we have created as the Senate and as a Parliament which considers the plight of our people.

With those few remarks, I support with those amendments.

Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Than you, Prof. Onger. Let us have Sen. Judith Pareno.

**Sen. Pareno:** Thank you, Mr. Deputy Speaker, Sir. I rise to support this Bill and the amendments that I have had a chance to look at. I am not going to be as hesitant as the Mover. I am convinced that this Bill is well intentioned and having looked at some of its provisions, they are meant to ensure that we effect the provisions of the Constitution in as far as devolution is concerned.

Mr. Deputy Speaker, Sir. I am convinced that if a few issues of this Bill are thrashed out, as it has been indicated by the mover and the seconder, it will be a Bill that can devolve some of these services that the citizens have been looking for.

I looked at Section 6 of this Bill and it indicates that you have to meet certain criteria. It is not just in this section, in other sections the same applies to creation of towns, urban centres and municipalities. For you to qualify to have that municipality, urban centre or a market, it means you have to meet certain criteria for you to be able to designate these particular areas as either an urban area, a market or a city.

So, it goes down to indicate that the objective of this Bill is to amend the Urban Areas and Cities (Amendment) Act, 2017 to provide for devolution of these services to *mwananchi* so that you do not talk of a city without its attendant services. You cannot talk of a market, municipality or upgrading a certain region to a city or a municipality without providing the services that we require. An example is the Economic Processing Zones (EPZ); the economic zones that we have created, not only in this country, but in other countries in the East African Community (EAC).

Look at the EPZ which is located in Kitengela, just by focussing, creating a zone and designating that zone as an area of development, in itself increases the population and services. At one point we visited this EPZ as the East African Legislative Assembly and this visit revealed that we have approximately 7,500 employees at any one day in that particular economic zone. So, if we create certain areas and zones and call them processing zones, market zones, a city or a municipality, the aim and intention is one; to create employment and take services to the people.

However, as we do this, then we should have the necessary accompanying resources for us to have these cities or urban centres running. So, I think that this Bill is well intentioned because it is meant to devolve these services for citizens to improve their livelihoods. We can, therefore, improve on it and iron out a few areas here and there.

Mr. Deputy Speaker, Sir, on the issue of population, we cannot be complaining that our cities are overpopulated. We complain that we are crowded in Nairobi County, but we are afraid to create other cities or municipalities that will decongest this already congested area. We are so congested that we lack water. The little water that is there is not enough for us, and the services that are there are not enough for us. So, we should

not shy away from creating such zones, markets and municipalities so that we decongest the services and the cities that are already congested. So, I think that the objective of this Bill is good and we only need to support it.

There was a time for us in the Rift Valley when the nearest Provincial Headquarters where you would get certain services was in Nakuru. So, you would have to come all the way from Kajiado, cross over to Nairobi County and reach Nakuru for you to get the assistance that you needed at the Provincial Headquarters, because you are in the Rift Valley.

Of course, with time, those services have been devolved and they have come to the counties. But this is a Bill that would ensure some of these small services can actually be delivered right at the markets and the municipalities. By doing that, we would be doing what our devolution agenda was meant to achieve.

So, Mr. Deputy Speaker, Sir, this Bill is good and I support it. The reason it has come to this House is not for us to say it is not a good Bill; but it is for us to improve it. If we have issues of a city or an urban area has a certain population, then it is for us to suggest what kind of population is acceptable for it to be upgraded. In my opinion, the issue should not be the population, but how you are able to sustain the city or urban area and make sure that you have the services to qualify for a certain level of development.

Why should a place not be upgraded to a municipality if it has the necessary services, even if it has a small population? I do not think we should look at population *per se*. We should look at every other service or qualification for a place to be upgraded to the next level. We can start by upgrading a market to a municipality. We can then move to a town and city, but we still have others that have special names like economic zones. All these are meant to gear up to certain development and improve the livelihoods.

I support the Bill.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. Senators, for the convenience of the Senate, we should adjourn at this juncture. I direct that the Bill, under Order No. 11, be placed in tomorrow's Order Paper as requested by the sponsor of the Bill.

*(Debate on the Bill deferred)*

### ADJOURNMENT

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, it is now time to adjourn the House. The Senate stands adjourned until tomorrow, Wednesday, 21<sup>st</sup> February, 2018 at 2.30 p.m.

The Senate rose at 6.15 p.m.